FAMILY LAW EXAM

QUESTION 1- (75 MINUTES)

Henry and Wendy were married when he was 50 and she was 42. Henry had inherited millions from his parents, and ran a successful trucking company which he had started at the age of 18 with seed money from the inheritance. His annual income is about \$110,000. This figure does not include various perks, including his cars, stock shares and options, vacation homes and a boat, which were all purchased by the business. Henry had been married once before, and he was required to pay \$30,000 annually in alimony to his first wife.

Before their marriage, Wendy had been an assistant professor of English at a local teaching college. Her salary had been \$42,000 a year. Henry began a campaign to get Wendy to stop teaching. He stated that he needed her to accompany him on business trips and dinners with prospective clients, and didn't like the time she spent preparing for classes and grading students' papers. In addition, if Wendy quit her job, Henry promised to pursue the infertility treatments Wendy desperately wanted. As a result of Henry's continuous pleading and whining about her work, Wendy reluctantly resigned from her tenured position at the college. Eventually, the couple had a baby through the use of artificial insemination using donor sperm.

Henry paid for all of the infertility treatments, and most of the living expenses of the couple. He boasted to friends that Wendy didn't need to work because he had sufficient resources to support his family, and enough left over to maintain his hobbies from his bachelor days. Wendy was liked by Henry's clients, and in the second year of their marriage, his company was successful in luring away a large account from a competitor. At the time, Henry attributed this success to his "charming wife."

After their daughter Dina's birth, Wendy noticed that Henry's behavior changed. Before their marriage he seemed to be a kind and gentle person, but he became increasingly harsh, cruel and tyrannical. He refused to engage in any social life with Wendy, and spent most of his free time either playing poker or playing with Dina. He doted on Dina, and by all accounts, he was a good father to her. When he was home, the two could often be found playing games on the living room floor. Henry hired two nannies for Dina, and discouraged Wendy from taking care of Dina, saying she should "leave it to professionals instead of doing an amateur job of it." On two occasions he hit Wendy after he discovered she had taken Dina out without an attending nanny. Wendy showed the bruises to a close friend, but said nothing to anyone else about what had happened.

Initially, Wendy's response to this conduct was to try to talk to Henry and persuade him to get counseling. Henry was so enraged by this suggestion that he left their house for three days, taking Dina with him. During this time Henry's lawyer told her Henry wanted her out of his house, and she could not see Dina until she agreed to move. Because she was worried about her daughter, and missed her, Wendy agreed to move out of their large home into a one bedroom apartment.

When Henry returned, Wendy tried to take Dina with her, but Henry threatened her and said he would give her no money if she took the child. He did assure her that the nannies would continue to care for Dina. Wendy sought to get her old teaching job back, but was told there were no positions available. During the 6 years of their marriage, teaching positions had become quite scarce. Henry sent her three monthly checks of \$2500 each, but refused to send any additional funds. After depleting most of the savings she had accumulated during her years of teaching, Wendy finally managed to find a position as a saleswoman in a department store, earning about \$1,000 per month. She sees Dina less frequently than she would like, because Henry often takes her with him on his business trips. She has learned from one of the nannies that Henry has been having an affair with the other nanny that began shortly after Dina was born, and that the nanny hopes Henry will marry her once he is divorced from Wendy.

Wendy has been referred to you by a former classmate who does not practice in the family law area. The friend described Wendy as "a bit spacy" but was more concerned about Wendy's emotional health as a result of what he described as Henry's "emotional abuse." Wendy would like advice concerning Henry's obligations to support her and Dina, and wants custody of Dina. She would also like your help concerning alimony and property distribution and any other matters you think might be relevant. Your research assistant has attached the statutory provisions which might be applicable to this case. Please analyze the issues raised by Wendy's situation, and advise Wendy of the likely outcomes of her case. If you believe there is information missing which you need to resolve any issue raised, please state your assumptions.

