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School of Law Library
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Telephone (505) 277-0939
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Examination No. _____

Family Law

Semester I, 2001-2002

UNM School of Law
Final Examination
Three Credits

Professor Sedillo Lopez
December 12, 2001
9:00 a.m. to 12:00 noon

INSTRUCTIONS

YOU MAY TAKE YOUR COPY OF THE NEW MEXICO DOMESTIC RELATIONS CODE AND A CALCULATOR. YOU MAY NOT TAKE ANY OTHER MATERIAL WITH YOU INTO THE EXAM ROOM AND YOU MAY NOT CONSULT ANYTHING ELSE DURING THE EXAMINATION.

Answer each question fully. Use relevant statutes, case law and policy considerations to analyze each problem thoroughly. Do not simply express your opinion.

The time suggested for each question roughly reflects its weight in grading. Note that the time suggested adds up to three hours exactly. You do not have extra unallocated time.

Clearly identify your answers in your bluebooks.

GOOD LUCK!!!

END OF INSTRUCTIONS

[Exam begins on next page]

QUESTION ONE
(90 minutes)

Alfred and Geraldine met in college in 1989. Alfred's roommate was a law student who had taken Family Law with Professor Sedillo Lopez. The law student convinced Alfred and Geraldine that they should write up a pre-marital agreement. Without consulting attorneys, Alfred and Geraldine wrote the following agreement.

We both love each other very much and are not marrying each other for money. During our marriage we will share income, but in the event of divorce, we intend for each of our respective wages and property to belong to the person who earned it no matter what the applicable law is.

The agreement was signed and dated on April 2, 1992 by Alfred and Geraldine and witnessed by the law student.

Alfred and Geraldine were married on August 20, 1992. During the early part of the marriage, Alfred attended graduate school off and on, pursued hobbies and kept house. Geraldine worked for a computer software company. In the evenings and week-ends, Geraldine and Alfred would play around with designing web pages.

In 1995, Geraldine quit her full time job to market and work on a web-based business offering financial planning services on the Internet. Geraldine worked on the business full time and Alfred worked on the business part time. In 1995 the business generated \$30,000. In 1996 it generated \$40,000. In 1997 it generated \$50,000. In 1998 it generated \$50,000 and they purchased a 3-bedroom house for \$150,000, putting \$15,000 down. They put the title of the property in both of their names. They operated the business out of the den and the spare bedroom. In 1999 and 2000 the business generated \$50,000. Geraldine got pregnant in early 2000. When Geraldine discovered she was pregnant, she told Alfred that she wanted him to get a "real job" using his degree in chemical engineering. Alfred stated that he had no interest in chemical engineering but that he would increase the time he worked on their internet business. Geraldine did not believe that the increase in Alfred's time would generate much more income, but she agreed.

She began to work part time on the business and Alfred worked full time. The business income has dropped significantly. Their 2001 income is \$30,000 to this point. Because of the drop in income they have had to dip into their savings and use credit cards more than usual to maintain the mortgage and household expenses. They have a current credit card balance of \$15,000. In July of 2001 Alfred's Uncle Jose, left him an inheritance of \$50,000 and "Lucky Hero" a registered quarter-horse. The will stated that he left Alfred the horse because even though Alfred did not ride, he knew how much Geraldine liked to ride and he hoped that she would enjoy the horse. since she had always enjoyed riding when they had visited Uncle Jose in Taos. Alfred put the \$50,000 in an IRA in his name only and did not use any of it for household expenses or bills.

The couple's baby girl, named Santhony was born on September 18, 2000. Alfred and Geraldine shared care. Geraldine breastfed the child until the child was 9 months but with the exception of the Geraldine's nursing, they took turns bathing, changing and playing with the precocious child. The family's precarious financial situation with the drop in business income and the increased expenses of the child and maintaining "Lucky Hero" put stress on the marriage. On October 18, 2001, Geraldine filed for a dissolution of marriage in district court in New Mexico.

Discuss the issues raised by the foregoing facts.

QUESTION TWO
(30 minutes)

Ada and Al. have been married for eight years. They have a child, Barbie, age 6, who was born with mild Down's syndrome. Ada and Al both love the child very much. They lived for the first five years of their marriage in New Mexico where Ada is from. Two years ago, the couple moved to New York City where John is from. They lived in an apartment on John and Broadway, two blocks from the World Trade Center. On September 11, the terrorist bombing of the World Trade Center Twin Towers caused Ada psychological stress. She returned to New Mexico with Barbie for a "vacation". She kept extending her visit and finally called Al to say that she would not return to New York. On December 1, Ada filed in a New Mexico

court and had Al personally served in New York with a petition requesting legal separation and requesting sole custody of Barbie and an ex parte New Mexico Court order granting temporary custody of Barbie to Ada. On December 2, Al filed a petition for legal separation in New York requesting the immediate return of the child and sole custody of Barbie. Both New Mexico and New York have enacted the Uniform Child Custody Jurisdiction Act.

- 1) Does the New Mexico Court have jurisdiction to proceed with the legal separation? Explain.

- 2) Which one of the following statements is true? Write the correct letter in your bluebook. You may explain your answer briefly.
 - a. The UCCJA does not authorize New York to modify the New Mexico custody order because New Mexico is Barbie's home state.
 - b. The Parental Kidnapping Prevention Act (PKPA) does not require New York to recognize the New Mexico custody order.
 - c. The UCCJA does not require New York to recognize the New Mexico custody order.
 - d. Neither the UCCJA nor the PKPA require New York to recognize the New Mexico custody order.
 - e. The UCCJA authorizes the New York to modify the New Mexico custody order if it would be in the child's best interests to do so.
 - f. The UCCJA authorizes the New York court to modify the New Mexico custody order because New York is Barbie's home state.
 - g. The UCCJA authorizes New York to modify the New Mexico order because Al is in New York.
 - h. New York may modify the child custody order because the New Mexico court had no personal jurisdiction over Al.
 - i. The New York court may ignore the child custody order issued by New Mexico because the New Mexico court did not have subject matter jurisdiction.
 - j. None of the above statements is true.

QUESTION THREE

(30 minutes)

Sherry and Ruben were divorced in August of 2000. The court order required Ruben to pay his former wife \$600 per month permanent alimony, \$700 per month child support, and \$500 a month for twelve years as Sherry's share of the community property to balance a retirement fund that Ruben was allowed to keep. Ruben has just quit his job as a biochemical engineer to go to acupuncture school. He filed a motion to modify the alimony and child support. He projects that his income over the next two years while he is in acupuncture school will be \$12,000 per year in a combination of student loans and part time employment.

A. Is a court likely to modify the child support and/or alimony? Why or why not? Explain fully.

B. Notwithstanding your answer to part A, assume that the court denied Ruben's motions to modify. Assume that Ruben has filed for bankruptcy. Are his family court ordered obligations dischargeable? What are the arguments on both sides?

QUESTION FOUR

(30 minutes)

Early in this course, we learned about the "privacy principle". After your study of the law and policy of family law, what is the privacy principle? In what ways is it upheld and in what ways is it violated in the laws involving families? Use at least three specific examples from the cases or laws that we discussed in class to illustrate your thesis.

[End of Examination]