

EXAM # \_\_\_\_\_

**FAMILY LAW  
FINAL EXAMINATION**

Professor Pilkington-Casey

Spring 2006

**INSTRUCTIONS:**

**This is an open book exam. You may use your text and notes but no computers. You have three 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), and generally adopted uniform statutes in your text unless a question specifically sets out the law to apply.**

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

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**ESSAY QUESTIONS**

**Thoroughly answer each question asked. However, please note that I subtract points for wrong answers or information or analysis not directed to the question asked.**

**Please answer Question 1 on no more than two pages in the blue book. A page consists of the right hand side of the page only.**

## QUESTION 1 (15 POINTS)

### FACTS:

On September 16, 1974, Jane married Peter Smith in a ceremony performed by a pastor "in accordance with the laws of the State of California" pursuant to a marriage license issued on August 26, 1974. The certificate of marriage between Peter and Jane was officially registered and placed on file in the office of the Shasta County Assessor-Recorder. For the next 28 years, Peter and Jane held themselves out to the community as husband and wife and the community accepted them as such. The Smiths believed they were legally married. This 28-year chapter ended November 14, 2002, when Peter, in an apparent suicide, was struck by a train and killed.

Jane is the co-trustee and beneficiary of the Peter S. Smith and Jane H. Smith Joint Living Trust created by the Smiths in 1999 (the 1999 Trust). The primary asset of the trust is a piece of residential property that was owned by Peter prior to his marriage to Jane in 1974. During the marriage, there was a single house on the lot, until Jane used her separate property assets to build a second house, into which the couple then moved. Jane and Peter lived together in that house as husband and wife until Jane filed for a temporary restraining order against Peter on October 25, 2002, at which time he moved in with his mother-in-law, Jane's mother. According to Jane, Peter at this point had become a bit " 'sick' " or " 'crazy.' "

The only named beneficiaries under the 1999 Trust are Jane and certain of her children and grandchildren from her prior marriage to Larry Larson (Larson). None of Peter's natural heirs, aside from Jane (including James Smith (Peter's grandson)), were mentioned as beneficiaries under the trust document; Jane's grandson was explicitly included as the beneficiary of Peter's 50 percent share of the trust estate. In 1980, some 19 years prior to creating the 1999 Trust, Peter transferred title to the residential property that is subject of the trust to himself and Jane as joint tenants.

After Peter's death, James Smith filed a complaint alleging that Jane had never obtained a valid divorce from Larson, that her concealment of her allegedly bigamous marriage constituted fraud or other wrongdoing regarding the 1999 Trust, and that a constructive trust should be imposed on the 1999 Trust for the benefit of Peter's family heirs under rules of intestacy. Jane believed she was divorced from Larry Larson and that her marriage to Peter was valid.

Jane and Larry Larson moved to California soon after their 1948 marriage. Larson became involved with another woman (Rita) and was with her 12 years. At some point Larson moved back to Arkansas. Still later, he sent Jane divorce papers. Jane completed the divorce papers and sent them back to Miller County, Arkansas. Although Jane never saw the finalized divorce papers, some papers, either those she completed and mailed back to the court or other papers, were sent to her from the

Miller County court. What happened to these papers is not clear. Everyone thought and acted as though Larson and Jane were divorced. Larson's girlfriend Rita thought they were divorced. Longtime family friends thought they were divorced. No question concerning the validity of the Smith marriage was raised until after Peter's death.

#### QUESTION 1

Jane has come to you for legal advice. If James Smith is correct that Peter and Jane were not legally married are there any arguments regarding her status that Jane can make to the court to show she should be viewed as Peter's wife while he was alive and now is his widow?

Please answer Question 2 with no more than 4 sentences for each of the three alternatives you identify.

#### QUESTION 2 (15 POINTS)

Attorney John Cameron discussed five (5) alternatives to litigation in a divorce proceeding. Identify three (3) of the alternatives discussed by Attorney Cameron and very briefly explain why/how the alternative you identified would benefit the parties to a divorce.

#### QUESTION 3 (20 POINTS)

##### FACTS

Rhonda is divorcing her husband Barry, who has left her for a young associate in his law firm. Rhonda tells you that Barry is a decent parent who loves his children, Martha and Sally, ages 5 and 7. However, because of his busy professional life, he has played a small role in their upbringing. Barry is seeking joint physical custody of the children. Rhonda is adamantly opposed to joint custody and wants sole custody. Rhonda does not believe that Barry is capable of caring for the children and she does not believe they (Rhonda and Barry) can cooperate, in part, because she's so angry with him about his relationship with the young associate.

Assume your jurisdiction has adopted a statute similar to the Florida statute that reads as follows:

Fla. Stat. Ann. section 61.13 (West Supp. 2003)

*(2) (b) 2. The court shall order that the parental responsibility for a minor child shall be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child....*

*a. In ordering shared parental responsibility, the court may consider the express desires of the parents and may grant one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care, and any other responsibilities which the court finds unique to a particular family.*

*b. The court shall order "sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of" the minor child.*

### QUESTION 3

Rhonda has come to you for legal advice regarding custody what do you advise Rhonda?

