

Exam Number _____
FAMILY LAW EXAM
PROFESSOR DEBORAH BELL
MAY 2, 2003

Instructions: Write your exam number in the top right hand corner of **each page** of the exam. Answer each question in the space provided. If you need additional space, write “over” and complete the answer on the back of the *same page*. Each separately lettered question is worth 5 points. Total points: 200. The examination period is three hours.

Jeanie and Joe Sam: Custody modification

Jeanie was awarded primary custody of two children in a 1997 divorce, with standard visitation awarded to their father, Joe Sam. Jeanie received certification as a minister of the True Way Gospel Church in 1999, and the children began spending Thursday through Sunday night of each week with Joe Sam while Jeanie toured the Southeast with an evangelical tent revival. The family has continued this arrangement for the last four years. Jeanie recently announced her plans to marry another member of the revival group, Banjo Bob, and move to his home in Nashville. Joe Sam has filed suit seeking modification of custody.

1. State the test for modification of custody that Jeanie will argue applies to this action.

2. State the test that Joe Sam should argue applies and briefly explain why.

DONEVA

Edna and Don their daughter Doneva and her husband Troy, and Doneva’s former boyfriend, T.J., are involved in an action over custody of Doneva’s children, Jacqui (5) and Jewel (8). Doneva and T.J. were never married, but were living together in Arkansas at the time both children were conceived. When Doneva was pregnant with Jacqui, T.J., who was sometimes violent toward Doneva, went on a drinking binge and at one point threatened her with a gun. Doneva called the police, who arrested T.J. Doneva refused to allow him back into the house, and T.J. moved to New Mexico shortly after the arrest. Doneva left Jacqui with her parents, who had kept Jewel since she was one month old. Doneva moved to New Orleans where she has been an exotic dancer for the last five years. Edna and Don have provided primary care for the children since they were infants. Doneva visits several times a year, spending a total of a few weeks a year with the children. They do not visit her in New Orleans. She has provided sporadic financial support for the children and occasionally sends them presents. T.J. is still living in New Mexico. He has had no contact with the children since Jacqui’s birth, although he did

occasionally visit Jewel at her grandparents when he lived with Doneva. Last month, Doneva married a chef at a New Orleans restaurant and gave up her career as a dancer. She asked the children to come live with her in New Orleans. Edna and Don have refused, stating that the girls feel their home is in Picayune with their grandparents, they are happy and doing well in school, and do not want to live with their mother. Doneva has filed an action to obtain custody of her daughters. Edna and Don responded with an action for custody. They have both joined T.J. as a party, requesting child support for Jacqui for 5 years and Jewel for 8 years. T.J. responded with a request for custody of both girls. Doneva's husband joined in with a petition to adopt the girls. This mess is pending in court.

3. What test will Edna and Don argue applies to their petition for custody of their granddaughters?

4. What test will Doneva argue applies to the custody action between herself and her parents?

5. What defenses will T.J. raise to the action for back support?

6. What test will T.J. argue applies to determine custody between himself and Doneva?

7. What test will Doneva argue applies to determine custody between them?

8. T.J.'s net monthly salary is \$2400. He pays \$400.00 in support for two children under an Arkansas decree and supports his wife's two children. The children live with him and he has adopted them. If Doneva is awarded custody, what amount of base child support will he be ordered to pay?

9. If Doneva is awarded custody and refuses to allow the children contact with Edna and Don, what must they prove to have legal rights to see the children?

10. What point should Doneva and Troy emphasize to convince T.J. to allow Troy to adopt the girls?

Dr. and Ms. Gross: Alimony

Dr. Gross, a heart surgeon, has filed a petition to modify his alimony payments. Dr. and Ms. Gross were divorced in 1998 after a twenty year marriage. The divorce agreement approved by the court provided that Dr. Gross would pay to Ms. Gross "the sum of \$2000 a month for ten years as lump-sum alimony until the death of the payee or payor, and which will not be modifiable at the request of payee. Alimony will terminate if the payee remarries." Dr. Gross has petitioned for termination of alimony payment based upon evidence that Ms. Gross has been dating the same man for five years. Dr. Gross retired from medical practice last year at the age of 65 and receives retirement income of \$150,000 per year. As an alternative to termination, he has requested a modification of alimony based upon his reduction in income.

