

FAMILY LAW EXAM
PROFESSOR DEBORAH BELL

Instructions: Write your exam number in the top right hand corner of **each page** of the exam. Answer each question in the space provided. If you need additional space, write “over” and complete the answer on the back of the **same page**. For multiple choice questions, check the box before the correct answer. Each separately lettered question is worth 5 points. Total points: 200. The examination period is three hours.

PART ONE: BRITNEY AGAIN

In July, 2003, pop star Britney Spears married Kevin Federline in a one million dollar wedding extravaganza. Britney’s lawyers prepared a detailed prenuptial agreement for the couple to sign. Unfortunately, Britney presented the agreement to Kevin three weeks before the wedding, telling Kevin that she would not marry him unless he signed the agreement. The volative couple fought for hours, fueled by three bottles of wine and a fifth of vodka. Finally, Kevin signed the agreement at 3:00 a.m., promptly threw up, and passed out on the living room rug. The agreement provided that “each party’s property will remain separate, including both property owned prior to marriage and property acquired during the marriage, with the exception of jointly titled assets, which shall be marital property.” The agreement stated that both parties entered the agreement freely and voluntarily, without coercion, and that the promises made by each were in consideration of their mutual agreement to marry.

Britney became pregnant within two months of the wedding, and gave birth to a son, Sean, in April 2004. The marriage began to falter after the child’s birth. Kevin began to party with his friends within days of the child’s birth, leaving a forlorn Britney to care for the child (with the help of numerous staff members). One tabloid produced photographs of Kevin with his arm draped around a former girlfriend at a late night party in L.A. and reported that the two had spent the night in the same hotel room. When Kevin invited his drug supplier to the family home one evening, in December, 2004, Britney took the child and went back to her mother in Louisiana, telling Kevin that he could straighten up or be gone when she returned. Britney remained in Louisiana for most of the next year, flying back and forth for engagements. On one return visit, she made headlines when she was photographed driving with her baby in her lap. In May, 2005, Kevin visited Britney and Sean in Louisiana, and the couple decided to try to make the marriage work. They purchased a home and 400 acres near Britney’s mother and vowed to spend most of their time in Louisiana, living a “simple, honest” rural life. They stocked the farm with horses and cattle, and built a landing strip for a private plane.

Shortly after the reconciliation, Britney left Sean with her mother during her visits to L.A, hoping that a few months without the stress of childcare would rekindle the marriage. Because of her mother’s concern about medical care and other decision-making, she signed a document giving her mother legal custody of Sean for the period of time that she was in California. Britney soon realized she was again pregnant. She gave birth to a second son, Jayden, in September of 2006. Sean remained with Britney’s mother in Louisiana throughout most of the pregnancy, but joined the family in California after his brother’s birth.

Surprisingly, Britney was the one who hit the party circuit after the birth of her second child. New best friends Paris and Lindsay introduced her to the best hot spots in L.A., where she has been seen partying late into the night, reportedly using marijuana, photographed in an apparently drunken state and – most recently – photographed without benefit of undergarments.

Last month, Britney filed suit for divorce in California, seeking divorce on the basis of irreconcilable differences, custody of both children, and enforcement of the property division and

alimony provisions of the prenuptial agreement. She apparently celebrated the filing by inviting Mario (of “Dancing with the Stars”) to spend the evening in the hotel suite she shared with the two children. Kevin countersued seeking custody of both boys and arguing that the prenuptial agreement is invalid. He is also requesting drug testing of the infant Jayden, alleging that Britney is using drugs and drinking to excess even though she is still breast-feeding the baby.

In a surprising move, Britney then dismissed her California suit, filing suit for divorce in Kenner, Louisiana, and requesting the same relief as in the California suit. Kevin’s petition is still pending in California. He has filed a motion to dismiss the Louisiana suit on the basis of lack of jurisdiction.

Louisiana law is identical to Mississippi with regard to divorce grounds, jurisdictional rules, and the test for custody. Both California and Louisiana are community property states in which marital property is divided equally. However, they use the same basic rules as do equitable distribution states for classifying separate and marital property.

Jurisdictional issues

1. State Kevin’s argument that the Louisiana divorce action should be dismissed for lack of jurisdiction.

2. State Britney’s response.

3. State Kevin’s argument that the Louisiana court lacks jurisdiction to determine custody.

4. State Britney's response.

5. As the Louisiana judge, how will you rule on Kevin's claim that property division and alimony cannot be addressed in Louisiana?

Grounds for divorce

6. What grounds for divorce will Britney's attorney consider alleging, and what defenses may Kevin assert to each?

7. What grounds may Kevin assert in a counter-suit for divorce?

8. For what practical reason do you think Britney sought divorce in Louisiana?

9. What is the legal disadvantage to her of filing in Louisiana?

After weeks of negotiation, Britney and Kevin agreed to an irreconcilable differences divorce and to submit the issues of custody, support, and property division to the court. The court bifurcated the action, granted the couple a divorce, and scheduled the trial on the remaining issues for March, 2007. Britney’s lawyers tried to convince her to maintain a low profile pending the custody suit. However, three weeks after the divorce was granted, Britney (apparently unable to learn from her mistakes) married Mario in the Star Trek Chapel (“Where all couples live long and prosper”) in Las Vegas, Nevada. In her rush to the altar, she failed to secure a prenuptial agreement. That evening, Britney and Mario gambled at the Pyramid Casino, where Britney won \$40,000 playing blackjack. The couple then joined Britney’s friends for a week of heavy drinking and club-hopping in L.A., then returned to Louisiana.

