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**533 Family Law
Fall Semester 2002**

**UNM School of Law
Final Examination
Three Credits**

**Professor April Land
December 6, or 14, 2002
9:00 a.m. to Noon**

INSTRUCTIONS

1. Please be certain that your exam consists of eight (8) pages, including this cover sheet.
2. This exam consists of three fact patterns with questions. The first fact pattern is worth 50% of the total points available. The second fact pattern is worth 33% of the total points available. The third fact pattern is worth 17% of the total points available. The suggested time allocations are 90 minutes for the first fact pattern, 60 minutes for the second fact pattern, and 30 minutes for the third fact pattern.
3. Please read the fact patterns and the questions carefully, including the references to specific statutes which are provided on the List of Statutes on the last page of this exam. If there are any ambiguities as to law or fact, please state your assumptions and proceed with your analysis.
4. Please write your answers in blue books, as neatly as possible under the circumstances, using alternate lines and one side of the paper only, or type. Be sure to place your exam number on each blue book or each type written page.
5. This is a limited open book exam. You may use your casebook, New Mexico statutes, class supplement and handouts, and your own work product, such as class notes and outlines that you prepared individually or as an active member of a study group. You may not use hornbooks, treatises, commercial outlines or the like.
6. Please turn in all exams and scratch paper with your answers.
7. Please remember that the Honor Code is in effect.

FACT PATTERN I

50% of Total
(Ninety Minutes)

Alicia and Bella met each other during a traditional ceremony in Bella's home village of Harmony, in the state of Hope. The village, Harmony, has a rich culture, and strong sense of community that has been celebrated for hundreds of years. Alicia is from the city of Discord, a modern American city in the state of Hope with a population of over one million people. Discord is an hour a half away from Harmony by car. Alicia had been interested in the traditions and customs of Harmony since she was a child. When she was 17 years old, she went to Harmony to participate in a traditional ceremony with almost five hundred people, which is half of the population of the village.

As part of the ceremony, Alicia drank some herbal teas, and ate foods that had been specially prepared. About an hour later, Alicia began to feel as if she had been swept away into a different world pulsating with music and chanting. In this different world, she saw a woman named Bella for the first time. Alicia immediately felt a very strong feeling towards Bella. Alicia and Bella did not part for the rest of the two-day ceremony. By the end of the second day, Alicia declared out loud that she would never leave Bella.

After the ceremony, Alicia ran away from her home in Discord to live with Bella in Harmony. They lived together for several years. Bella financially supported Alicia by working at the local factory. Alicia kept the house, grew a fantastic garden, and took responsibility for managing their joint bank accounts. Alicia and Bella had other friends, but they were openly devoted to each other. When Alicia got sick, Bella would take off from work to attend to her. They never had a wedding ceremony, and Alicia never told her parents that she felt that she was married to Bella.

About five years after they moved in together, they adopted a pair of fraternal twins, Cody and Daniella, shortly after the twins were born. The adoption was legal. Both Alicia and Bella were granted full parental rights.

Bella continued to work full-time at the factory, sometimes adding double shifts to make enough money to support Alicia and the children. Alicia took care of the twins full time. The twins were raised according to the culture and traditions of Harmony. By the age of two, they had already begun rudimentary lessons in archery. The children received only natural medications, and when the children got very sick, which was seldom, Alicia and Bella would request a visit from the natural healer in the village. Bella and Alicia agreed that when the twins reached school age, they would be home-schooled. They also promised never to spank or hit the children. Generally, they shared common goals and values regarding the children.

Late one night when the twins were two years old, Bella returned home to find the children running and screaming around the house with Alicia running and screaming after them. Bella asked Alicia what was wrong and Alicia said that the children were out of control, that she was sick of taking care of the rotten little monsters, and that she wanted out of the village. The

children continued to scream and Alicia spanked them. Bella ran to try to protect the children and Alicia screamed at Bella and threw a plate that hit Bella in the face.

After the incident, Alicia realized that she needed to make some changes in her life. She says that she does not necessarily want to end her relationship with Bella, but she wants to return to Discord for a while, and take the children with her. She has a male friend who has said that she and the children can stay with him. Her friend has also told her that his Christian church would be very supportive of Alicia and would provide daycare, and, eventually, kindergarten, for the children.

Bella comes to you seeking legal advice. Bella says that while she wants to respect Alicia's wishes and support her during this difficult time, she wants to know her rights.

Bella does not mind if the children move with Alicia to the city as long as she can see them one night per week and overnight on the weekends. However, Bella wants to retain legal authority to have the children return to live with her if things do not work out for Alicia or the children in Discord. Bella does not mind if her children are exposed to Christianity, as long as they also continue to celebrate the traditions of Harmony. Bella is adamant that the children continue to receive medical care from the current natural healer. She does not want the children to have any immunizations or modern pharmaceutical medicines. Bella also wants the children to be home schooled, both because she wants them to receive an alternative education, and because she does not want the children immunized as required by most schools. Bella also hopes that the children will continue with their rudimentary archery training.

The custody statute in Hope states that custody and visitation shall be awarded in the "best interest of the child," but does not include any specific statutory factors for consideration. The case law provides that the district court can consider "any relevant factors." As to time-sharing or visitation, the mandatory mediation clinic in Discord follows guidelines similar to those provided by the State of New Mexico, Second Judicial District, Family Court Clinic; a copy of the relevant guidelines is on the List of Statutes (even though the guidelines are not statutes).

