

**S.J. QUINNEY
COLLEGE OF LAW
EXAMINATION COVER SHEET**

Student Examination Number: _____

**Professor Kessler
Family Law**

May 1, 2003

Spring Semester 2003

Time Allowed: 3.5 Hours

1. Print your Examination Number, the title of the course and the instructor's name on the front of every bluebook or every page (if using a computer).
2. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.
3. Student must submit a completed honor code and the examination questions with the answers.
4. Students will be provided with scratch paper that must be submitted with the examination questions and answers at the end of the exam.
5. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used.
6. If the examination utilizes a computer answer sheet, print your examination number at the top of the computer answer sheet in the space provided. On the reverse side complete the space marked "identification number" with your examination number preceded by zeros. For example, if your examination number is 00237706, you would complete the following:

IDENTIFICATION NUMBER:

0	0	0	2	3	7	7	0	6
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Special Examination Instructions on the following page

Special Examination Instructions

- 1) This exam is limited open book. You may refer to your casebook and family law supplements, any handouts that were distributed in class, and outlines or notes that you have prepared alone or in collaboration with classmates currently enrolled in this class. You may also use a calculator, if necessary. You may not have access to any commercial reference books, notes or outlines not prepared by a student currently enrolled in the class, or any other outside material that I have not explicitly permitted above; this restriction includes online computerized material.
- 2) **Please write on only one side of the page. Please start each of the three parts of the exam in a new blue book, or on a new page if you are typing your exam.**
- 3) If you are typing your exam, number each page and clearly indicate the total number of pages on the first page of your exam answer.
- 4) Part I of the exam consists of very short answer questions. You will select 10 questions to answer out of the 11 questions presented. When writing your answers, be sure to indicate clearly the number of each question you are answering. Do not answer more than 10 questions; I will read only the first 10 answers in your blue book.

In Part I, you are not expected to write essays. Keep your answers short. It is fine to write a few sentences or provide a list where appropriate.

Part I of the exam is worth 30 points out of a total of 100 points for the entire exam. Each question in Part I is worth 3 points. The suggested time for Part I is 50 minutes.

- 5) Part II of the exam consists of a fact pattern, followed by a question which will require you to analyze several legal issues.

Part II of the exam is worth 30 points out of a total of 100 points for the entire exam. The suggested time for Part II is 70 minutes (1 hour 10 minutes).

- 6) Part III of the exam consists of a single essay question. You are expected to write an essay that fully explains your reasoning. Your essay should have a rational organizational structure and proceed clearly and logically from beginning to end. Therefore, it is advisable to take time to outline your essay before you begin to write. Essays that are well organized and well written will receive more points. However, if you are short of time, it is advisable to outline the remainder of your answer so you can get some credit for the substance of your ideas.

Part III of the exam is worth 40 points out of a total of 100 points for the entire exam. The suggested time for Part III is 90 minutes (1 ½ hours).

Special Examination Instructions Continued on Next Page

Special Examination Instructions, continued

- 7) There is no page limit for any portion of the exam. However, verbosity will not help your grade and may cause you to run out of time. Try to be thorough but concise.
- 8) Address all significant issues, even if you think one is dispositive.
- 9) Throughout the exam, if you feel a question you are answering is ambiguous or there is further information that you would want to have in order to refine your response, indicate this in your answer. Also, if you need to assume facts not provided in the question to answer the question, state your assumptions.

Good luck and have a great summer!

PART I
SUGGESTED TIME 50 MINUTES (5 MIN. PER QUESTION)
30 POINTS TOTAL

Answer any 10 of the following 11 questions. Do not answer more than 10 questions. When writing your answers, be sure to indicate clearly the number of the question you are answering. Each question is worth 3 points.

NOTE: QUESTIONS FOR THIS PART WILL NOT BE RELEASED. HOWEVER, I
 WILL DISTRIBUTE SAMPLE QUESTIONS FOR PART I IN CLASS.

END OF PART I

PART II
SUGGESTED TIME 70 MINUTES
30 POINTS

Winnie was married at age sixteen to Albert. The marriage lasted just a few weeks, and then Winnie moved back with her mother. Winnie never obtained a divorce because her mother told her it was not necessary. Her mother gave her this information because her mother consulted an attorney about the validity of the marriage to Albert, and the attorney had said that the underage marriage was not valid.

