LOUISIANA STATE UNIVERSITY LAW CENTER

Final Examination

Section 1 8:35 to 1:05 pm
Professor J.-R. Trahan Rooms: 212 (Non-Smoking) & 108 (Smoking)

INSTRUCTIONS

1. This is something between a closed-book and an open-book exam. Aside from the test packet itself, you may consult one and only one book, i.e., the Appendix (which is in four (4) parts).

2. Before you begin reading this portion of the exam, make sure you have all of the pages. There are eighteen (18) pages in all.

3. Do not sign your test packet or your scantron sheet. Identify both using only your secret ID number. If you have a pre-printed exam number tag, use it. If not, just write the number out on the first page of the test packet. And on the scantron, put your ID number in the space marked “student ID number” and circle in the appropriate blanks below it.

4. You have a total of 275 minutes (4 hours, 35 minutes) to complete the exam. To assist you in budgeting your time, I have indicated the amount of time that I think you should spend on each Part and sub-Part of the exam. This time is also indicative of the weight I will assign to each Part and sub-Part for grading purposes.

You may, of course, allocate your time as you wish. But be careful not to get behind. If you do, chances are you will never catch up.

5. In answering the “subjective” questions on the exam, be sure to justify every proposition that you assert. One of the major objectives of this exam is to test your ability to identify the applicable provisions of law, to resolve conflicts between them, and to apply them to the facts.

6. If you should encounter what you consider to be some anomaly, inconsistency, or contradiction in one of the narratives, DON’T JUST SIT THERE PUZZLED. Instead, come find me and ask me for a clarification.

If, for some reason, you think that you need additional information in order to answer a question, DON’T ASSUME ANYTHING! Instead, come find me and ask me for clarification.

During the exam period, I will come down to the lobby outside the examination rooms every hour on the hour (i.e., at 9:00, 10:00, 11:00, etc.) and will remain there for fifteen minutes at a time (e.g., from 9:00 to 9:15). At all other times, I will be in my office (Room 328).

7. You should answer all questions, even those set in the past or the future, on the basis of the current law only.

8. Record your answers to the multiple choice questions on your scantron sheet and your answers to the essay questions in the space provided in this test packet. DO NOT EXCEED THE SPACE PROVIDED.

9. After each objective question you will find three lines. If, because of some perceived deficiency in the pertinent facts as stated in the narrative or some perceived uncertainty in the applicable law, you believe (i) that two or more of the alternative answers provided for the question might be correct (depending on how the factual deficiency or legal uncertainty is resolved) or (ii) that none of them is correct, you may use these three lines to explain yourself.

DO NOT MAKE A COMMENT on these lines UNLESS YOU PERCEIVE SUCH A PROBLEM and, if you make such a comment, DO NOT EXCEED THE SPACE PROVIDED.

10. Scattered throughout the exam are footnotes that contain helpful “hints” and “notes.” BE SURE NOT TO OVERLOOK THEM.

I

(35 minutes)

About six (6) months ago, Doggett, the husband of Alice, having left her, sued her for a divorce under Civil Code article 102. Six (6) months later, when the judge signed the order granting the divorce, Doggett’s Tulane-trained attorney advised him he was “now free to marry again, if he wanted,” even though the delay for Alice to file an appeal (or, for that matter, to request a new trial) had not yet run. To Doggett, this was indeed good news, for he was hot to marry his new girlfriend of five (5) months, Christine, whom he believed (because she’d repeatedly told him so) was the daughter of a famous Texas millionaire. (This belief, in fact, was a determinative, “but for” cause of his decision to marry her.) And so, the next day Doggett and Christine were wed. The ceremony
was performed by a Justice of the Peace whose commission, unbeknownst to Doggett or Christine, had expired just a few days before.

One (1) month after the wedding, Alice, Doggett’s supposed “ex”-wife, died.¹

Two (2) months after the wedding, Christine, using wages she’d earned in the past two months, bought a new couch.

Three (3) months after the wedding, Doggett’s attorney, having discovered the “little mistake” he’d made when he’d told Doggett it was alright for Doggett to re-marry, told Doggett about it. When Doggett passed this information on to Christine, she said, “I don’t care. I still want to be your wife.”

Four (4) months after the wedding, Doggett, using wages he’d earned in the past month (after Alice’s death), bought a boat.

