#### PART II ESSAYS

#### RULES OF THE ROAD

- 1. Assume all facts are true as represented (a luxury you need to avoid in real life 🕙).
- 2. All events take place in a single, marital property jurisdiction.
- 3. Divorce grounds are the typical statute (similar to NJ) where a period of voluntary separation has been added to the traditional list of grounds, defenses have been modified appropriately.
  - 4. The jurisdiction recognizes common law marriages.
  - 5. If you need facts to answer the question that are not given, you may indicate what information you need and why you need it in order to answer the question.

## CLIENT #1 (suggested time 30-45 minutes)

- 1. "I got divorced about a year ago. My own lawyer really screwed me. My ex is from a really rich family and has tons of money. Shouldn't I have gotten half of the property?"
- 2. "At one point, my ex said that all he really wanted was O-U-T, and I could have everything. Both lawyers advised against it, even my own. Why didn't my lawyer get it all for me right then? I'll bet the lawyers had some secret arrangement between them; I know they went to law school together."

## CLIENT #2 (suggested time 5-15 minutes)

"I'm engaged to a man who has been separated from his wife for 18 months. We had planned to marry earlier this year, but he says that it was his wife who initiated the divorce and now, out of jealousy, won't proceed. Can we do anything?"

### CLIENT #3 (suggested time 30-45 minutes)

Client Sally has been living with Sam for nearly eight years. They have a written contract establishing their arrangements as to financial matters and household duties. Sam maintains that they are married because, as he says, "Marriage is a contract, and we have a contract." Sally believes that marriage is a religious state and wants a member of the clergy to sign their contract "to make it really a marriage."

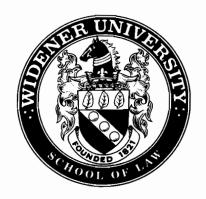
- 1. Are they legally married?
- Would satisfying Sally's wish to have clergy sign the paper make any difference?Explain.
- 3. Is Sam correct that "marriage is a contract"?

## CLIENT #4 (suggested time 10-20 minutes)

"I caught my spouse in bed with another woman. I saw another lawyer who tried to tell me I couldn't take him to the cleaners. I should have known a male lawyer would rust stick up for the man! So that's why I want you to be my lawyer."

### CLIENT #5 (suggested time 25-35 minutes)

"I never get to see my child. When I go over to pick the kid up on days I have visitation, there is no one home, or the kid is all booked up with tennis lessons and soccer practice, or has his out-of-town cousins visiting—it's always something. I don't even know the kid anymore. I'm sick of paying child support to a kid I never see and really don't know. Can you help me?"



## **EXAMINATION BOOK**

5

ANONYMOUS #:_	28406	<b>~</b>
ВООК	OF	

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OOO Marital vs. separate property
            marital vs. community
            "family" money sounds like separate
            equitable distribution
              does take into account separate property
O O Property div not modifiable
 ø o o
           Long term consequences when comes to regret it
Ø 0 0
              anger, harassing litigation
O O just practical reality known to both lawyers
           could have been poor if not mal- practice either way
000
O Proceed on no-fault
          Def of "separated" incl. length of time
000
₩ O Need to know details of "holding themselves out"
v000
           Sam's holdout shows counter-intent (why in year 2000?)
øoo
           clergy could maybe make intent clear
O O clear, convincing, consistent evidence
O O better to have license & solemnization than "signature"
O O reciprocal and mutual obligation
Ø Ø o
           requires meeting of the minds (intent) to form
øoo
           no fraud to essence
000
           invalid if unconscionable = against public policy
O O requires state recognition
Ø 0 0
          cannot be resolved w/o court
000
O O proceed on fault grounds
000
          any advantage?
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#### Family Law Key December 2000

10 O place of misconduct in property division O O O difficulty of getting alimony 000 even though fault may be permissible factor O O O law, not lawyer preference of of ethics: reconcile; actions out of anger oro worky 000 O O Modify custody O O best interests of the child O O O material change of circumstances 000 parent alienation syndrome O O O counter-argument will be disrupt child (go to unknown parent) O o child needs \$\$ whether visit or not O O prefer to trade for \$\$ or to have (re)oppty to build relationship pop ut 000 000 000

O As the client's new attorney. I am under a code of professional responsibility to explain that an attorney's job is a duty to take necessary legal steps to do all possible to help client achieve a fair just outcome. It's possible that she client may have a malpractice claim against the former attorney if the attorney didn't represent in the best interests of client.