11. What argument will Dr. Gross make that the alimony payments should be terminated?

12. What argument will Ms. Gross make that alimony should not be terminated?

13. What argument will he make that alimony should be modified?

14. What argument will she make that alimony should not be modified?

15. As Ms. Gross' attorney, what fact is critical to preparing your defense to the modification request?

16. Ms. Gross has not reported the alimony payment as income for the last ten years, and Dr. Gross has threatened to report her failure to the IRS. What is the critical provision in the agreement for determining whether the alimony should be reported as income?

Mike and Missy: Child support

Mike and Missy were divorced in 1993. Missy was awarded sole physical and legal custody of their two pre-school age children, and Mike was awarded visitation and ordered to pay \$400 a month child support or 20% of his income. In 1998, child support was modified by court order to require payment of \$1000 a month, which was 20% of his income at that time. At the time, Mike was a partner in a small law firm making approximately \$95,000 a year. In 2000, Mike married Lucy, the owner of an organic produce business and small farm. Mike resigned from the law firm to work on the farm, with primary responsibility for the goats and the cheese making business. His net income, after taxes and social security, is \$2000 a month. Mike has filed a petition to modify child support based on (1) his reduction in income; (2) the fact that Missy was not employed in 1998, and is now working at a law firm as a paralegal, with an income greater than his; (3) her remarriage to a successful businessman who assists in supporting the children.

Missy has filed a counter-petition seeking a judgment against Mike for arrearages in the amount of \$21,600. For three years, Mike has paid \$400 a month, based upon 20% of his current income. Mike responded to her petition arguing that (1) he was unable to pay any more than \$400 a month because of his reduced income and expenses; (2) Missy had orally agreed to allow reduction to \$400; and (3) the divorce agreement included a provision that he would pay 20% of his income as child support. He argues that no arrearages are owing for these reasons. As attorney for Missy, how will you respond to Mike's petition to modify based on

17. Her increase in income?

18. The support provided by her husband?

19. His reduction in income?

As the judge hearing this action, how will you rule on Mike's argument

20. That \$400.00 is the proper amount of child support under the provisions of the original divorce decree?

21. That \$400.00 was the proper amount of payment based on the 2000 agreement with Missy?

22. That he was unable to pay more than \$400.00 a month and could have obtained a modification?

23. If Missy decides to forego an arrearages action now, how long will she have to bring an action for arrearages?

Henry and Gertrude: Marriage at 80

Henry Jones and Gertrude Birdsong were married in 2000. Henry, an eighty year old man with an 8th grade education, died last month survived by Gertrude and Henry's three children, Hosea, Henrietta, and Helene. Gertrude, a 60 year old retired hairdresser, cooked, kept house, and cared for Henry during his illness, but never actually moved from her home, located several miles from Henry. Henry died, apparently without a will, leaving property valued at half a million dollars. Most of the property was in Henry's name alone. However, Henry had deeded 100 acres to himself and Gertrude "as joint owners" when they married, and had deeded 50 acres to himself and Gertrude as "tenants by the entirety." All of the property was owned by Henry prior to the marriage. The only property Gertrude owned at the time of the marriage was a small pension from her second husband, who died in 1994, and a house. Neither has been employed during the marriage.

Henry's children filed an action challenging Gertrude's right to any inheritance from Henry's estate. They claimed that Henry's was ill and not mentally competent in 2000. They also claim that Gertrude married their father only for his money, and that she lied to him about her intention to live with him. A former friend of Gertrude has also told the children that Gertrude never obtained a divorce from her first husband, who died last year. Gertrude has responded, claiming that she owns the 150 acres and is entitled to a share of the estate as well.

Gertrude apparently ran up substantial bills during the course of the marriage and her creditors are seeking recovery from Henry's estate. She owes the Horseshoe Casino \$30,000, the Oxford hospital \$18,000, and has accumulated \$25,000 in credit card debt on cards held jointly with Henry.

24. What is the maximum amount of property Gertrude can claim?

25. What two presumptions may be relevant in determining ownership of the 50 acre and 100 acre plots?

26. What cause of action should the children bring to prevent Gertrude's ownership of the 150 acres deeded to her?

- A. Undue influence and duress.
- B. Annulment of the marriage
- C. Fraud and unjust enrichment

27. What cause of action should the children bring to prevent Gertrude's inheritance of any remaining portion of the estate?