Five (5) months after the wedding, Doggett learned from his paternal grandmother that she was the mother not only of his (Doggett’s) father, but also of Christine’s mother, whom she had given up for adoption shortly after she had been born (in other words, that Doggett and Christine are consanguinous first cousins).

Six (6) months after the wedding, Christine informed Doggett that she was then four (4) months pregnant with his child.

Seven (7) months after the wedding, Doggett discovered that Christine’s father was not famous, not a Texan, and definitely not a millionaire, but rather a poor rice farmer who had grown up in the same town as his own mother. Shocked and appalled at Christine’s deceit, Doggett left her.

A

(5 min) Doggett has just filed suit against Christine, seeking to annul their marriage on the ground of her misstatements to him regarding her father. Will he prevail? Why or why not?

a yes: the marriage was relatively null; Doggett’s consent to the contract of marriage was vitiated by fraud; Christine made misrepresentations of fact with the intent to deceive Doggett and thereby to induce him to marry her; this deception was, in fact, successful, that is, caused Doggett to consent to the contract

b yes: the marriage was absolutely null; Christine’s cause for entering into the contract was unlawful, namely, was based on fraud; Christine made misrepresentations of fact with the intent to deceive Doggett and thereby to induce him to marry her; this deception was, in fact, successful, that is, caused Doggett to consent to the contract

c yes: both a and b are correct

d no: the marriage is neither relatively nor absolutely null; it’s not relatively null, because fraud is not a recognized vice of consent in the context of marriage; it’s not absolutely null, because Christine’s cause was entirely lawful

e none of the above

For purposes of the rest of this Part I, assume that the correct answer to this question 1 is a (the marriage was relatively null).

¹ You should assume that this event did not, as it were, retroactively “cure” the defect in Doggett’s second marriage that had resulted from his having re-married before the delay for the appeal from the judgment of divorce dissolving his first marriage had run. In other words, that “defect” still remains even though Alice is now dead.
2 (5 min) Suppose Doggett takes a different tack, namely, to seek annulment on the basis of his prior undissolved marriage to Alice. Will he prevail? Why or why not?

a. yes: the marriage was relatively null; one who is married cannot contract another marriage
b. yes: the marriage was relatively null; Doggett’s consent to the contract of marriage was vitiated by error (an error of law, to be precise); Doggett mistakenly assumed that he was free to enter into a valid marriage, and Christine undoubtedly knew of his cause for contracting it
c. yes: the marriage was absolutely null; one who is married cannot contract another marriage
d. no: though the marriage was absolutely null for the reason given in b, Doggett, as the party who suffered from the impediment, cannot challenge the marriage on that basis (only Christine, the “innocent” party, could do that)
e. none of the above

For purposes of the rest of this Part I, assume that the correct answer to question 2 is c (the marriage was absolutely null).

i. (8 min) Were there any other “absolute defects” (i.e., causes of absolute nullity) in Doggett’s marriage to Christine? If so, what were they? Could Doggett get an annulment on the basis of any of these defects? Why or why not?

For purposes of the rest of this Part I, assume that the correct answer to this question is “no, there were no other absolute defects.”

B

Christine, who faces a mound of pre-natal expenses due to complications in her pregnancy, wants to compel Doggett to “chip in.”

ii. (5 min) Is it yet “too soon” for Christine to seek such relief from Doggett? Why or why not?
Assume that the answer to this question ii is "no, it is not ‘too soon’ for her to seek such relief" (in other words, she can do it now).

3  (6 min) As things now stand, is (are) there any ground(s) on the basis of which Doggett might be able to resist Christine’s demand?

a yes: for reasons given above in question 1, Doggett’s marriage to Christine was relatively null; for that reason, he is not Christine’s husband and, therefore, is not presumed to be the father of Christine’s child; consequently, she cannot obtain any sort of “support” for the child from him until she first establishes that he is, in fact, the child’s father, which will require a successful Civil Code article 209 filiation action

b yes: for reasons given above in question 2, Doggett’s marriage to Christine was absolutely null; for that reason, he is not Christine’s husband and, therefore, is not presumed to be the father of Christine’s child; consequently, she cannot obtain any sort of “support” for the child from him until she first establishes that he is, in fact, the child’s father, which will require a successful Civil Code article 209 filiation action