QUESTION 2 (105 MINUTES)

When Amy was 16, she went to live with her mother's sister for the summer. She hadn't seen her Aunt Linda in 10 years, and she had never met Linda's husband Ed Aster. When Amy met Ed, it was love at first sight. Ed was only a few years older than she was, even though Linda was 20 years older than Amy. Amy said nothing about her feelings for Ed because she felt it "wasn't right." One night when Linda was out, Ed professed his love to Amy, "even though he knew it was wrong." The two left a long, tearful note for Linda, and ran away together. Linda, after recovering from her shock, filed for, and was granted, a divorce on the grounds of desertion.

About a year later, Amy and Ed made their way to Pennsylvania, where they rented an apartment in the names of Amy and Ed Aster. Ed introduced Amy to his friends as "my old lady." They became involved in community activities in their small town, and both of them ended up working in local businesses as clerks. When their daughter Tanya was born, they listed Aster as their last names, and as their daughter's last name. They lived together happily for 5 years, when tragically, Ed ran into his ex-wife Linda. He and Linda rekindled their romance and left for California without leaving a forwarding address.

1. WERE AMY AND ED MARRIED? DOES AMY NEED TO SEEK A DIVORCE? IS ED RESPONSIBLE FOR TANYA'S SUPPORT?

The next years were difficult ones for Amy. She barely made ends meet, and spent most of her time working or caring for Tanya. Ed sent one card with 20\$ in it for Tanya's Th birthday, but they heard nothing from him after that. Amy worked hard, and eventually began to make a better life for herself and Tanya.

Five years later, when Amy was taking data processing classes at a local community college, she met Bill. Bill was jut finishing up his law school studies and was using the college library as a place to study for the bar exam. They dated for a year and then decided to get married. Both Amy and Bill had seen the heartache of broken relationships, and vowed not to go through it again. After getting a form antenuptial agreement from the library, Amy drafted an antenuptial agreement which was reviewed by a mutual friend at Bill's work the week before the couple married in a small ceremony at Bill's house. Amy did not tell Bill about the \$10,000 nest egg she had slowly accumulated during her years as a single mother. Bill did disclose to Amy that he had law school debts, but did not tell her he owed close to \$80,000 for college and law school loans. The agreement contained the following provisions:

- 1. Both of us have seen the destruction a breakup of a marriage can bring, and believe that marriage should be for life. Difficulties in relationships can always be worked out. Should one of us become unhappy in the relationship, the other agrees to attend counseling. Should one of us breach any portion of this agreement or seek to void this agreement and seek a divorce, that person shall pay \$20,000 to the innocent spouse and agrees not to seek to include the marital home in any distribution of joint property. In the event of breach, all separate property of the parties' shall remain separate.
- 2. Bill agrees to begin proceedings to adopt Tanya, and agrees to pay for half of Tanya's expenses. Any additional children born to this marriage will be raised according to the tenets of Amy's religion. Both of us will share the expenses of raising these children.
- 3. In the event one of us breaches this agreement and seeks a divorce, that person shall forfeit the right to seek custody of the children.
- 4. Each of us agrees to live off our own earnings and savings, which will remain separate. We have made full disclosure of all of our assets to each other.

After the marriage, Bill continued to work at the law firm he had joined the previous year. His starting salary was \$45,000 and he received annual raises and bonuses. Amy continued to work as a data processor, earning \$24,000 per year. Unbeknownst to Amy or Bill, Amy was pregnant at the time of the wedding. As the pregnancy progressed, Bill began to express doubts about raising the children in Amy's faith. She was also considering quitting work in order to stay home to care for her children.

2. ARE THE SECOND AND FOURTH PROVISIONS OF THE ANTENUPTIAL AGREEMENT ENFORCEABLE DURING THE MARRIAGE? PLEASE BE SPECIFIC WITH YOUR REASONS, AND RESTRICT YOUR INQUIRY TO THESE PROVISIONS ONLY.