### QUESTION 4 (20 POINTS)

#### FACTS

After Michael and Suzanne decide to marry, Michael asks his attorney, Donna, to draft a premarital agreement. Donna arranges for Suzanne to meet separately with another attorney, Fred, whose office is down the hall from hers. Donna supplies Fred and Suzanne with a copy of the proposed agreement just as Fred and Suzanne meet for the first time. But the copy lacks the attachments referred to in the agreement, detailing Michael's financial situation. Suzanne's meeting with Fred was interrupted after a half an hour by Michael, who arrived unannounced to inquire "what was taking so long." The wedding was then canceled, but the parties reconciled a few weeks later and married hurriedly so that they could take the honeymoon arranged in connection with their original wedding plans. The agreement was signed the day before the wedding at Donna's office, with no further meetings between Suzanne and Fred. The attachments were included in the signed copies. The parties divorced 10 years later. The agreement denies Suzanne any share of property acquired by Michael during the marriage and limits alimony claims to a two-year rehabilitative award. It allows for a lump sum of \$50,000 in lieu of any further alimony or property claim. The couple has no children. Michael has substantial assets and a healthy income that would be marital property but for the premarital agreement. Suzanne is an registered nurse and can obtain reasonable employment. Suzanne has few assets.

You are the trial judge and Suzanne is arguing that the premarital agreement should not be enforced while Michael argues that it's a valid premarital agreement.

#### QUESTION 4

**Should this agreement be enforced? Explain why the agreement should or should not be enforced focusing only on the issue of counsel for Suzanne.**

#### QUESTION 5 (30 POINTS)

##### FACTS

**On July 10, 1979, Brenda F. Johnson and the Bruce Williams were married in the State of Freehold. Three children born during the marriage of this couple: Francis Williams, Brandon Williams, and Bruce Williams, Jr.**

**In June 1996 Brenda filed for a divorce from Bruce requesting custody of the three children and child support from Bruce. During the divorce proceedings Bruce acknowledged in court that Francis, Brandon and Bruce, Jr. were born during his marriage to Brenda. At the time of the divorce the children were ages 12, 10 and 8 respectively. When the divorce was completed Brenda received primary custody of the three children subject to reasonable visitation by Bruce. Child support in the amount of \$1875 a month as well as payment for all reasonable medical and dental bills incurred on behalf of the children was to be paid by Bruce.**

**In August, 2000, Brenda informed Bruce she was planning on filing a motion to modify the child support obligation based on the fact that Bruce's income had increased since the divorce. During the marriage Bruce was a supervisor at a trucking company. Since the divorce Bruce has been promoted to management and is now a Vice-President resulting in an increase in Bruce's income from \$50,000 to \$100,000 a year.**

**Bruce told Brenda if she requests more child support he will argue to modify the child-support order, stating that he had been informed by Brenda and others since entry of the court decree in the divorce that he was not the biological father of Brandon Williams and Bruce Williams, Jr. Bruce stated he will ask the court to decrease his child support obligation so that he is required to pay child support only for Francis.**

**Brenda stated she had conversations with Bruce "when the kids were younger" about the two boys not being his, reminding Bruce that he knew the two boys were not his before the divorce decree was issued. Bruce does not recall these conversations.**

**Bruce also wants to request the court to modify his child support obligation by imputing to Brenda the starting salary of a full-time professor rather than her actual earnings as part-time lecturer at a community college.**

**When the divorce became final Brenda moved with the children from Wisdom, Freehold to Certainty, Freehold is approximately 60 miles from Wisdom, to pursue her Ph.D. studies. Brenda did not pursue a Ph.D. She moved into a rent-free apartment upstairs from her parents and took occasional substitute teaching jobs until January 1998 when she accepted a part-time instructor position at a local community college which paid her \$824 per month. She also began taking courses toward a second master's degree--this time in fine arts.**

**Although the children were in Bruce's care during virtually the entire summers of 1998, 1999 and 2000, Brenda did not work during those periods, explaining that she was involved in "writing projects and developing new curriculum for [her] classes." In the fall of 2000 she was scheduled to continue as a part-time lecturer at the same salary rate.**

**Brenda has the teaching credentials that allow her to substitute teach anywhere in the Certainty School District, regardless of subject matter. A copy of the Certainty Higher Education News reveals numerous want ads soliciting applications for teaching positions from persons with Brenda's qualifications including positions for which Brenda is qualified at the community college she is teaching at on a part-time basis. A pay scale obtained from the community college showed a starting salary of \$81,753 for a professor with Brenda's credentials.**

**Brenda admitted to Bruce that full-time employment was not part of her present plans. "I have never intended to be a full-time employee outside of the home while my children were still in the home..." She felt part-time work plus her pursuit of a second postgraduate degree was "enough for me to handle right now in addition to my concerns as a parent and being involved in my children's lives."**

#### **QUESTION 5**

**Bruce has come to you requesting your assistance with the child support for the three children and potential imputed income for Brenda. What advice would you give Bruce regarding these issues?**