

EXAM # _____

**FAMILY LAW
FINAL EXAMINATION**

Professor Pilkington-Casey

Spring 2003

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 federal statutes, and generally adopted uniform statutes 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).

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 Questions 1, 2 and 3 in one paragraph, or two at the most.

QUESTION 1 (10 POINTS)

FACTS:

Sue Bonner and John Bonner were married in the state of North, where they resided, in 1975. The parties were divorced by order of a North court on July 12, 1986. Both Mr. and Ms. Bonner appeared in court on the day the decree was entered and both signed the decree.

The same day they appeared in court in 1986 for their divorce, John Bonner came to Sue Bonner's house and told her he had made a mistake and was unhappy. He went to the State of East the next day, July 13, 1986, but attempts to reconcile continued. Sue later spent a week with John in East, and the couple traveled on vacation together. In August 1986, John returned to North and moved back into the marital home. Sue and John simply continued their lives and their relationship as it had been before the divorce. This arrangement continued for over a year while John and Sue continued to reside in North.

In late 1987, the parties decided to relocate to East because John foresaw opportunities for his home-building business resulting from the announced new Ford plant there. The parties made several trips to the Concord area in East looking for property to build their home and to build other homes for sale. They met with a realtor who helped them in their search. The realtor sent letters to them in North addressed to Mr. and Mrs. Bonner. Offers and contracts for the purchase of real estate were signed by Mr. and Mrs. Bonner; property was deeded to John Bonner and wife, Sue Bonner. Documents reflecting these transactions were executed by John and Sue on September 11, 1987, October 7, 1987, and October 23, 1987.

As part of the parties' original divorce, they had agreed to a property settlement which required John to pay Sue \$50,000 and to transfer certain real property to her. He made a first payment of \$25,000, but never paid the rest, and, after the couple reconciled, the money paid was used for family and household expenses. The real property was never transferred to Sue and remained jointly held. Because of the reconciliation, John never paid the child support that was part of the divorce decree.

After deciding to move to East, the parties returned to North on several occasions to sell their real property located there. General warranty deeds for these properties were signed by John Bonner and Sue Bonner on October 16, 1987, September 3, 1988, and November 20, 1989. Again, these documents

reflected that John and Sue were husband and wife. John and Sue moved to East in March of 1988.

John and Sue have filed joint tax returns, as married persons, for a number of years. In 1986 and 1987, while in North, the couple filed joint tax returns and since the parties moved to East in 1988, they continued to file joint tax returns.

Although John never introduced Sue as his wife and did not hold himself out as married to Sue, he also did nothing to correct the many references to the parties as husband and wife, including those on legal documents and tax returns.

Sue believed the divorce was never final or effective. Sue allowed John to return to the marital home and to a relationship that was the same as before the divorce because he wanted things back as they used to be and promised not to be unfaithful again. They remained together, living and acting as husband and wife, for another sixteen years after their reconciliation.

The parties continued to live together until they separated in 2001 after Sue Bonner discovered John Bonner was having an affair. Sue Bonner now wants to file a complaint for divorce. John has told Sue that a valid marriage did not exist between them; therefore, Sue will not be entitled to a divorce.

In East, marriage is statutory, and a common-law marriage, putative marriage, or de facto marriage between its citizens based on conduct in this State are not recognized. However, East courts will recognize a valid common law marriage, putative marriage, or de facto marriage entered into under the laws of another state where such marriages are sanctioned. North does recognize common law, putative and de facto marriages.

QUESTION 1

Sue has come to you for legal advice. Can Sue file for a divorce from John under any of the theories of common law marriage, putative marriage or de facto marriage? If so, under which theory can Sue file for a divorce and why?

QUESTION 2 (10 POINTS)**FACTS:**

Barbara and George married in 1991. In March 1999, St. Mary Hospital Medical Center provided medical care to George. The expenses for the medical treatment totaled \$33,600. Insurance paid \$26,880 of the bill resulting in a balance of \$6,720; this bill has not been paid.

George and Barbara divorced in November 2000. St. Mary Hospital Medical Center has been unable to collect the \$6,720 balance from George. After his divorce from Barbara, George became depressed; he began drinking heavily and lost his job. George has been unable to find a new job. At the same time, since the divorce, Barbara has been successful in writing children's books and earns approximately \$80,000 a year.