c yes: the reasons given in answers a & b are both correct

d no: even if Doggett’s marriage to Christine was absolutely null or relatively null, Doggett cannot resist the demand; absolute nullity is not a “problem” here because the marriage was still producing civil effects as to Doggett, the “spouse” against whom the support action is pending, at the time of the child’s conception, inasmuch as he was still in good faith at that time (Christine’s good faith at that moment being irrelevant); relative nullity is not a “problem” here because a relatively null marriage produces civil effects for the spouses and their children until it is declared null, something that had not happened as of the time of the child’s conception

e no: even if Doggett’s marriage to Christine was absolutely null or relatively null, Doggett cannot resist the demand; absolute nullity is not a “problem” here because the marriage was still producing civil effects as to at least one of the parents (and, therefore, as to their children) at the time of the child’s conception; relative nullity is not a “problem” here because a relatively null marriage produces civil effects for the spouses and their children until it is declared null, something that had not happened as of the time of the child’s conception

C

For purposes of this sub-Part I.C, forget sub-Part I.B (the previous sub-Part).

4  (6 min) Who is entitled to the couch that Christine bought at month two (2) of the “marriage” and the boat that Doggett bought at month four (4) of the “marriage”? Why?

a the couch belongs entirely to Christine and the boat, entirely to Doggett; inasmuch as their marriage was absolutely null, there was no “community” between them; each thing, then, belongs to the “spouse” with whose funds it was purchased

b the couch and the boat each belongs 50% to Christine and 50% to Doggett; when the couch was acquired, both “spouses” were in good faith and, as such, were entitled to the civil effects of marriage, including community property rights; when the boat was acquired, though both “spouses” were then in bad faith, Christine, as the “innocent” spouse in this bigamous marriage, was still entitled to the civil effects of marriage, including community property rights

c whereas the couch belongs 50% to Christine and 50% to Doggett, the boat belongs entirely to Doggett; when the couch was acquired, both “spouses” were in good faith and, as such, were entitled to the civil effects of marriage, including community property rights; but when the boat was acquired, both “spouses” were in bad faith and, as such, neither was entitled to the civil effects of marriage; the boat, then, belongs to the “spouse”
with whose funds it was purchased, i.e., Doggett  
d whereas the couch belongs entirely to Christine, the boat belongs 50% to Christine and 50% to Doggett; Doggett, as the “guilty” spouse in this bigamous marriage, is not entitled to the civil effects of marriage; Christine, as the “innocent” spouse in this bigamous marriage, is entitled to those effects  
e none of the above  

II  
(130 minutes)  

On June 1, 2003, Monique, the fifteen (15) year old girlfriend of Niles, himself only sixteen (16) years old, discovered that she was pregnant. Determined to do the “honorable” thing, Niles, with his mother’s blessing (Niles’s father had died several years earlier) asked Monique to marry him. With her parents’ blessing, Monique accepted the proposal. Due to certain problems they encountered in scheduling the wedding, the birth of the child, whom they named Ogden, came first – on December 1, 2003 – and the wedding came second – on December 21, 2003. For the time being, the couple lived, with their child, in a small apartment in their hometown of Morgan City.

A  

On January 1, Monique, who is still fifteen (15) years old, and Niles, who is still sixteen (16) years old, decide they’d like to sell some of their property to generate funds with which they can make a down payment on a new home. Monique wants to sell (i) a mineral servitude (she had received this from her paternal grandfather’s succession) and (ii) 100 shares of Cajun, Inc. common stock (she received this as a wedding gift from her maternal grandmother); Niles wants to sell a farm (Niles received this from his father’s succession). Their parents, however, are opposed to the idea, so much so that Monique’s parents bring suit against her and Niles’s mother against him for an injunction to enjoin her or him, as the case might be, from making the sale(s).

5 (6 min) Who will prevail in this injunction action? Why?  

a Monique and Niles will prevail on all counts; inasmuch as they are now married, they have been “emancipated” from parental or tutelar authority, as the case might be; as such, they can do with their property what they want, just as can a major  
b Monique’s parents will prevail as to the mineral servitude and as to the stock, but Niles will prevail as to the farm; because Monique is only fifteen (15) years old, the marriage has produced for her only a “limited emancipation,” one that does not confer on her the power to dispose of her goods; because Niles is sixteen (16) years old, the marriage has produced for him a “full” emancipation from his mother’s tutelar authority  
c Monique’s parents will prevail as to the mineral servitude, Niles will prevail as to the farm, and it’s uncertain who’ll prevail as to the stock; because Monique is only fifteen (15) years old, the marriage has produced for her only a “limited emancipation,” one that does not confer on her the power to dispose of her immovable goods (such as the servitude); whether it confers on her the power to dispose of her movable goods (such as the stock) is a still- unresolved question of law; because Niles is sixteen (16) years old, the marriage has produced for him a “full” emancipation from his mother’s tutelar authority  
d Monique’s parents will prevail as to the mineral servitude, but Monique will prevail as to the stock and Niles will prevail as to the farm; because Monique is only fifteen (15) years old, the marriage has produced for her only a “limited emancipation,” one that does not confer on her the power to dispose of her immovables (such as the servitude), but that does confer on her the power to dispose of her movables (such as the stock); because Niles is sixteen (16) years old, the marriage has produced for him a “full” emancipation from his mother’s tutelar authority  
e none of the above
Assume, for purposes of the rest of this Part II, that the couple’s parents were successful in blocking the sales in question.