Since a divorce was granted, their marriage was valid. I would explain to client that first, it must be determined if a pre-ruptial agreement existed. If one did exist, was it made with full a fair discourse laking any unconsciendoility. A pre-nuptual agreement fair at the time of its signing would be fair at the time of application a ward have an effect on the way property and alimony was decided. Next, I would explain to client that in a marital property jurisdiction such as this one, all detisa assets are paced into the pot, individual non-marital property is taken out to be returned to the deserving spouse, and the remainder is divided equitably. This is it a pure common law 1x where everything is divided equitably, nor is it a community property the where things are split equally. The amount of money life Family has malles no difference in this marital property because the dient should have received an equitable mother of the

property, not half. It family manay was given to ex solely, then it remained his after divorce. It family manay was given to ext client as a married cape, client opt an equitable, not equal, portion. Also, I would advise client that disposition of assets could have been a factor because it means that one spase already received its part of property division. Did client openable or spand to an sweetle? This will have an effect on division of owners, to

effect on division of property, too.

Finally, I will explain to client that property division is not modifiable because much of it is forceable a can be calculated a determined at the time of cliurce.

Unless dient's former attorney is quilty of magnatice,

Lines has no claim.

DI would tell client that altomays have an affirmative duty towards their clients and among other attornays to abide by a code of ethical professional responsibility. Simply because attorneys attended law school together doesn't professional their ethical responsibilities.

Next, I would tell client that divorce, property division, and, if there are children, costody of children; are three separates distinct tagal proceedings that cannot be rushed through carelessay, but are sometimes combined under one complete proceeding when courts and justice allows it. Because of the substantial implications

of divorce and property division, the lawyers were correct in advising against a "take all & leave." approach. There may be assets & debts that are legally titled in the ex. The purpose of divorce is to sever ties between the parties and promote a method of recaining emotional health & healing. A toke all approach, while not being legal or practical, is not healthy. It could only lead to greater pain & more lovation on the courts because it is not in the best intorests of justice.

#2

I would explain to client that the law will not recognize the relationship between client a fiancée unless ### fiancé and his wife are divorced.

I would advise client that it is possible for florce to file for divorce on the no fault grands of invectorileable differences, recognized in this jx. This no fault or and allowes the of to decree a dissolution based on an irretrievable preakdown of the marriage structure. Since the parties have been separated for the legally required term of 18 months, the of will view that as indication that the marriage structure has completely broken with no hopes of reconciliation. Because florces intent to someday marry client is not enough evidence in the eiges of the court. Florce

must show that in his separation from wife, it was voluntary consented to, they have no marital/sexual contact, and it has been a complete 18 mos. If the ct doesn't these factors to be correct, a dissolution will most likely be granted.

If the courts grant france a dissolution, then he a client can apply for a marriage license, get blood tests & courseling, but there may be a waiting period before the license is granted because france recently obtained a divorce.

#2

D I would explain to Sally that this jurisdiction recognises common law marriage, but there are many factors that must be present to achieve this atalias. To be married at common law, the evidence must be clear, convincing, and consistent over time. Intent, which is represent manifested through factors like: wearing rings, holding at as husband time, cohabitating, comhighing assets, and filling tak letures as married status, must be clearly evidenced. Also, an agreement is needed. Sally a Sam have lived toopther for a long period of 8 years, and they have made arrangements for finances a household duties. Furthermore, Sam maintains that they are married and their written contract supports that. These factors, consistent for 8 years, and clearly in a

writing, establish that Sally & Sam would probably be recognized as married at common law.

I would explain to sally that not all jurisdictions recognize common law marriage, however, other states must give full faith a credit to the recognitions of their united states.