QUESTION 2

Can St. Mary Hospital Medical Center sue Barbara for the \$6,720 under the doctrine of necessities? Why or why not?

QUESTION 3 (10 POINTS)**FACTS:**

You are the trial court Judge who has just heard a case concerning the validity of a prenuptial agreement executed between Cate Wallach and Fred Wallach. At the time of their marriage, in 1990, Cate was a twenty-three year old nurse and Fred was a thirty-nine year old neurosurgeon. Fred had an income of approximately \$190,000 per year, and Cate was receiving approximately \$30,000 per year in salary. Fred also had assets worth approximately \$800,000. On the eve of the parties' wedding, Fred's attorney presented Cate with a prenuptial agreement to be signed. Cate, without the benefit of counsel, signed the agreement. Fred's attorney had not advised Cate regarding any legal rights that the agreement surrendered.

On January 1, 2001, Cate discovered that Fred was in love with his partner, James Smith, MD. Cate is suing Fred for a divorce and has named James in this fault based divorce.

Fred and Cate are in disagreement as to whether Cate knew in advance of the date of their wedding that a prenuptial agreement would be presented to her for

signature. Cate denies having had knowledge that the agreement would be presented to her to sign and claims to have signed the agreement under adverse circumstances, which, she contends, provides a basis for declaring it void.

The agreement limits Cate to support payments of \$800 per week in the event of separation or divorce, subject to a maximum total payment of \$63,000. Fred and Cate separated in 2001, and, in August 2002, divorce proceedings were commenced. Between January 2001 and August 2002, the \$800 per week that Fred paid to Cate satisfied the \$63,000 limit. In 2002, Cate filed a claim for alimony *pendente lite*. In the prenuptial agreement, Cate waived her right to alimony *pendente lite*. Cate now seeks to overturn the prenuptial agreement so that she can continue to receive payments of \$800.00 per week.

Cate's efforts to overturn the agreement have focused upon her assertion that there was an inadequate disclosure of statutory rights. The statutory rights in question are those relating to alimony *pendente lite*. The agreement did expressly state, however, that alimony *pendente lite* was being relinquished. Cate's claim is not that the agreement failed to disclose the particular right affected, but rather that she was not adequately informed with respect to the nature of alimony *pendente lite*.

The first contention raised by Cate is that the agreement should be declared void on the ground that she did not consult with independent legal counsel prior to signing the agreement.

Cate's second contention is that the agreement was executed under conditions of duress in that it was presented to her at 5 p.m. on the eve of her wedding, a time when she could not seek counsel without the trauma, expense, and embarrassment of postponing the wedding.

Cate testified that she did not discover until the eve of her wedding that there was going to be a prenuptial agreement. Fred testified that, although the final version of the agreement was indeed presented to Cate on the eve of the wedding, he had engaged in several discussions with Cate regarding the contents of the agreement during the six-month period preceding that date. The legal counsel who prepared the agreement for Fred testified that, prior to the eve of the wedding, changes were made in the agreement to increase the sums payable to Cate in the event of separation or divorce. He also stated that he was present when the agreement was signed and that Cate expressed absolutely no reluctance about signing.

QUESTION 3

As the Judge deciding the matter concerning the alimony *pendente lite*, is the prenuptial agreement valid? Discuss fully.

QUESTION 4 (35 POINTS)**FACTS:**

Jane and Doug had been married for ten years. They had one child, Seth. Jane was a college professor, and she had always taken care of Seth. Doug was a tax attorney who never had much time to spend with Seth. Doug was also an alcoholic. Jane was a member of a religious group called the Urban Amish, a group which was characterized by a belief that salvation required living separate and apart from the world.

Doug's alcoholism became so bad that Jane divorced him. Doug, who was extremely bitter, did not want to pay support. He quit his \$500,000-a-year job and became a surf bum. The California Superior Court granted dissolution, divided the community property, and awarded sole custody to Jane. The court ordered allowed visitation for Doug with Seth, for one day a week. The court did not award Jane any spousal support or child support because she had an income and Doug had none.

After the divorce, Jane moved into the Amish commune. Because of the groups' extreme separatism, Jane and Seth were only allowed to socialize with other members of the commune. Jane went to her teaching job, but the rest of her time had to be devoted to commune work. Seth went to the commune school and was prevented from meeting other children outside the commune. Both of them wore very old-fashioned black clothing. Jane discouraged visitation, and Doug stopped visiting completely.