B

Time went by. When Monique turned twenty (20), she enrolled as a full-time student at ULL (University of Louisiana in Lafayette), where she took up the study of psychology. While Monique was in class or studying for class or commuting to class (which was most of the time), she left Ogden, now aged five (5) years, in the care of her parents in Morgan City.

During Monique’s freshman year, her marriage to Niles deteriorated badly. Monique, who’d never been very fond of the “conjugal act” to begin with, became even less so. When Niles tried to initiate sex (which happened, on average, about twice a week), Monique, more often than not, put him off, usually by feigning some ailment (headaches, stomach upset, etc.) The frequency of their sexual encounters declined steadily from once a week at the beginning of the school year, to once a month by mid-year, to once a quarter by the end of the year. Niles, who had quite a healthy libido, found this development terribly frustrating.

Things came to a head one evening in the summer following Monique’s freshman year. After Monique put him off yet again (the tenth time in two months), he quoted for her no less an authority than the great reformer Martin Luther: “If thou wilt not, I shall find a maid who will!” At that, Niles ran off to Lafayette’s “red light” district, picked up a prostitute named Roxanne, and drove her to a cheap hotel. Then, in mid-foreplay (Niles and Roxanne had undressed and had begun to “fondle” each other, that is, there was mutual hand-to-genital contact, though there’d as yet been no oral, anal, or vaginal sex and neither had yet reached orgasm), Niles had a change of heart. Quoting no less an authority than the Jewish patriarch Joseph, he shouted, “How could I do such a wicked thing and sin against God?” and ran out of the hotel. Upon his return home, Monique asked him where he’d gone. Sobbing, he told her everything and then asked for her forgiveness. Monique’s response was short and to the point: “Pack your things and get out! NOW!” Niles did as she asked and took an apartment nearby.

A few days after moving into his apartment, Niles was served with process in a suit for divorce filed against him by Monique on the ground of “adultery.” In the petition, she also requested sole custody of Ogden; $650 for Ogden’s support; and $700 a month for her own support.

Niles has hired you to represent him. In the course of your consultation with him, Niles discloses to you the following information:

1. the direct cost of Monique’s education came to $2,000 ($1,500 in tuition and $500 in books and supplies);
2. last year Niles earned (a) $42,000 a year ($3,500 per month) in salary, paid to him by his employer Bell South Co., and (b) $12,000 a year ($1,000 per month) in cash dividends from stock he had inherited from his father;
3. last year Monique earned $6,000 per year ($500 per month) as a part-time student-worker in the ULL library;
4. during Monique’s freshman year, Niles and Monique spent all their income just meeting expenses (that is, they acquired no new assets and put nothing away in savings);
5. because Monique’s parents don’t charge her anything to keep Ogden while she’s at school or at work, Monique has no child care costs;
6. to add Ogden to his employee health insurance plan, Niles must pay an extra $25 per month;
7. Monique has a mineral servitude (the one she inherited from her paternal grandfather, see supra), which is worth $50,000 but never has generated and presently generates no income, and some stock (that which she received as a gift from her maternal grandmother, see supra), which also is worth $50,000 but presently generates no income (the company hasn’t issued a dividend in years);
8. Niles has a farm (the one he inherited from his father, see supra), which is worth
$100,000, but never has generated and presently generates no income;
(9) Niles’s job with Bell South Co. requires him to work long hours at unusual times of the
day, which leaves him with relatively little opportunity for face-to-face contact with
Ogden;
(10) whereas Monique is a lapsed Catholic who has no interest in religion, he is a devout
Lutheran; he and he alone has seen to Ogden’s “Christian formation” during the past five
(5) years (i.e., had him christened, taught him how to pray, read the Bible to him, took
him to “Sunday School” and to church each Sunday);
(11) Monique has long suffered from serious bouts of depression, for the relief of which she
regularly sees a psychologist and takes the anti-depressant Prozac;
(12) if Ogden is asked, he’ll say, “I want to live with my Mommy.”