When she was 25, Winnie married Harry a firefighter who was thirty years old. At the time of the marriage, Harry had been divorced from his first wife Betty for five years.

Twenty years after the marriage between Winnie and Harry, the couple is divorcing. Through mediation, they are able to settle all of their issues except the following:

A. *Harry's Pension.* Harry began his career as a firefighter ten years before his marriage to Winnie. The normal retirement age is 55. Harry is now 50, and he intends to retire at age 55. The pension is a defined benefit plan which entitles him upon retirement to \$2,000 a month after taxes. Under this plan, payments will continue for Harry's lifetime. Betty, Harry's former wife, released her interest in Harry's pension in exchange for other valuable property as part of their divorce settlement. Betty is now seeking a share of the pension through a modification proceeding.

B. *Support.* Harry is now a captain, and his annual salary is \$80,000. Winnie is a paralegal. Her salary for the first ten years of the marriage ranged from \$25,000 to \$40,000. After ten years of marriage, Harry and Winnie had a daughter, Grace. Since Grace was born, Winnie has worked part time and has been responsible for most of the homemaking duties. Her salary is now \$30,000. Harry and Winnie have agreed to joint legal custody of Grace; Winnie will have physical custody.

C. *The Couple's Automobiles.* Winnie has a 1996 Nissan Sentra purchased during the marriage for \$8,000 with funds from a bank account in her name only (funded by her bi-weekly paychecks). Title is in her name. It is now worth \$5,000. Harry has a 1955 Ford pickup truck that he received as a gift from his father during the marriage. Title is in Harry's name. At the time of the gift, the truck had a value of \$10,000. The Ford has been a "labor of love" for Harry. He has spent a significant amount of time restoring it to its original condition, including searching for old parts, making mechanical repairs, networking at classic car shows, and painting it. Harry is the only one who drives the truck, with rare exceptions. The truck is now worth \$25,000.

Part II continued on next page

Part II continued

Question: Discuss the rights and liabilities of the parties as to each of the foregoing issues. In doing so, include dollar figures in your answer where possible.

Assume for the purposes of this question that Harry and Winnie live in a state that:

- (1) Is a common law property state with a “dual property” equitable distribution statute that requires 50/50 division of marital property upon divorce;
- (2) Does not recognize contract remedies between unmarried cohabitants upon their separation on public policy grounds;
- (3) Has adopted § 308 of the Uniform Marriage and Divorce Act regarding spousal support (*See* course case book, at 671); and
- (4) Is currently considering revising its spousal support law in light of the American Law Institute Principles of the Law of Family Dissolution, as follows:

Compensation for Loss of Marital Living Standard and for Primary Caretaker’s Residual Loss of Earning Capacity

A presumption arises that a spouse is entitled to an award under this section whenever that spouse has been married ten years or more to a person whose income at dissolution is expected to be at least 50 percent greater than the claimant’s. The presumptive award shall equal the difference in the spouse’s expected incomes at dissolution, multiplied by an appropriate durational factor. The durational factor is equal to the years of marriage, plus the years the claimant provided significantly more than half of the total care for a dependent child of the marriage, multiplied by .01, but shall in no case exceed .4.

END OF PART II

PART III
SUGGESTED TIME 90 MINUTES (1 ½ HOURS)
40 POINTS

Answer the following question. You are expected to write an essay that fully explains your reasoning. Your essay should have a rational organizational structure and proceed clearly and logically from beginning to end. Therefore, it is advisable to take time to outline your essay before you begin to write. Essays that are well organized and well written will receive more points.

In the 1888 case of *Maynard v. Hill*, Supreme Court Justice Field wrote:

Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature. . . . [While] marriage is often termed by text writers and in decisions of courts as a civil contract . . . it is something more than a mere contract. The consent of the parties is of course essential to its existence, but when the contract to marry is executed by the marriage, a relation between the parties is created which they cannot change. Other contracts may be modified and restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation, once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and society, without which there would be neither civilization nor progress.

Although Field wrote these words over a century ago, some might claim that they aptly describe modern family law. Others, however, might dispute the accuracy of Field's description in light of developments in family law in the past 30 years.

Question: Using at least three specific examples of family law doctrines or topics that we studied this semester, write an essay either supporting or disputing Justice Field's statement (in whole or in part) as an accurate characterization of family law today.

END OF EXAM