Anonymous Number :\_\_\_\_\_

ON MODINE

FAMILY LAW SUMMER 2001

## FINAL EXAMINATION

Professor McLaughlin July 23, 2001

Room 248

6:00 p.m. until 10:00 p.m.

- 1. This exam is composed of three questions. Each question is designed to be answered in one hour. This exam is 9 (nine) pages long. You must answer each question, including all sub-parts of a question. The "law of Areen" refers to the cases and materials that we studied together throughout this semester.
- 2. No questions will be permitted once the examination begins. The only exception to this rule is to question possible typographical errors.
- 3. Write legibly. You earn points only by communicating your knowledge to me in legible handwriting. Write your answers in the exam blue books provided. Write on every other line. Do not write on the back of any page. I will read only the front side of each page. At the conclusion of this exam, place the exam, any scratch paper you use, and your exam blue books containing your answers into the manila envelope and hand it in.
- 4. On each exam blue book you hand in, please write your anonymous number on the outside cover. If you hand in two blue books, on the cover of each book, please indicate the sequence of the book in relationship to the total number of books (e.g. "Book 1 of 3, Book 2 of 3, and Book 3 of 3").
- 5. Take a moment to gather your thoughts. Good luck on this exam. Use it as an opportunity to demonstrate to me your mastery of the material and your ability to apply your knowledge in different factual settings.
- 6. Do not begin this exam until you are instructed to do so.

## ESSAY QUESTION ONE (One Hour)

In an attempt to reestablish marriage as a lifetime commitment and to reduce the percentage of marriages ending in divorce, the Delvania legislature passed the following law entitled the "One Strike Marriage Act:"

- (1) Given the prediction that one out of every two marriages will end in divorce and given the economic impact of divorce on the public including, but not limited to: 1) the increased need for child welfare funds, 2) the increased need for adult welfare funds, 3) the increased rate of teenage truancy, 4) the increased rate of high school dropouts and the corresponding less well-educated workforce, and 5) the increased court costs to oversee the dissolution of one-half of all future marriages, a resident of the state of Delvania shall have the right to marry only once.
- (2) Should the first marriage of a Delvanian end by reason of the death of the other party, the surviving party shall have the right to remarry except as expressly provided in subsection (3) below.
- (3) The Slayer's Act shall bar the remarriage of any spouse determined to be criminally responsible for the death of his or her spouse.
- (4) No Delvanian may re-marry following a divorce from his or her existing or future spouse.
- (5) This law shall have prospective application only.

There is no Delvania case law regarding the validity or invalidity of the "One Strike Marriage Act."

Additionally, Delvania has amended its state constitution to include a form of the Equal Rights Amendment that provides in relevant part:

The state may not discriminate against any individual on the basis of race, gender, or sexual orientation.

There is no Delvania case law regarding the validity or invalidity of a same-sex marriage.

Assume that you are a Delvanian family law practitioner. A potential client named Dena consults you for legal advice. Dena is a Delvanian resident. What advice would you give to Dena regarding her fundamental right to marry under the following circumstances:

- (A) Dena is currently married and would like to divorce her husband and marry her lover, Brandy, who is also a woman.
- (B) Dena is currently married and would like to divorce her husband and enter a Civil Commitment Agreement with Brandy in Vermont designating Vermont law as controlling the validity and enforceability of the agreement.
- (C) As in (B) above, Dena is currently married and would like to divorce her husband and enter a Civil Commitment Agreement with Brandy in Vermont designating Vermont law as controlling the validity and enforceability of the agreement. However, Dena contacted you from jail where she is serving a life sentence for a felony crime. How does your analysis change assuming the one-strike marriage law was enacted as a Delvanian Division of Corrections Regulation and applies only to convicted felons serving a life sentence?

## ESSAY QUESTION TWO (One Hour)

In 1990, Ricky asked Lucy to live with him. However, as a condition of living together, he required that Lucy sign an agreement. The agreement provided that Lucy waived, released, and relinquished any and all rights to share in the property acquired by Ricky in his own name in the event that the parties separate without regard to their marital status at the time of separation. The agreement also provided that should Lucy have any children while the parties were married, Ricky would have sole physical and sole legal custody of the children should the parties separate or divorce. The agreement further provided that Lucy understood that Ricky "is a person of substantial wealth" and that the "parties exchanged full and fair financial disclosures" before executing the agreement. Lucy did not consult an attorney before executing the agreement. Lucy signed the agreement, without reading it, based upon Ricky's assurance that he would rip it up if they ever married. Despite the terms of the agreement, Ricky owned no assets at the time the agreement was executed by the parties.