Niles, who has a rather good knowledge of family law for a layman, asks you a series of
questions. Do your best to give him answers that are, at once, succinct and yet complete.

(1) First, Niles has a couple of questions about Monique’s claim for divorce.

6 (5 min) Was Niles really guilty of “adultery”? Why or why not?

a  it’s debatable: though it’s clear that oral sex, anal sex, vaginal sex, and, in fact, just about
every (if not every) kind of genital-to-genital stimulation (even without penetration)
constitutes adultery, it’s not clear whether mere “manual” genital stimulation (hand-to-
genitals) constitutes adultery, especially where, as here, the stimulation stops short of
producing orgasm
b  he’s guilty: any kind of direct stimulation of the genitals, regardless of the body part with
which the genitals are stimulated, constitutes adultery
c  he’s guilty: under current law, “adultery” includes not only physical but also
psychological “infidelity”; Niles, at the very least, was guilty of the latter
d  he’s not guilty: mere “manual” genital stimulation (hand-on-genitals) is not enough for
adultery; adultery requires oral sex, anal sex, vaginal sex, or at least some kind of genital-
to-genital stimulation
e  he’s not guilty: mere “manual” genital stimulation (hand-on-genitals) is not enough for
adultery; adultery requires some sort of “penetration,” be it orally, anally, or vaginally

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iii (7 min) Even if he was guilty of adultery, might he not have some sort of “defense” to the
divorce suit, one based on Monique’s conduct? Why or why not?

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For purposes of the rest of this Part II, assume that Niles does not have a defense to the divorce
action (at least not on the facts given so far).
Next, Niles has a couple of question about Monique’s demand for custody of Ogden.

iv  (20 min) Is Monique likely to get sole custody of Ogden, as she has requested? Why or why not?

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(3)

Next, Niles has a question about Monique’s demand for child support for Ogden.

v  (20 min) If Monique does get sole custody of Ogden, what will be the amount of Niles’s “child support” obligation? (Record your answer to this question on the Child Support Guidelines Worksheet that is attached to the exam packet. If you’d like to offer any explanatory comments, you may do so on the back of the worksheet.) In calculating the custody award, you are to ignore the complications that might arise if Monique were to succeed in getting an alimony award for herself.

2 If you’re supposed to have to discuss the CC art. 134 factors somewhere in the exam, this is probably the place, don’t you think?
Next, Niles has a couple of questions about Monique’s demand for “alimony.”

vi (5 min) Is Monique entitled to alimony *pendent lite*, that is, alimony pending the resolution of her divorce suit? Why or why not?¹

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7 (5 min) If Monique is entitled to alimony *pendente lite*, which of the following factors may / must the court take into account in setting the amount of the award?

a the wages Monique earns as a part-time student-worker
b Monique’s mineral servitude and stock (either as assets or for their earning potential)
c the salary Niles earns at Bell South Co.
d Niles’s farm (either as an asset or for its earning potential) and Nile’s stock (either as an asset or for the revenue it generates)
e more than one of the above: ___________ ⁴

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vii (5 min) Is Monique entitled to *permanent* alimony? Why or why not?⁵

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viii (15 min) If Monique is entitled to *permanent* alimony, what factors may / must the court take into account in setting the amount of the award? Are there any facts regarding Monique’s or Niles’s financial / economic situation that the court may *not* take into account? Explain.

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¹ Note that this question is about *entitlement to* alimony *pendente lite*, not about the *amount* of that alimony. The “amount” question comes next (see infra question 7).

⁴ If you choose this alternative answer, circle in “e” on your Scantron and then insert into the space provided the letters that correspond to the other answers that you think are correct. For example, if you think *all* of the other answers are correct, then write “a, b, c & d” in the space provided.

⁵ Note that this question is about *entitlement to* permanent alimony, not about the *amount* of that alimony. The “amount” question comes next (see infra question ix).
Finally, Niles has a question about some relief of his own he’d like to seek.