I would explain to Sally that in saying "begally" married the traditionally are referring to a ceremonial marriage. Sally a Sam are married "at common low" and that carries a different societal constation than saying they are "legally", ceremonially married.

- 2. I would explain to sally that in signing the paper by clergy, it simply means that the contract has been blessed. In order for same Jally's union to be recognized in the eyes of religion, as she wishes, aceremony must be performed by a legal officiant like a priest, rabbi, etc... To be ceremonially "legally married, Sally & Sam must apply to the state for a marriage licence. During this process, the caple opts blood tests and counseling. It is the final stack of schemization that makes the marriage legal. Either a ceremony is performed or a civil service by a justice of the please, and the paper is signed & filed with the state.
- 3. Sam is correct in analogizing the requirements of a valid marriage to a contract, however the fundament

substance of a marriage is much different from a contract. Marriage, like a contract, is valid if it was valid at the time and place it was entered into except if it violates public policy. Also, marriage requires offer, exceptance, and consideration. There must be an outward manifestation of mutual assent a meeting of the minds. Like contracts, a marriage carnot have froud that goes to the essence or misrepresentations. The marriage must not be unconstitutable, and it must be entired into willfully, without coercion, not under duress, intoxication, or mental incapacity. Broken dawn into these basic rules, marriage very closely resembles a contract. This author is probably the veason why more than half of marriages entered into today end in divorce; breach of that marital contract. 3am fails to realize that the significance of this lifelary pleage has many consequences, both good & bad. It is can be so complicated that the Doctrine of Family privacy makes it favorable for the court system to not have to deal with many of the issues involved in marriage. Status, children, taxation, standard of living, social surroundings, and (some would argue) hedristic liberties freedoms are all consequences of marriage. And these "consequences" plaque even the greatest, most compatible unions "A contract can be tom up a shredded. A marriagk is never that simple.

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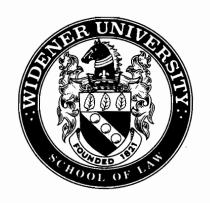
Once again, I would begin by explaining to client my role as attorney and duty of professional

responsibility

I would then explain that in this situation, it may be in the couple's best interest to consider going to marriage counseling with the hopes of reconciling If that seems out of the question, then I would explain that I could accompany the couple to a few meetings with a mediator, or independent 3rd party who will help the couple narrow the issues and make the proceeding less stressful & painty. It is important forme to advise client that doingthing. out of anger usually perpetuates a negative, painful cycle. But, if she still wants to take him to the Cleaners, I will explain the option of filling for divorce on the grounds of fault. Fault grounds are adultory, physical or mental cruelty, desertion, or insanity. Clients best option is to file for divorce on the grounds of adultery. The evidence against an adulterer must clearly a convincingly prove his intent and disposition to commit adultery. According to client, the witnessed her husband emaging in a

physical act in a bed with another woman Seems pretty clear to me! However, a court needs it to be convincing. This dramstantial evidence is of, but client could also hire private investigators to obtain information/evidence of corroborate her storu Her husband will probably raise a deforse because he doesn't want to be known as the cheating-run around, so he has options, too. Recrimination, Comivaire, Condonation, and collusion are possible defences He will probably drope that, under consivence, client sethimup and entrapped himinto committing adultry. He can also say, under recrimination, that all out wilty of adultery, too, and that he beamed of it by watching her, so she is quittient he's the innocent £injured party. If client is still having marital relations with husband, he can defend under Condonation, that he thought she forgave him. Unless they are committing froud on the court, collusion is the least likely delense I would explain to client that tout grounds are normally not considered in dividing property marital property ju, after individual property has been separated, the remaining property divided equitable HIS sexual epilalianting, however, may be a amallfactor to be considered if they have children

for the diant to visit, then client has some attas. "I would advise client that he could abtain an injuration against the custodial parent to stop with her from frustrating visitation. The ct could hold the custodial parent in contempt for not complying with a court order. Also, the threat of moving to modify the custodial and control as fear in the custodial parent of losing custody of the child As a public servent, I det do not want to encourage my client to use will support as a device to get the custodial parent to comply. On the other hand I don't want to advise my client to force the family into court where the child could possibly become the bargaining tool in a bitter custody dispote Client abes not have to be absent from child's life, nor does he need to be Disnayworld 1880 Parent. It is my job to help toster a moon's for the child and his parents to figure out how to go about creating a schedule that will accommodate all a then convincing the judge that this modified visitation schedule is in the best interests of the child.



