

EXAM # _____

**FAMILY LAW
MID-TERM EXAMINATION**

Professor Pilkington-Casey

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INSTRUCTIONS:

This is an open book exam. You may use your text and notes/outlines and power point handouts. You have one and one-half hours to complete it. The questions should be answered with references to common principles of family law, including cases in your text that apply to the issue(s).

Write all answers in the blue book(s) or using your computer. Write legibly. If you do not write legibly, you will lose points. Make sure your exam number is on all blue book(s) or pages on the typed pages. If the question asks for a brief answer, please provide a brief answer only as I shall not read more than the number of sentences indicated for the question. You will lose points for sentences or paragraphs that run on.

Write only on the right hand side of the page.

QUESTION 1. (134 POINTS)

Samson brings this action to recover \$5, 490.00 from the Delilah: \$5,370.00 for Delilah's failure to return property belonging to Samson, specifically an engagement ring, money spent on a couch and television set, first month rent and security deposit, and money spent for tolls billed to his EZ pass account for coming to court to file this claim. Samson is also asking for \$120 for loss of time from work.

At the trial, Samson testified on his behalf. Delilah presented Ruth, her mother, as a witness and testified on her own behalf.

Samson testified that he proposed to the Delilah on December 24, 2007 and she accepted. Soon after, Samson and Delilah signed a lease to live together at 1765 Kimball Street, Graceland. A deposit of \$1,900.00 for first month's rent and security was required at the time the parties signed the lease. While living together, the parties agreed that the Delilah would pay the food, gas and electric bills while the Samson would pay the rent.

Additionally, the parties bought a couch from Moses's Furniture and a television set from Pharoah's together.

On or about September or October of 2008, Samson wanted to move out. The parties separated but agreed to continue to work on the problems in their relationship. On or about January 2009, Samson terminated the relationship because "he did not love the Delilah anymore and did not want to cheat on her." Samson has submitted as evidence a receipt for an engagement ring in the amount of \$2,862.00, a \$59.50 bill for an E-Z pass, an invoice from Moses's furniture showing the balance of \$1500.00 was paid off, a bill from Pharoah's for \$505.31 attached to a cancelled check for \$303.19 and a copy of an agreement between the parties and signed by the Samson.

Delilah's testimony corroborated much of Samson's testimony. The testimony differed only on two points. According to the Delilah, Samson proposed and she accepted on December 29, the date of her birthday. Ruth, the witness, testified that Samson called her a few days before Christmas; asked for her daughter's hand in marriage; and told her the ring would be a gift for Delilah's birthday, for Christmas, and in celebration of their engagement.

Delilah testified that on October 23, 2008, Samson came to her place of residence and picked up the couch and the television set and that she asked him at that point if there was anything else he wanted and he replied, "aside from the air conditioner, no." At this point Delilah produced a document that Samson read and then signed.

The document reads: "This letter is to notify that all the following items were relinquished in good condition on October 23, 2008 to Samson: black leather couch, RCA T.V. As agreed, the items were left in front of the curb on 1765 Kimball Street, Graceland, Delilah's prior residence. After this point there should be no future contact between both parties or any request for other belongings." Samson wrote in black ink "Except For A/C" and signed it.

Samson acknowledged signing the document.

Delilah testified that Samson had been with another woman four days after he presented her the ring and against her better judgment, she “begged him to stay” because she “did not want to be without him.”

Both the Delilah and her witness testified that the ring was given to the Delilah on her birthday as a birthday and Christmas gift, as well as in celebration of their engagement. She stated that since the ring was not given to her in the contemplation of marriage, it is now her property and she should not have to return it.

Samson and Delilah both testified that the Samson is now in possession of the couch and the television set which he retrieved from Delilah's residence on October 23, 2008. Samson argues that he is, at least, entitled to the interest that accrued on the couch for Delilah's failure to make payments as agreed between the parties.

While Samson testified that he wants the entire security deposit and first month's rent, he is at least entitled to \$500 of that money because his grandmother loaned them that money with the intent to get repaid. Samson introduced a letter from his grandmother which was not dated or notarized, indicating she had loaned Samson \$500.00 for his apartment.

QUESTION 1 (134 POINTS)

You are the Judge:

Please answer “yes” or “no” to each question. The answer for part 1 regarding the ring does not have a page limit. A brief reason for answers to parts 2-6 should be no more than one to three short sentences.

1. Would you order Delilah to return the ring? Answer this question in detail.

Answer these questions in no more than one to three short sentences.

2. Would you order Delilah to reimburse Samson for first month rent and security deposit?
3. Would you order Delilah to reimburse Samson for the couch?
4. Would you order Delilah to reimburse Samson for the television?
5. Would you order Delilah to reimburse Samson for the E-Z pass account?
6. Would you order Delilah to reimburse Samson for the \$120 loss of time from work?

QUESTION 2. (40 POINTS)

Alex R. and Madonna J. began cohabitating in March 2002. On November 14, 2002, they participated in a wedding ceremony officiated by an acquaintance, who allegedly represented to the parties that he was a Minister. Prior to the ceremony, they intentionally did not obtain a marriage license. On April 1, 2007, the parties learned that the acquaintance was not a Minister.