One night, as he was leaving a bar, Doug had an automobile accident while driving under the influence of alcohol. Doug suffered brain damage which resulted in an I.Q. of about ninety. The accident changed his life. He started going to Alcoholics Anonymous, stayed sober, and got a job as a warehouse custodian. Doug developed an entirely new attitude toward his son, Seth. But when he tried to visit Seth, Jane informed him that she wanted to move with Seth to the New York Urban Amish commune where she would be one of the Elders, a position of great responsibility. Doug went to court and obtained a temporary order prohibiting her from removing Seth from California. The court also ordered Jane to comply with visitation.

Over the last year, Doug and Seth have seen each other every Sunday and established a good relationship. Seth is now 14 and much smarter than his father. Seth has a very loving and protective attitude toward his father. He also hates the commune because he has to wear funny clothing and cannot meet any other teenagers. Doug lets Seth watch television and listen to rock music. Seth prefers to live with his dad. Jane objects to the visitations because she thinks they have a negative effect on Seth's religious beliefs and are making him misbehave.

Doug wants the court to allow Seth to live with him because that is Seth's stated preference. Jane believes Seth is being influenced by the television shows and music that Doug allows in his home. Also, Jane is worried that Seth is now more intelligent than Doug with the result that Seth will not receive much discipline or guidance from Doug.

QUESTION 4

This case is scheduled for a hearing in two months to address several issues. Jane has hired you to represent her in court and has asked you the following questions regarding the issues before the court:

- A. In the original action for dissolution, did the trial court make a correct ruling regarding child and spousal support? Discuss fully.
- B. Doug wants to modify the custody arrangement and wants the court to order Seth's stated preference? Should the court do as Doug suggests? Discuss fully.
- C. Can Jane move to New York with Seth or must she stay in California? Discuss fully.

QUESTION 5 (35 POINTS)

FACTS:

Charles and Sherry Moses desired to start a family. Sherry, however, is sterile. In February 1999, the Moses met with a surrogacy broker in Henniker in the State of South who introduced them to Ellen Jacques. In late June and early July of 1999, the Moses and Jacques signed an agreement which provided Ellen Jacques would be artificially inseminated with Charles Moses' semen so as to bear his "biological offspring." Ellen promised that Charles Moses could obtain sole custody and control of any child born. She also promised to sign all necessary papers to terminate her parental rights and "aid" Sherry Moses in adopting the child. Charles

and Sherry agreed to pay Ellen \$10,000 in "recognition" of Charles's "obligations to support [the] child and his right to provide [Jacques] with living expenses." In November 1999, Ellen became pregnant through artificial insemination. However, by January 1999, the Moses were having marital problems, and in April, Charles told Sherry he wanted a divorce. Ellen learned of the Moses' domestic difficulties on May 27, 2000 while she was in labor. The next day, she delivered a baby girl, Jane.

Ellen began to reconsider the surrogacy agreement, and for two days, she refused to allow Charles or Sherry to see the baby. On May 31, she relented, and allowed Charles and Sherry to take the child home after they told her they would stay together. However, the marriage deteriorated; and within seven months, on November 30, 2000, Charles left the family residence, taking Jane with him. Less than a month later, on December 21, 2000, Sherry filed a petition for legal separation, and a petition to establish custody of Jane; less than a month after that, on January 11, 2001, she filed a petition to establish parental relationship, alleging she was the "de facto mother" of Jane. In February, Ellen sought to join the dissolution action (granted in March), while Charles filed responsive pleadings requesting a judgment of dissolution rather than legal separation and requesting legal and physical custody of Jane.

The State of South has no statutes or case law concerning surrogacy contracts so you refer to your Family Law Textbook from law school. The outcome of this case will determine how surrogacy contracts will be regarded in the future in the State of South.

QUESTION 5

After filing for judgment of dissolution as a pro se litigant, Charles now comes to you for legal advice concerning the following issues:

- A. Is the surrogacy agreement valid? Why or why not? Discuss fully.
- B. Who are Jane's parents? Discuss fully.
- C. Who should have custody of Jane? Assume all three adults, Charles, Sherry and Ellen, want custody of Jane. Discuss fully.
- D. Based on your advice regarding custody, who should have visitation/residual custodial time with Jane? Discuss fully.