

EXAMINATION COVER SHEET

Student Examination Number: _____

FAMILY LAW
Professor Kessler

May 1, 2004

Spring Semester 2004

Time Allowed: 2.5 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 7706, you would complete the following:

IDENTIFICATION NUMBER

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SPECIAL EXAM 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 question (not each Part, but each question) 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 a fact pattern, followed by a question or series of questions which will require you to analyze several legal issues.

Part I of the exam is worth 60 points out of a total of 100 points for the entire exam. The suggested time for Part I is 90 minutes (1 ½ hours).

- 5) Part II 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 II of the exam is worth 40 points out of a total of 100 points for the entire exam. The suggested time for Part II is 60 minutes (1 hour).

- 6) 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.
- 7) Address all significant issues, even if you think one is dispositive.
- 8) 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 90 MINUTES
60 POINTS

Harry and Wendy were married in 1994. They had one daughter, Dora, now age seven. They live in the state of West which has both fault grounds for divorce and no-fault grounds where a couple lives separate and apart for one year. Wendy is an attorney who works in a large downtown law firm. Harry is a middle school teacher. They own a beautiful house in a very nice neighborhood. In addition, they have substantial savings and investments. Because of his schedule, Harry takes primary responsibility for raising Dora. He fixes meals, helps with homework, and gets her off to school each morning. Wendy works long hours and brings in a very good income. When she gets home each night, she has a few minutes with Dora. She usually reads or watches T.V. with Dora before she goes to bed. Then Wendy has a late dinner with Harry. It is her custom to open a bottle of wine before dinner, and she normally finishes it before she goes to bed. Wendy works most Saturdays, but devotes every Sunday to activities with Dora. On Sunday she starts drinking around noon and has numerous drinks throughout the day.

In January of 2003, Harry informed Wendy that he was bisexual, and that even though he loved her, he was entering counseling to explore whether he wanted to continue their marriage. The next day, Wendy told Harry she was taking Dora to stay with her mother who was ill. Thirteen months later Wendy, who had never returned to live with Harry, filed for divorce on the ground of living separate and apart, and Harry cross-filed for a divorce based on desertion. Dora has been spending about equal time with both parents, alternating between the marital home where Harry resides and her grandmother's house nearby, where Wendy lives. Dora, if asked, would state that she has a strong preference for living with her daddy.

PART I CONTINUED ON NEXT PAGE

PART I CONTINUED

- Question 1:** The statutory period for desertion in West is one year. Who will get the divorce? Explain fully. (15 minutes) (10 points)
- Question 2:** Assume that during the period of separation, Harry went out to dinner several times with Bob, a gay man. Who will get the divorce? Explain fully. (15 minutes) (10 points)
- Question 3:** Both Harry and Wendy are requesting sole custody of Dora. West currently employs a traditional “best interest of the child” standard, however, it is considering revising its custody law in light of the American Law Institute’s PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, § 2.08 Allocation of Custodial Responsibility. Who should be awarded custody? Explain your reasoning fully. (15 minutes) (10 points) **Note: West’s custody statute can be found on the next page.**
- Question 4:** Wendy has been working for the last two years on a large class action tort case on a contingency fee arrangement. The case has not yet come to trial or settlement, but settlement in the amount of \$50 million is anticipated in another year or two. Wendy, a partner, is likely to receive \$400,000 in fees from the settlement. How should the court classify and apportion the fees? Include dollar figures in your answer. (15 minutes) (10 points)
- Question 5:** Assume – for this question only – that the court awards Harry sole legal and physical custody of Dora, with liberal visitation to Wendy. Five years later, Wendy dies in a car accident. Harry has been in a committed intimate relationship with Bob since shortly after the divorce from Wendy. Dora views Bob as a stepfather. They share a loving emotional bond which has deepened since Wendy’s death. Marriage not being an option, Harry and Bob would like Bob to adopt Dora. They feel that such a step would give legitimacy to their family. It would also entitle Dora to significant benefits (*e.g.*, health benefits, inheritance rights) and would ensure that Bob will be Dora’s legal parent and custodian in the case of Harry’s death.
- Bob files an application to adopt Dora but it is rejected by West’s Department of Children and Families (“DCF”) pursuant to West’s adoption law, which provides: “No person eligible to adopt under this statute may adopt if that person is homosexual or lesbian.” West excludes all gay individuals from adoption on the theory that married parents provide greater stability for children and that it is preferable for children to have a mother and a father, even though it allows single heterosexual persons to adopt. Is the adoption statute constitutionally valid? Discuss fully. (30 minutes) (20 points)

PART I CONTINUED ON NEXT PAGE

PART I CONTINUED

§ A. Child Custody

The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including:

- (A) the child's preference;
- (B) the benefit of keeping siblings together;
- (C) the relative strength of the child's bond with one or both of the prospective custodians;
- (D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;
- (E) factors relating to the prospective custodians' character or their capacity or willingness to function as parents, including:
 - (i) moral character and emotional stability;
 - (ii) duration and depth of desire for custody;
 - (iii) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;
 - (iv) reasons for having relinquished custody in the past;
 - (v) religious compatibility with the child;
 - (vi) kinship, including in extraordinary circumstances, stepparent status;
 - (vii) evidence of abuse of the subject child, another child, or spouse; and
- (F) any other factors deemed important by the court.

END OF PART I

PART II
SUGGESTED TIME 60 MINUTES
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 May 2000, Ira Mark Ellman, Chief Reporter of the AMERICAN LAW INSTITUTE'S PRINCIPLES ON THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS, wrote:

One expects a nation's family law to reflect its cultural values. In America, those cultural values include a strong tradition of family privacy. . . . French law bars parents from giving their child a name that does not appear on a government-approved list. Mexican family courts are empowered to settle [certain] disputes between spouses Neither intrusion is plausible, and perhaps not constitutional, in the United States. At the same time, Americans are as likely as others to have strong normative beliefs about the family. Because much family law is statutory, citizens can and do engage the political system to promote family-law rules that reflect their views. . . . Family law is necessarily affected by this tension between the tradition of family privacy and a shifting majority's desire for rules that advance their values.

Question: Using at least two specific topics that we studied this semester, write an essay highlighting where the tension described by Ellman is manifested in family law; how courts, policymakers, and/or reformers have resolved the tension; and how those resolutions have shifted over time.

END OF EXAM