When Lucy moved into the Rittenhouse Square apartment with Ricky in 1990, he said, "now we are married." He threw a big party to celebrate and in front of 50 guests he placed a diamond ring worth \$20,000 on Lucy's finger and introduced her to the crowd as "my beautiful new wife." Ricky purchased the ring on credit.

On January 1, 1997, the parties participated in a mass ceremonial wedding performed in Rittenhouse Square with 200 other members of the Christian religious sect, True Believers. The parties exchanged polished iron rings as a symbol of the strength of their love. At that time Ricky reported a net worth of \$2,500,000 flowing from his television evangelical career. Lucy became pregnant and delivered twins, a girl and a boy, on January 1, 1998. Ricky is Cuban and the children have lovely olive-colored skin and dark eyes like their father. The children comprehend Spanish and are very attached to their paternal grandmother, also a member of True Believers. Their Grandmother is extremely critical of Lucy, as is Ricky, especially when Lucy questions the teachings of True Believers.

Following the birth of the twins in 1998, Ricky insisted that Lucy and the children move into the True Believer's Young Mother's Compound located approximately 90 miles from Philadelphia in Lancaster, Pennsylvania. Here, the mothers of children under the age of five raised the children communally, without any exposure to the outside world. No television or radio was permitted. No men were permitted to visit. The mothers could each enjoy two days away from the compound every two weeks.

In 2001, when Lucy's children had turned three, Lucy began to question the wisdom of the group's child rearing techniques. The twins spoke only between themselves in a special "twin talk" language that no one else understood. They called Lucy "mama," but otherwise pointed and grunted to communicate with others.

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Ricky was often travelling and was rarely at home in Philadelphia. Lucy called him regularly. He rarely returned her calls. The last time that Lucy saw Ricky, was at their apartment when she was on leave from the Compound without the children. Lucy told Ricky that she wanted to leave the Compound and have the children tested to assess the reasons for their delayed speech. However, Ricky insisted that she and the children continue to live at the compound. When Lucy disagreed, Ricky became enraged, lifted his favorite walking stick, and brandished it about Lucy's head and shoulders. Although he did not strike Lucy, Ricky broke several vases and a lamp at the apartment. Ricky insisted that the children remain in the True Believers Compound because proper religious training is the most important aspect of raising a child. After approximately six more weeks of escalating arguments with Ricky over the telephone, Lucy took the twins and left the compound in the company of a state patrol-person on June 1, 2001. Lucy asked the state patrol-person to drop her at the nearest airport where she booked a one-way ticket for herself and her children back to Milwaukee, Wisconsin to live with her parents while she pursued a divorce from Ricky.

Her parents' home is quite large. Lucy and each of the children have a separate bedroom. There is a big backyard and there are many young children in the neighborhood. The school system is excellent. Lucy had the children meet with a child psychologist, Dr. Young. Dr. Young reported that the twins were suffering from severe learning delays and needed to be "mainstreamed" in a preschool with other children in order to boost their speech skills. According to Dr. Young, one of the twins, through gestures and grunts, indicated a preference to return to live at the Compound. There is little ethnic diversity in the town where Lucy is living with her parents. Her parents are Catholic and attend church regularly. Though raised Catholic, Lucy now considers herself agnostic following her bad experience with True Believers.

Additionally, Lucy told you that Fred, a dear friend whom she would like to marry as soon as possible. Fred would like to assume the role as the children's legal father, even though he is confined to a wheelchair. Lucy is certain that Ricky will object to any involvement by Fred and claim the right to sole physical custody of the children without regard to parentage.

Lucy estimates that Ricky's net worth is now \$5,000,000. Ricky continues to live in Pennsylvania. Ricky has not taken any legal action yet.

Lucy consults you on July 1, 2001. In preparing your answer, please assume that you are an experienced family law practitioner. Additionally, pleases assume the following: 1) Wisconsin has a ninety-day residency requirement to exercise subject matter jurisdiction over a divorce complaint; 2) Wisconsin is a signatory of the U.C.C.J.A.; 3) Wisconsin has enacted a long arm jurisdiction statute that allows Wisconsin to exercise personal jurisdiction over a person so long as the exercise of such jurisdiction does not violate due process.

- (A) Lucy has asked you to initiate actions for divorce, custody, property distribution, spousal support, alimony and child support on her behalf. As a Wisconsin lawyer, applying the law of Areen and based upon your working knowledge of the relevant state and federal jurisdictional uniform statutes, where should Lucy file each of these actions?
- (B) How would a court determine the ownership of the \$20,000 diamond ring?
- (C) Is the agreement executed by the parties in 1990 valid and enforceable, and what impact does this agreement have with respect to the parties' separation and divorce?
- (D) Discuss the custody claims of Lucy, Ricky and Fred and predict the likely judicial outcome of each claim.