If Monique does secure a divorce, can he recoup all or part of his “financial contribution” to Monique’s education and, if so, how much? In making this determination, you are to ignore the complications presented by the presence of the child in the household, in other words, you are to treat the expenses that his presence in the household creates as if they were expenses of the parents themselves.
C

While Monique’s divorce action against Niles is still pending, Monique, at Niles’s request, joins him for dinner at their favorite Morgan City restaurant. Near the end of the dinner, Monique, who by then was quite tipsy, told Niles such things as “I think I may have been too hard on you” and “maybe we should give it another try.” Then, as they prepared to leave the restaurant, Monique invited him back to “our place” (that’s how she put it). He went. They had sex—several times, in fact. The next morning, when Monique awoke to find Niles in bed beside her, she was appalled. After rousing Niles, she told him that she’d made a “terrible mistake” by inviting him home with her, that she intended to press the divorce suit forward, and that he should leave. He did.

x (10 min) Niles, who has just informed you of these events, thinks he may now have some sort of defense to Monique’s divorce action. Is he right? Why or why not?

For purposes of the rest of this Part II, assume that these events do not provide Niles with any sort of defense.

D

Nine months after Monique secures her divorce from Niles, Niles discovers that Monique has invited two of her psychology professors, Dr. Vanessa Williams and Dr. Jennifer Lopez, to “move in” to the house with her and Ogden. When he asks Monique about the nature of her relationship with the two women, she candidly admits that “it’s a classic menage à trois, except that we’re all three girls.” When Niles, shocked, asks her if Ogden knows what’s going on, Monique answers, “Well, we don’t have sex in front of him, if that’s what you mean. But we do hold hands and kiss each other in front of him, just as married people would do. And we do this on purpose: we don’t want him to grow up to be homophobic; we want him to accept all people for who they are, especially people like us, that is, gays and lesbians and people who want to live in ‘group marriages’.”

Niles, who has just passed this information on to you, wants to know whether, on the basis of this information, he “has a shot” at changing either (i) the existing custody arrangement for Ogden or (ii) his existing permanent alimony obligation to Monique.

xi (10 min) Does this new information provide Niles with any justification for seeking a change

6 The normal kind.
of custody? Why or why not?

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8 (5 min) Does this new information provide Niles with any justification for seeking a change in permanent alimony? Why or why not? If so, what kind of change?

a no: though these developments may reflect badly on Monique’s moral character, her moral character is not relevant to the question of entitlement to or amount of permanent alimony

b it depends: the professors, one must suppose, are contributing to the defrayment of the expenses of Monique’s household; if their contributions exceed the additional costs that their presence in the household has created, then to that extent, Monique’s “needs” have been reduced and, consequently, the alimony award may be adjusted downward; but if the professors’ contributions are equal to or less than the additional costs that their presence in the household has created, then, of course, Monique’s “needs” have not been reduced and, consequently, the alimony award cannot be adjusted downward

c yes, termination of alimony: to the extent that the professors are now living with Monique after the manner of husband and wife, Monique has forfeited her right to permanent alimony

d none of the above

III (95 minutes)

Anna and Barry, husband and wife, having failed in their efforts to conceive a child, decided to adopt one. Instead of contacting the Department of Social Services or even a private adoption agency (“They’d just charge us a lot of money for doing what we can do for ourselves,” Barry told Anna), they simply “asked around” for a child, that is, asked their friends, neighbors, fellow church members, and co-workers if they new of any pregnant young ladies who might be interested in giving their children up for adoption. In the course of time, Anna and Barry were introduced to Cassie, the nineteen year old granddaughter of one of their neighbors. During their conversation, it came to light that (i) Cassie was still married to a fellow named Dennis, who’d left her two years before, but who, as she put it, “hasn’t even touched me or, for that matter, even seen me, in all that time” and (ii) the father of the child was “probably” Eric, a seventeen year old boy who, for the past year, had been her off-and-on “steady” boyfriend. According to Cassie, “Eric doesn’t care what I do with the baby. When I told him about it, he proposed that I get an abortion or at least give the child up for adoption.” After a few more meetings, Anna and Barry, on the one hand, and Cassie, on the other,
entered into what Barry called an “adoption contract,” whereby Cassie agreed to surrender her baby to Anna and Barry when the baby should be born. On the day of the child’s birth, Anna and Barry met Cassie at the hospital where, as they had previously agreed, Cassie (i) signed an instrument (which Barry had prepared) entitled “Act of Surrender,” wherein she “relinquished all of my parental rights in the child” in favor of Anna and Barry and (ii) handed the baby over to Anna and Barry, who, after naming him Frank (so that the birth certificate could be completed), then took him straight home. The birth certificate, which Cassie alone signed, listed Cassie as “mother” and Eric as “father.” One week later, Cassie’s mother, Mary-Helen, files suit against Anna, Barry, and Cassie, seeking to halt the adoption.