Six and a half months later, Amy delivered twins prematurely. Despite a normal pregnancy, and normal prenatal test results and ultrasounds, both of the twins were born with medical problems. Jake has a cleft palate, (a hole in the roof of his mouth) which can be surgically corrected but is not life threatening if surgery is not performed. Bill wants the surgery performed early, to maximize the chances of success and to reduce chances of emotional trauma from the teasing of others. Amy is adamantly opposed to surgery on religious grounds. Amy also opposes surgery for Cassie, who has severe physical abnormalities as a result of spina bifida, a failure of the spinal column to develop properly. Although doctors want to perform the surgery because it holds the only hope of improving the quality and well as the length of Cassie's life, they acknowledge that the surgery is frequently unsuccessful, and that as a result of the spina bifida and other problems, it is unlikely that Cassie will survive to adulthood. Upon hearing the prognosis, Bill reluctantly agrees with Amy that the surgery should not be performed.

3. A HOSPITAL STAFF PERSON SEEKS A COURT ORDER TO COMPEL THE SURGERIES.

WHAT RESULTS AND WHY? EXPLAIN THE ARGUMENTS ON BOTH SIDES AND INDICATE WHICH ARGUMENTS YOU BELIEVE WILL BE SUCCESSFUL.

Bill seeks to adopt Tanya as he agreed to in the antenuptial. His lawyers seek to notify Ed, but they are unable to find him.

4. WILL BILL BE ALLOWED TO ADOPT TANYA?

After 15 years of marriage, Bill becomes disabled when a bookcase in the law firm's library falls on him. He cannot stand for long periods, and he has trouble sitting in one place for more than a few minutes at a time. The blow to his head has left him with memory problems, making a return to the practice of law unlikely. He quickly depletes the savings he has accumulated, and his disability checks are insufficient to pay for the therapy he believes is critical to his comfort and his return to health. Amy begins to pay for Bill's food, and picks up his share of the mortgage on the townhouse she purchased 5 years previously, but she refuses to pay for his chiropractic sessions, or his medications, stating she thinks these are not really helping him.

5. CAN BILL REQUIRE AMY TO PAY FOR HIS THERAPY OR HIS MEDICATIONS?

A year later, Amy has had enough of caring for her disabled spouse, and her disabled daughter, who has miraculously survived. She files for divorce after refusing to go through "useless"

counseling sessions. She seeks to have Bill evicted from the house, which is in her name, and seeks custody of Jake, who is now 17 years old. She refuses to pay more than half the necessary support for Cassie, and is unwilling to continue supporting Bill. Jake feels incredibly guilty about leaving his father and sister, and wants to stay with them, but knows he cannot support the household on his part-time earnings from the after school job he has at a local bike shop.

6. BILL HAS CONSULTED YOU ABOUT AMY'S ACTIONS. ASSUMING THAT AMY AND BILL WERE VALIDLY MARRIED, CAN HE ENFORCE THE ANTENUPTIAL PROVISION PROHIBITING EITHER SPOUSE FROM SEEKING A DIVORCE? IF NOT, CAN HE ENFORCE THE ANTENUPTIAL PROVISIONS ABOUT THE HOUSE, THE DIVORCE PENALTY AND CUSTODY OF THE CHILDREN? CAN HE FORCE HER TO CONTRIBUTE MORE THAN HALF OF THE SUPPORT FOR THE CHILDREN? WHAT HAPPENS WHEN THE CHILDREN TURN 18 NEXT YEAR? IS AMY RESPONSIBLE FOR SUPPORTING BILL, OR DOES THE PRENUPTIAL AGREEMENT GOVERN? DISCUSS ALL OF THE QUESTIONS RAISED IN THE BOLD TYPE THROUGHOUT THE FACT PATTERN, AND ANY OTHERS YOU BELIEVE NEED TO BE ADDRESSED. USE THE ATTACHED STATUTORY SUPPLEMENT TO SUPPORT YOUR ARGUMENTS.

END OF EXAM

HAVE A GREAT SUMMER!