Please address the following questions.

1. Bella wants to know how her legal custody rights, and any visitation/time-sharing issues are likely to be resolved by the courts, if she and Alicia are unable to come to an agreement. How would you advise her?
2. Bella also wants your opinion as to whether she would be able to name Alicia as the beneficiary of her pension plan. The pension plan states that Bella may designate any member of her "family" as beneficiary, and that the plan will recognize any valid marriage. The courts of Hope have recognized common law marriage in a case that does not address gender issues. She also wonders if Alicia's proposed move would have an impact on this issue. What would you advise Bella about whether Alicia could be a beneficiary under the plan?

FACT PATTERN II

33% of Total
(Sixty Minutes)

Willow and Holloway worked together in a little bookstore owned by Holloway's parents, in the state of Iowa, a common law property state. When Holloway's parents died in November 1979, they left the bookstore to Holloway. The business was appraised at \$20,000. Willow and Holloway continued to work in the little bookstore, and also became romantically involved. In January, 1980, Holloway and Willow, when they were both 20 years old, moved in together. They did not feel ready for marriage. However, they shared expenses and profits from the business.

Five years later, in 1985, Holloway and Willow got married. At that time, the business was appraised at \$30,000.

In 1990, Holloway and Willow decided that they were ready for a change in their lives and moved to New Mexico. Holloway wanted to go to business school. He sold the bookstore for \$40,000 and took the proceeds to pay for his education.

Willow started a bookstore, café and art gallery in an old storefront in Albuquerque, New Mexico with a living space upstairs. Willow worked very hard to develop the new store, and their new living space. She also did all of the cooking, cleaning, grocery shopping and laundry for the couple. They lived very frugally and Willow put most of her earnings back into the business in the hopes that it would be successful. Holloway was very busy on a fast track to a Masters degree in Business Administration.

After two years, Willow got tired of all of the responsibilities. She tried to speak with Holloway, but he would not even listen to her, so she threatened to divorce him. Holloway did not want a divorce, but he was very tired of living so frugally. They entered into a written agreement to take more earnings out of the gallery, and to take two vacations per year together. Holloway agreed to take more responsibility around the house. They also agreed that in the event of divorce, that they would each take whatever debts and assets they had at that time, and would not claim any assets or property from the other.

By Spring of 2002, the bookstore, café and art gallery was very successful. At that time, Willow was making approximately \$50,000 per year and the business was appraised at \$150,000. Holloway had graduated from business school and recently landed a job as an investment banker earning \$500,000 per year, and he had savings of \$100,000 in his name. Their assets and incomes remained stable throughout the rest of the year, and there were no debts of the marriage. But, for all of their financial success, the marriage was not working. While Willow had kept her part of the agreement by taking more money out of the business, Holloway had never kept his promises. He was never home, never helped with chores, and always claimed that he was too busy to go on vacation.

In early summer of 2002, Willow decided to leave Albuquerque for a few months on her own to make some decisions about her life. She decided to go in style. She traveled to Hawaii, staying in five star hotels, eating in fancy restaurants, and getting spa treatments, running up a bill of over \$40,000. When she returned to Albuquerque, she told Holloway that she wanted a divorce.

Holloway comes to you for advice. He wants to know how New Mexico law will address the assets and debts of the marriage, and the relevant tax implications. He says that he wants to give Willow a fair share of the assets and liabilities, but he is offended by the idea of paying alimony or spousal support. How would you advise him? You do not have to do the arithmetic. Please explain your reasoning.

FACT PATTERN III

17% of Total
(30 minutes)

Pedro lived across the street from the Roberta throughout his childhood. Pedro and Roberta played hide and seek together in the neighborhood, ate at each other's houses and went to the same neighborhood schools for the first 16 years of their lives. When Pedro turned 18 years old, he began working at a computer store in the neighborhood. Roberta, who was also 18, had not seen Pedro for over a year and was happy to see him when she went into the store to purchase a computer. Roberta purchased a computer. She also took the opportunity to ask Pedro if he wanted to go see a movie. Pedro declined the offer.

A couple of days later, Roberta returned to the store to ask questions about how to install some software. She again asked Pedro if he wanted to go see a movie, this time making it clear that she wanted to go out on a date. Pedro declined again. She then began calling Pedro at home every day, at least twice a day. Pedro did not answer the phone, and she did not leave messages, but Pedro could tell from his caller ID that Roberta was calling. Pedro also saw Roberta driving by his house on several occasions.

About three weeks after purchasing the computer, Roberta returned to the store. She was very angry and said that her computer was not working properly, that Pedro had ripped her off by selling her an inadequate computer, and that she was "going to make him pay" for ripping her off and embarrassing her.

After this incident in the store, Pedro saw Roberta driving by the store almost every other day. He also kept running into her when he was off work, at the video store, the grocery store and other places he frequented. Pedro began to feel that Roberta was following him. Pedro was very concerned that she would not stop. Therefore, Pedro filed a petition for an order of protection in court.

The New Mexico Family Violence Protection Act provides that "a victim of domestic abuse" may petition for an Order of Protection. If you were the Domestic Violence Commissioner in the New Mexico court in which Pedro filed, would you issue an Order of Protection for Pedro pursuant to § 40-13-2 NMSA 1978, (set forth on the attached list of statutes) and, if so, on which grounds? What arguments would you expect Pedro and Roberta to make?