A

The case of “Baby Frank” has landed on the docket of Family Court Judge Luke Lavergne. After listening to the evidence (which included all the facts cited above), the good judge commented, “This may be the most screwed up private adoption I’ve seen in my twenty years on the bench.”

xii (25 min) What did Judge Lavergne mean? In what respects, precisely, was this adoption “screwed up”?7

7 In answering this question, you should assume that Mary-Helen has “standing” to object to the adoption.
For purposes of the rest of this Part III, assume that the adoption was invalid.

B

After the adoption “falls through,” Cassie decides to keep little Frank. Eleven (11) months to the day after Frank’s birth, Cassie, finding that the cost of caring for Frank was more than she could handle on her own, demands in writing that Dennis, her estranged husband, pay child support. Dennis, incredulous that she would even make such a “ludicrous” demand (that’s what he calls it), determines right away that he’ll “fight it.” But Dennis, an inveterate procrastinator, drags his feet.

Three more months pass. Cassie then sues Dennis, seeking an order directing him to pay child support for Frank, who is now 15 months old.

Dennis now comes to you, an attorney, for advice. In the course of your consultation, Dennis admits to you that he first found out about Frank’s birth one month or so after it happened (i.e., 14 months ago). To assist you in evaluating his case, Dennis also provides you with a copy of the transcript of the hearing on Mary-Helen’s opposition to the adoption. Now, Dennis wants you to answer some questions:

xiii (2 min) What remedy, if any, is generally available to the presumed father (or his successors) in such cases? (Just name the type of action.)

9 (5 min) Is there still time for Dennis to assert that remedy? Why or why not?

a yes: Dennis has until one year from the date on which Cassie first demanded child support from him in writing within which to assert the remedy in question
b yes: Dennis has until one year from the date of Cassie’s suit within which to assert the remedy in question
c no: Dennis’ right to assert the remedy in question prescribed one year after Frank’s birth (3 months ago)
d no: Dennis’ right to assert the remedy in question prescribed one year after he learned of Frank’s birth (2 months ago)
e none of the above

xiv (10 min) Under the circumstances presented here, does Dennis yet have enough evidence to prevail? Explain. Whether he does or not, is there any way in which he might be able to get additional evidence to bolster his position? Explain.
For purposes of the rest of this Part III, assume that Dennis can not get the remedy in question because the action whereby he might have obtained it has prescribed.

C

After Cassie gave birth to Frank, Eric, her old boyfriend and the person she believed was Frank’s “real” father, “split.” Recently, Cassie learned that Eric died a little over a year ago. If it’s possible, she’d like to see to it that Frank gets his “fair share” of Eric’s estate.

Cassie, who has hired you to represent her in this matter, has some questions for you:

xv (5 min) Does the mere fact that Frank is Dennis’ legitimate child and, further, that Dennis can no longer deny paternity bar Cassie (on behalf of Frank) from seeking such relief from Eric? Why or why not?

xvi (2 min) If Cassie (on behalf of Frank) could take action to see that Frank “gets his fair share” of Eric’s estate, what kind of action would it be? (Just name the type of action.)

10 (6 min) Is there still time within which Cassie (on behalf of Frank) may bring such an action?

a yes: she has one (1) year from the date of Eric’s death within which to bring the action
b yes: she has one (1) year from the date of Eric’s death or eighteen (18) years from Frank’s birth, whichever occurs later, within which to bring the action
c yes: she has (1) year from the date of Eric’s death or nineteen (19) years from Frank’s birth, whichever occurs later, within which to bring the action
d no: (1) year from the date of Eric’s death or eighteen (18) years from Frank’s birth, whichever occurs first, within which to bring the action
e no: (1) year from the date of Eric’s death or nineteen (19) years from Frank’s birth, whichever occurs first, within which to bring the action

11 (3 min) If Cassie brings the action, by what “standard of proof” must she prove that Eric was Frank’s “real” father?
Because this handwritten note lacks a date, it does not meet the requirements for valid testamentary form.

a preponderance of the evidence
b clear and convincing evidence
c evidence beyond a reasonable doubt

xvii (10 min) As things now stand, does Cassie have enough evidence to prevail in the action? Explain. Whether she does or not, is there any way in which she might be able to get additional evidence to bolster her position? Explain.

