

FINAL EXAMINATION

Domestic Relations

December 15, 1995

FIRST, WITHOUT OPENING THE EXAM, CHECK THE BOTTOM OF THE PAGES TO INSURE THAT YOU HAVE PAGES NUMBERED 1 THROUGH 3.

General Directions:

This is a closed book exam.

Assume that generally accepted principles of domestic relations law apply unless a particular jurisdiction is specified. In answering each question, assume that there are no relevant facts except those set out in the particular question. If one or more additional assumptions must be made in order to answer a particular question, state what assumption(s) you are making and why it is necessary to do so. Do not make assumptions that are contrary to the facts given.

Examinations may be written only in the classroom which has been assigned to us, Classroom C. You may type for purposes of this examination in Classroom D. If you find it necessary to leave the room during the examination, turn your exam and handout face down on your desk, and close your Blue Books. The examination, your Blue Books, and your handout of statutory material must remain in the examination room until you have completed the exam.

On each Blue Book used, be sure to write the following:

- (1) Blind grading number (the correct one, of course)
- (2) Name of exam (Dom Rel.)
- (3) Fall 1995
- (4) If you use more than one Blue Book, on each Blue Book so indicate, e.g., Part 1 of 3, Part 2 of 3, and Part 3 of 3.

All Blue Books must be turned in no later than 12:05 p.m.

I. TERMS (20 percent - 5% each)

Directions: In your Blue Book, discuss the following terms in their Domestic Relations context. Be brief but include enough detail to illustrate their application in the law of Domestic Relations.

1. common law divorce.
2. default divorce.
3. opportunity interest.
4. substantial change in circumstances.

II. ESSAY (80 percent)

Directions: In your Blue Book, write a lawyerly answer to the following questions.

5. On January 1, 1995, Husband and Wife, who had been married for 7 years and who had lived in Ocala, Florida, came to St. Simons Island, Georgia for a "second honeymoon" to try to salvage their deteriorating marriage. (The month before, Wife had learned about a 6-month affair in which Husband had engaged. She said she forgave him, and they resumed sexual relations, but she was having trouble forgetting.) They were both committed to making every effort to salvage the marriage since Wife was pregnant with their first child.

The first week of their vacation, things were better, but by the end of their three weeks on the island, they were not even talking. (Wife had caught Husband having sexual intercourse with a waitress on the beach one night.) When Husband left on January 21 to return home, Wife refused to leave with him. She made arrangements with the desk to extend her stay at the resort another week while she located a condominium to purchase.

After settling in her condo, Wife contacted an attorney. Acting through her attorney, on June 5, 1995, Wife filed suit for divorce in the local Superior Court, alleging as grounds adultery and the irretrievable breakdown of the marriage. Wife also sought custody of their one-month-old son and child support for him. Husband was personally served in Florida.

- A. (20%) Assume that Husband appears specially and files motions objecting to the court's assumption of jurisdiction over the divorce and the issues of child custody and child support. What issues regarding Husband's motions should be raised and how should the court rule?
- B. (10%) In the alternative, assume that circumstances are such that the court has jurisdiction over all of the matters placed in issue and that Husband counterclaims for divorce on the ground of desertion. Which of the alleged grounds for the divorce (adultery, irretrievable breakdown, and desertion) could be established on these facts as a ground for the divorce after all relevant affirmative defenses were raised?
- C. (20%) In (B) assume that Husband also counterclaims seeking custody of Son. What standard should the court employ in deciding the issue of custody, and would the following be relevant factors for the court to consider in applying that standard? Explain.
- If Husband's adultery is the ground for the divorce, that Husband is the "party in default."
 - Wife's "wrongful conduct" in keeping Son in Georgia instead of returning with him to the marital home.
 - The tender years presumption.
- D. (5%) Assume that in (B) the division of their marital property is also properly placed in issue and that all choice of law matters are properly pled and proven. Under the First Restatement of Conflict of Laws, which state's law will be used to decide how to divide the three marital assets: the marital home in Ocala, Florida; the condo in St. Simons Island, Georgia; and Turner Broadcasting System stock purchased when the couple lived in California, which is now kept in a safety deposit box in Ocala, Florida. (Assume that the corporate headquarters for TBS is in Atlanta, Georgia.)
- E. (10%) Assume that in (B) Wife also seeks alimony. What factors should the court consider in deciding whether alimony is awarded and how much alimony she receives? What role, if any, would the alleged adultery by Husband or alleged desertion by Wife play?

6. (5%) Compare the approaches taken in Georgia and Florida as to the role of full disclosure as part of entering into a valid antenuptial agreement.
7. Wanda was married to Edward and living with him in Georgia when, in 1985, she began having an affair with Hinton, a traveling salesman. Because Hinton developed a vision problem and could no longer drive, Hinton needed Wanda to drive him on his sales trips. Hinton convinced Wanda to get a divorce as quickly as possible and marry him. Hinton made the arrangements for Wanda to travel to Haven, where she complied with Haven's divorce procedures, including having Edward personally served in Georgia. After procuring the divorce, Wanda immediately returned to Georgia and married Hinton.

Ten years later, in 1995, Wanda sues Hinton in the local Georgia Superior Court for divorce on the ground of cruelty. Through his attorney, Hinton makes a motion to dismiss, challenging the court's subject matter jurisdiction, alleging that he is not married to Wanda because she is still married to Edward.

NOTE: For purposes of this question, you may elect to substitute Florida or another state we studied everywhere "Georgia" is mentioned. If you choose to make the substitution, so state at the beginning of your answer.

- A. (5%) Assume that Haven is a sister state and Wanda lived there 6 weeks as required by Haven's divorce statute before securing the ex parte divorce and returning to Georgia. What inquiry will the court undertake in ruling on Hinton's motion to dismiss?
- B. (5%) Assume instead that Haven is a foreign country. Wanda signed the Haven registry certifying that she was a resident of Haven and had stayed there the 2 days required by the Haven divorce statute. Edward hired a Haven attorney who appeared for him at the trial but did not object to the divorce or offer any evidence. What inquiry will the court undertake in ruling on Hinton's motion to dismiss?