- A. Undue influence and duress.
- B. Annulment of the marriage
- C. Fraud and unjust enrichment

28. On what bases could the children seek to annul the marriage?

29. If the children seek to annul the marriage on the basis of bigamy, what will they have to prove?

30. If evidence can be obtained showing that the first marriage was never legally dissolved, which of the following is true?

- (1) Both subsequent marriages were bigamous.
- (2) The second marriage was bigamous, but the marriage to Henry was valid because the second husband died.
- (3) Both subsequent marriage were bigamous, but were validated when the first husband died.
- (4) Both subsequent marriages were validated after seven years when the first husband's whereabouts were unknown.

31. In an action to annul the marriage based on Henry's incompetence, what will be the outcome?

32. If the children are not successful in their actions against Gertrude, how will Henry's property be distributed?

33. Gertrude apparently ran up a large debt at the Horseshoe Casino, the Batesville Hospital, and the local pharmacy, and charged all of these debts to Henry. All three have made claims against his estate. Which claims will his estate be liable for?

- (1) The Hospital and Pharmacy, based on the doctrine of necessities.
- (2) None, based on the doctrine that spouses are not responsible for the support of the other.
- (3) The hospital, based on a special rule providing spousal liability for medical treatment

34. Gertrude also charged casino hotel bills on a joint credit card. Will the estate be liable for these debts if it can be shown that Henry had no knowledge of the charges?

Amanda and James: Property Division

You represent Amanda, who has filed for divorce from her husband of 6 years. There are no children of the marriage. Amanda and James, her husband, both brought substantial property into the marriage. Amanda's assets included: a home in Grand Oaks, Oxford, valued at \$450,000, with a mortgage of \$200,000; a pension with the state of Mississippi valued at \$125,000; Certificates of Deposit worth \$50,000. She was a faculty member at the University of Mississippi and had a consulting practice in landscape design with a yearly income of \$40,000, which supplemented her University of Mississippi salary. She also had a trust established by her parents with a yearly income of \$35,000. James' assets at the time of the marriage included: a home in Oxford with an equity of \$200,000; IRAs valued at \$250,000; a condominium in Destin valued at \$350,000. He was a 50% partner in an accounting firm with a yearly income of \$170,000. His share of the firm was valued at \$225,000. The couple both continued to work throughout the marriage, sharing household expenses and maintaining separate bank accounts. Each was responsible for his/her own personal expenses except that Amanda used her trust income to pay for travel for the couple, since James provided the beach condominium for vacations.

They have agreed to an irreconcilable differences divorce. You had your first meeting with Amanda a few weeks ago. She explained that she and James had always been responsible for their own expenses and in charge of their own incomes. They had been economically separate, with the exception of household expenses and vacations and she imagined that each

would take the property titled in his/her name. She listed their current assets. The assets titled in her name include: the Grand Oaks house, titled in her name. It is now valued at \$550,000. She has made all the monthly mortgage payments from her salary. Her pension is now valued at \$150,000. In 1999, she cashed the certificates of deposit and placed the funds in her checking account. She used the funds to purchase a BMW two months later. Her trust is valued at \$500,000. James' assets include: His house, now a rental, valued at \$280,000; IRAs worth \$300,000; Destin condominium worth \$400,000, and accounting firm valued at \$260,000. She also indicated that she had received a very large consulting fee – \$25,000 – several months after the couple separated.

One week later, Amanda called again. James' attorney insists that he is entitled to some of the property in Amanda's name. He did not specify which assets he claimed. She has asked you to review the assets and indicate whether any of the assets titled in her name could be considered marital property.

For each of the following items, state whether the item could be considered marital and if so, under what theory?

35. Grand Oaks house

36. University of Mississippi pension

37. BMW

38. Trust

39. Amanda's consulting fee

Amanda has also asked you to review James' assets and, if he claims an interest in property titled in her name, to make a similar claim for any item titled in his name that is arguably marital property. With respect to each of the following items, state whether the item could be considered marital and if so, under what theory?

40. rental house

41. IRA

42. accounting practice

43. Destin condominium