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D

For purposes of this sub-Part III.D, assume that Dennis succeeded in obtaining the relief that was the subject matter of sub-Part III.B (i.e., he established that Frank is not his son) and that Cassie failed to obtain the relief that was the subject matter of sub-Part III.C (i.e., she failed to establish that Eric is Frank’s “real” father).

Cassie has just died. While going through Cassie’s effects, Cassie’s best friend, Ginger, finds an undated note, written in Cassie’s handwriting, that reads as follows: “In the event of my death, I want my best friend, Ginger, to be Frank’s guardian and to take care of Frank and to manage his property until he turns eighteen.” Though Ginger is willing to take on this responsibility, she is aware that Frank has a number of relatives who might want the job, including Mary-Helen (Cassie’s mother and, therefore, Frank’s maternal grandmother) and Ian (Cassie’s nephew and, therefore, Frank’s first cousin). And so Ginger contacts them. Mary-Helen, complaining that she’s “too old” (she’s sixty-seven), declines. Ian, by contrast, says he’s willing to do it. Frank’s gross estate, which includes some stock, an interest in a painting, and a personal injury claim for medical malpractice (described in greater detail infra) comes to only $10,000.

Ginger, who has hired you as her attorney, has a couple of questions for you:

xviii (5 min) By virtue of the writing in which Cassie names Ginger as Frank’s “guardian,” is she entitled, as of right, to be put in charge of Frank and his property? Why or why not?

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Because this handwritten note lacks a date, it does not meet the requirements for valid testamentary form.
For purposes of the rest of this Part III, assume that Ginger is ineligible to take on responsibility for Frank and his property.

**xix** (5 min) Can Mary-Helen be compelled to assume responsibility for Frank and his property? Why or why not?

For purposes of the rest of this Part III, assume that Mary-Helen cannot be compelled to take on responsibility for Frank and his property.

**xx** (5 min) Does Ian have the right, as Frank’s cousin, to assume responsibility for Frank and his property? Why or why not?

For purposes of the rest of this Part III, assume that Ian has no right to be put in charge of Frank and his property (i.e., he’s not among those who is entitled, by law, to claim the post).

**xi** (5 min) If Ginger and Ian have no right to be put in charge of Frank and his property and Mary-Helen cannot be compelled to do it, whom should / may the court appoint to do it and on what basis may the court do so (i.e., what kind of “guardian,” to use Cassie’s term, would she or he be)? Explain.

For purposes of the rest of this Part III, assume that the court puts Ian in charge of Frank and his property.

**12** (6 min) Now that Ian has been put in charge of Frank and his property, Ian has decided he’d like to make some “changes” in Frank’s situation, namely, (i) hire himself (Ian) to manage Frank’s small stock portfolio (Ian is a professional stockbroker), (ii) sell Frank’s undivided co-ownership interest in a painting that Frank had inherited from his maternal great-grandfather, and (iii) bring suit, on Frank’s behalf, against Frank’s former pediatrician for personal injuries
Frank sustained as a result of the pediatrician’s medical malpractice. Which, if any, of these proposed changes can Ian make? And for which of them would prior court approval be required?

a. Ian can do all three of these things on his own, without prior court approval
b. Ian can do the first thing (hire himself as Frank’s portfolio manager) and the third thing (sue the pediatrician) on his own, without court approval; the second thing (sell the interest in the painting), by contrast, he can do only with prior court approval

c. Ian cannot do the first thing (hire himself as Frank’s portfolio manager) at all; the second thing (sell the interest in the painting) he can do only with prior court approval; the third thing (sue the pediatrician) he can do on his own, without prior court approval

d. Ian cannot do the first thing (hire himself as Frank’s portfolio manager) at all; the second and third things (sell the interest in the painting, sue the pediatrician) he can do on his own, without prior court approval

e. none of the above

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iv (15 minutes)

A client of yours who read a recent article published in the Morning Advocate concerning “interdiction” wants to know whether he can have his seventy-eight (78) year old father, who suffers from Alzheimer’s Disease, interdicted. According to your client, the disease is still in its “early stages,” in particular, his father “still recognizes people, thinks straight, and makes sense every once in a while.”

xii (all 15 min for Part IV) Explain to your client the types of interdiction available in this situation and what you recommend and why.