## ESSAY QUESTION THREE (One Hour)

Robert and Jane met in 1979, dated, and married each other in 1981. Bob was 22 years old and Jane was 32 years old when they married. They met at college. Bob obtained his B.S. in physics and business in 1981 and Jane obtained her Ph.D. in physics in 1981.

Bob's dad owned "Rush" a commuter airline service for businessmen specializing in non-stop trips between LAX and the Philadelphia International Airport. "Rush" is a start-up company owned entirely by Bob's dad and incorporated on January 1, 1981.

Before Bob could be trusted to "fly" the business, he first had to learn how to fly the "big birds," according to his World War II veteran flying ace father. Thus, following his graduation from college, Bob immediately enrolled in pilot training school at his father's request. Upon her graduation, Jane began teaching physics at a private university. She supported Bob for the first two years of the parties' marriage. Upon graduation from flight school in 1983, Bob became C.E.O. of "Rush." Jane supported the family for the two years that Bob attended flight school and paid Bob's tuition expenses totaling \$26,000, about

In 1990, Bob's father retired and gifted all of his stock to his three sons equally. The estate tax return indicated the business had a total fair market value of \$300,000 at the time of Bob's dad's death. Bob was and continues to serve as the C.E.O. of "Rush."

\$13,000 per year.

Bob encouraged Jane to give up her teaching position and to become the bookkeeper for the business. Jane quit her job and became the "Rush" bookkeeper in 1990. Jane worked approximately 50 hours a week without any formal compensation.

Thereafter, the parties decided to have children. They had two boys, Frank born in 1994 and John born in 1996. The kids are aged 7 and 5 respectively. By mutual agreement between the parties, Jane did not return to her bookkeeping job after the birth of the second child. Following the birth of John, Jane created, marketed, and instructed a MCAT review course, putting her science and business experience to good use.

In 1997, the parties bought a run down home in the suburbs for \$200,000 and renovated it using company funds. The house is now worth \$550,000 with a \$100,000 mortgage. Wife added a wing for her MCAT preparation classes. Throughout the marriage, "Rush" paid for many of the parties' personal

expenses, including all of the expenses associated with the marital residence following renovation, totaling approximately \$10,000 per month.

In the year 2000, Jane suspected that Bob was having an affair with a colleague named Rhoda. Jane found out about the relationship by secretly wire tapping Bob's business phone line. Jane asked Bob to attend marital counseling. Jane found the counseling quite successful. She forgave Bob his foibles and wanted the marriage to continue. Bob found the counseling less helpful. In January, 2001 Bob moved out of the marital residence.

Jane continues to live at the home with the two boys. At the time Bob moved out, Jane was netting approximately \$12,000 per year from her MCAT study course. As a professor, Jane had been earning \$120,000 per year before she left academia to assist with the family business. Jane was recently diagnosed with multiple sclerosis and was predicted to be wheelchair bound within the next 10 years. Bob was netting a salary of \$24,000 per year, over and above the direct payment of the parties' monthly living expenses of approximately \$10,000 per month.

Jane has a pension through her former university teaching position. It is vested and has a present value of \$120,000. At the time Jane quit, the future monthly benefit was valued at \$425 per month, based upon Jane's projected retirement date when the pension would enter pay status. At the time of separation, this projected future monthly benefit had increased to \$850 per month as a result of market forces. The marital assets also include Bob's 1/3 business interest in "Rush" with a current fair market value of \$600,000; a shore property that Jane inherited following her mom's death in 1999 worth \$125,000 according to the estate tax return. The fair market value is now \$500,000. There are no other assets.

Jane recently learned that Rhoda thinks that she is Bob's wife. They were secretly married in high school in 1974 when Rhoda was 16 and Bob was 15. Bob and Rhoda never lived together, although they consumated their marriage directly following the secret ceremony. Bob graduated from high school when he was 17 and went away to college where he lived on campus. Following his departure for college in 1976, Bob did not see Rhoda again until 1997. Neither Bob nor Rhoda ever obtained a divorce decree. Rhoda lives in Mount Airy, Pennsylvania.

On June 23, 2001, Jane consults you for legal advice. She would like to settle this case. As an experienced family law attorney, applying the law of Areen, what advice would you give to Jane regarding her economic rights arising out of her relationship with Bob? Assume that Bob does not contest Jane's desire to retain primary physical custody of the children. Please write a client letter to Jane analyzing the economic claims of Jane, Rhoda, and Bob and recommending to Jane the parameters of a fair