## **EXAMINATION BOOK**

5

ANONYMOUS #: 284027

BOOK 1 OF 2

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O O Marital vs. separate property
            marital vs. community
            "family" money sounds like separate
            equitable distribution pump
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o of orapit, tom
Q Q Proceed on no-fault
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O O better to have license & solemnization than "signature"
O O O reciprocal and mutual obligation
           requires meeting of the minds (intent) to form
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           invalid if unconscionable = against public policy
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#### Family Law Key December 2000

O place of misconduct in property division O O O difficulty of getting alimony even though fault may be permissible factor 000 O O O law, not lawyer preference Ø Ø ethics: reconcile; actions out of anger 000 000 66 Modify custody OOO best interests of the child ØØO material change of circumstances 0 0 0 parent alienation syndrome O O counter-argument will be disrupt child (go to unknown parent) O O child needs \$\$ whether visit or not O prefer to trade for \$\$ or to have (re)oppty to build relationship Ø Ø O Mt, 000 000 \$00 overall logic

· . . . . .

or didn't receive, no. I don't think you're lawyer screwed you. You see, in the jurisdiction where these proceedings took place there is a found way to divide the assets. Then step which should have occured was to marshall and value all of, the assets. After this, any separate property needed to be taken out of the mix. Separate property is any property which either of you would have had prior to the maniage. You ex-husbands after that, you would fall into that category. after that, you would apply any preruptial agreement. That, you would divide the remaining property liquidably.

now, dividing the property equitably depends on several factors. They are; the fault of either party (dissipation), the needs of the parties, the necessity of rehabilitation for a party (getting back on their feet), the contributions of the party, and the Status level naintained during the maniage. In your case, of dait have any information which would indicate that either of your were responsible for dissipating assets. As to you needs, I would have to delive deeper into

your larning capacity and monetary needs to

determent if your needs would require a larger

(but Barry Litable)

property settlement or alinony award. This would the in with the issue of rehabilitation I need to know if you worked during the maniage, or of you gave up work / educational opportunities which world put you at a disadvantage in the workplace This leads into your mantal contributions. Were you a homemaker, mother while your ex worked or did you work and contribute to the houshold expenses! The strongest point for you may be the Status issue. Of you and your ex lived on affluent defestigle during the manuage, you may have an argument that you should have that mountained by him. This will depend on the length of your manage

like you should have received more for the we would move to show a substantial change in circumstance here. That will be hard to show.

d) There may have been some conflict of interest between the attorneys. If they did know each other, they could still represent opposing parties but there may be some questions confidential as to how much internation then shared.

as to why your lawyer didn't "get it all " for you when your ex suggested it, well your ex was represented by counsel. His lawyer advised against it so I'm assuring the offer was never formally made. You lawyer can't get an agreement for you which isn't on the table.

From what you've told me, I am assuring that there was not much maintal property to be divided and the court didn't find you to be in need of rehabilitation, or money to neet your needs.

as long as both attorneys did not disclose confidential information, I would assume they acted extrically.

If your ex was writing to "give you everything", the two of you may have fared better with a mediator. This world have allowed you to craft an agreement which you were both satisfied with.

### Client # 2

Yes, you can do something. This juisdictions allows for a no-fault divorce. This is established by proving a period of voluntary separation. I'll have to I check the statute, but generally you need to show separation for between 6 nontres to a year. of this man has been separated for 18 months, he would west the separation requirement. He could then initiate a no-fault divorce proceeding. Once that is processed, you can be married ! of course, the couple will still need to deal with property division and any child custody! support matters. However, this jurisdiction has a clear system for accomplishing the property division, They would marshall and value all assets, take out any separate property and then divide the assets equitably.