On February 21, 2008, Alex R. filed an action seeking: a divorce from the Madonna on the ground of irreconcilable differences, a division of their community property, a lien upon her separate real property for the value of improvements made to it during the alleged marriage, and the award of his separate property. On March 2, 2008, Madonna filed an answer that, among other things, denied the existence of the alleged marriage.

On March 5, 2008, Madonna moved for summary judgment on the ground that absent a marriage license the parties did not have a valid marriage.

Alex R. argues that the parties intended to enter a marriage solemnized by a Minister and held themselves out as a married couple.

Prior to 2002, Yankee Code §§ 32-201, 32-301, and 32-302 provided as follows:

32-201. What constitutes marriage.-Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties or obligations.

32-301. How solemnized.-Marriage must be solemnized, authenticated and recorded as provided in this chapter, but noncompliance with its provisions does not invalidate any lawful marriage.

32-302. Duty of person officiating.-All persons herein authorized to solemnize marriages must ascertain and be assured of:

- 1. The identity of the parties.**
- 2. Their real and full names and places of residence.**
- 3. That they are of sufficient age to be capable of contracting marriage.**
- 4. If the male is under the age of 18 or the female under the age of 18 years, the consent of the father, mother or guardian, if any such, is given, or that such nonaged person has been previously but is not at the time married; and that the parties applying for the rites of marriage, and making such contract, have a legal right to do so.**

As of January 1, 2002, the Yankee legislature amended the above statutes as indicated below:

32-201. What constitutes marriage- No common-law marriage after January 1, 2002.- (1) Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and a solemnization, or as authorized and provided by law. Marriage created by a mutual assumption of marital rights, duties or obligations shall not be recognized as a lawful marriage.

32-301. How solemnized.-~~Marriage must~~ All marriages shall be solemnized, authenticated and recorded as provided in this chapter, ~~but noncompliance with its provisions does not invalidate any lawful marriage.~~ On and after January 1, 2002, any marriage contracted or entered into in violation of the provisions of this title shall be void.

32-302. Duty of person officiating.-All persons herein authorized to solemnize marriages must first require the presentation of the marriage license and must ascertain and be assured of:

1. The identity of the parties.
2. Their real and full names and places of residence.
3. That they are of sufficient age to be capable of contracting marriage.
4. If either the male or the female is under the age of 18 ~~or the female under the age of 18 years~~, the consent of the father, mother or guardian, if any such, is given, or that such ~~nonaged~~ underaged person has been previously but is not at the time married; and that the parties applying for the rites of marriage, and making such contract, have a legal right to do so.

Ch. 104, §§ 3, 4, & 5, 2001 Yankee Sess. Laws 334, 335-36.

QUESTION 2. (40 POINTS)

You are the attorney for Madonna.

Advise Madonna on whether the court will determine she is married to Alex R.? Please answer "yes" or "no" and explain your answer.

QUESTION 3. (58 POINTS)

Bridget Moynahan and Tom Brody were married in June 2004 and divorced in October 2007. While the couple was separated in May 2007, Bridget had a relationship with Matt Cossell and became pregnant with a son, Patrick. During the subsequent divorce proceedings, Tom first asserted the illegitimacy of the unborn child but later withdrew the allegation. The divorce decree did not address the issue of paternity. Shortly after the child's birth in February 2008, Bridget and Tom renewed cohabitation and eventually remarried in August 2008

Also in February 2008, Bridget filed a domestic violence and paternity petition against Cossell, which named him as the child's biological father. Cossell did not file an answer to the petition but affirmatively acknowledged his paternity. In June 2008, the superior court dismissed Bridget's domestic violence petition. In early August 2008, Bridget filed a motion to dismiss (voluntary nonsuit) her remaining claims. In January 2009, Cossell filed a motion for legal custody arguing in part that Bridget and Tom have not allowed him to have any contact with Patrick. Also in January 2009, Tom Brody filed an affidavit avowing his paternity of the child stating, in part, that he is the only father Patrick has known. In addition, Tom joined Bridget in arguing that Cossell should not be considered to be the father of Patrick and his motion for legal custody should be dismissed.

Under the common law and by statute, children conceived or born during a lawful marriage are presumed to be legitimate. It is undisputed that the child was conceived during the lawful marriage of Bridget and Tom. GSA 522:4, GSA 458:22.

The presumption of legitimacy can be rebutted in certain circumstances. GSA 522:5; GSA 458:23. It may be rebutted under our common law by satisfactory proof that the husband is not the father of the child. Evidence to rebut the presumption may include blood tests, testimony by experts or others, medical or scientific evidence, and statistical probability evidence. GSA 522:4 (Supp. 2009), :4-a (Supp. 2009). It may also include proof of a voluntary acceptance of parental responsibility by an individual; the establishment of an estoppel by one charged with the paternity because of his failure to question it after a substantial period of uninterrupted acquiescence and physical resemblance between the child and the putative father.

QUESTION 3. (58 POINTS)

You represent Matt Cossell.

Please answer "yes" or "no" and explain your answer.

Advise Matt Cossell as to whether the court will find that he is the father of Patrick and entitled to legal custody?