## Client #3

1.) This couple is not legally married. This is because they have not gone through a ceremonal marriage and because the requirements for a common law manage are not met. To establish a common law manuage you need clear and convening evidence of such. The first element of common law manuage is whether the porties have a present intent to be married. On this case, San has that intent, but Sally does not. This is evidenced by her wish to have a member of the clergy · make their marriage real ". The second element is continuous cohabitation. This is not because they have lived together for eight years. The There element is wrether they hold transelves out to be manued. The facts are unclear as to this element. Containly of Sally made her wish to have a clergy member "many tran" Known to others, then she wasn't representing them to be married.

An conclusion, there is no legal marriage here because Sally does not have a present intent to be married as required for a common law marriage.

2) Sallys wish for a clergy member to sign would not make a difference without the couple 22

first obtaining a naming liveral and going through a solemnizations (ceremony) You must sotisfy State procedures in order to have a valid ceremonial manage 3.) Som is correct that "marriage is contract". It is a contract between the two parties, as well as the State. The State's interest in maniage rises to the level of making it a party. However, Sam is wrong that since he and sally have a contract as to household duties they have a manuage contract. The Contract which they have is a personal service contract between transelves. The courts find these to be invalid and want evaluable then due to the dortrine of tamely privary. on other words, Jam and Sally can agree to whatever houshold amongaments they want, but they aren't enforceable and they don't equal a mannage contract.

## Client # 4

I can understand your fustration with the reaction of the other attorney. You are in the middle of a highly enotional situation and you are looking for someone to take your side. His reaction made it seem like he wasn't on your side.

At's important to think about what your mativation is in this matter. You've stated that you want to "take your husband to the cleaners". That is understandable, but I would suggest to you that taking his money may not be able to enase what he has done. It's important to look at this situation now but also ten years from now. You need to figure out if taking all your husband's money will be what you want to years down the road.

you do have a strong case for a fault divorce based on your husbands adulting. Once the divorce is settled the property division will come down to several equitable foctors. All of your separate property will be taken out and the renainder will be divided equitably. One of the equitable factors is fault. It is possible that your husbands adulting may be considered, but generally full just goes to dissipation of assets.

Think about what you want to do. You have a strong diworce case if that is what you want. This jurisdiction will provide for an equitable distribution of mantal assets. This may not satisfy your immediate goals but it may satisfy your immediate which you haven't had the apportunity to think about yet.

Client # 5 in next book

# Client # 5

I can understand how furtrating this situation must be for you. Showing so much interest in your child, but not getting time with the child. There are some things that I may be able to do to help you.

First of all, its important to note that the child support and visitation are separate issues. Therefore, your brustration with visitation does not allow you to cut off child support. It doesn't sound like that was your plan, but d'n just throwing it out there.

Secondey, many families attempt "self-help" in changing visitation Schedules. You may or may not have tried this yet or it may not be suitable for your situation. If speaking to your ex yourself about the scheduling problems isn't an option, we could file a petition to modify the visitation order. Those orders are always modifiable. We would need to show a substantial change in circumstances from when the original order was filed. I think we could do this by showing that your Child's activities have greatly increased, making the old visitation Schedule unworkable of think there is a good chance that the court well work to devise a better visitation

Schedule, especially since you are so eager to see your child. This could also be accomplished through a mediator. You and your ext could discuss this issue with the help of mediator. That way she may not feel so so much that the new schedule is being imposed on her. There may be a problem enforcing that agreement, but we could always take it to court later.

I would not suggest filing a petition to modify custody since the court will be unwilling to disrupt your child's life in that way. Modifying visitation is the best option.

I would also not suggest filing a potition to modify child support. As I mentioned before, visitation and child support are supstantial change in cuiumstances such as increase or decrease in your income, or decrease in your childs needs.

I think you have a very good chance at modifying the visitation order which will (hopefully) enable you to see your Child regularly again. That would be in the best interest of the Child.