When Britney’s mother learned of the wedding, she filed a petition in the pending action, seeking custody of both children. Britney immediately severed all communication with her mother, refusing to allow her to see the children, and telling her that when the case was over, she would never see them again.

Custody and visitation

10. What are the primary three factors that Britney should argue support an award of custody to her?

11. What factors will Kevin argue support an award of custody to him?

12. What test will Britney's mother urge the court to apply to her request for custody?

13. What test will Britney and Kevin argue should apply, and why?

14. If Britney's mother is denied custody, what must she prove to gain visitation with her grandchildren?

Property division

Britney's assets are valued at around \$200,000,000, a \$50,000,000 increase during the time she was married to Kevin. Kevin is asking the court for \$25,000,000, claiming that the prenuptial agreement is invalid, the assets are all marital property, and he is entitled to 50% of the assets.

15. Explain Kevin's argument that the prenuptial agreement is invalid.

16. If Kevin is successful in setting aside the agreement, what must Britney prove in order to remove assets from the marital estate? (None of her wealth is the result of gifts or inheritances).

17. Britney filed suit against the National Enquirer for publishing allegedly untrue stories regarding her escapades with Paris and Lindsay. If the suit is successfully resolved prior to the March trial, how should the proceeds be classified?

18. During their marriage, Britney and her mother co-authored a book about her life, which has produced \$100,000 in income. How should future proceeds of the book be classified for purposes of property division?

19. In the last year, Britney and Kevin produced a notoriously bad reality show – “Chaotic” – which, nonetheless, was financially successful. The production, which was funded with proceeds of Britney’s January 2003 Tour, and its spinoffs, produced \$1,000,000 in income. How should the income from the show be classified?

The Mario Marriage

Britney’s manager, Larry, has urged Britney to dissolve her hasty marriage to Mario.

20. What are Britney’s options and grounds for ending her recent marriage?

21. What course of action would you advise her to take, and why?

22. If the couple divorce, would the gambling proceeds be considered a marital asset?

The aftermath

Britney and Kevin eventually agreed that they would share joint legal and joint physical custody of the boys, with Britney having “primary physical custody.” Britney was awarded the marital home in California and the Louisiana house. It was quickly apparent that the parents were unable to communicate in a civil manner with regard to the children. After a particularly bitter argument over scheduling time with Kevin, Britney took the children to Louisiana, where she reconciled with her mother and asked her mother to help her with the children. Britney filed a petition in the Louisiana courts to modify Kevin’s time with the children, stating that she planned to move to Louisiana. Kevin filed a petition to dismiss the action for lack of jurisdiction, and in the alternative, to obtain custody of the children.

23. Does the Louisiana court have jurisdiction to hear the modification action? Explain.

24. How will Kevin characterize the custody arrangement, and why?

25. How will Britney characterize the custody arrangement, and why?

PART TWO: WHAT NEXT?

Paris and Lindsay, Britneys' former best buddies, decided to eschew men and to form a lasting relationship with each other. The new couple moved to Massachusetts, where they were married in a civil ceremony. After a year in Boston, they returned to Mississippi, for reasons that no one quite understands. The two became best friends with the two gay men, Matt and Andrew, who were their housekeepers. The four made a pact to form a family and to raise a child that belonged to the four of them as parents. Lindsay agreed to act as birth mother for a child for the family. Paris donated eggs, some of which were fertilized with sperm from Matt and some from Andrew. Two of the fertilized eggs were implanted in Lindsay, who gave birth to a daughter.

Their longest period of interrupted friendship ended when Paris threw a glass at Lindsay one night and struck her in the head. Lindsay moved out, and filed suit in Mississippi chancery court requesting custody of little Brit. Paris responded with a request for custody and/or visitation. Matt and Andrew filed a petition to intervene, alleging that they were the fathers of the children. The court ordered a guardian ad litem to represent the child. Blood tests show that Andrew is the child's biological father.

26. As between Paris and Lindsay, what is Lindsay's argument that she is the child's mother?

27. What is Paris' argument?

28. What argument should Matt rely on to establish a right to custody or visitation?

PART THREE: ORDINARY PEOPLE

June and Joe Tom

June and Joe Tom, who live in North Mississippi, decided to divorce after eight years. They agreed to an irreconcilable differences divorce, that June would have custody of their two children, and that Joe Tom, whose adjusted gross income was \$2000, would pay \$400 or 20% of his adjusted gross income, whichever was greater, as child support. Joe Tom has been irregular in his child support payments in the four years since the agreement was signed. For the first few years, he exercised visitation about half of the time set out in the schedule, and was extremely difficult to deal with when he saw the children. It has now been eighteen months since he has seen the children or paid support. In the interim, Joe Tom remarried, fathered twins, and divorced again. He is paying \$150 a month in child support to his second ex-wife.

29. June wants to file suit to terminate his parental rights. What advice will you give her concerning the likely success of a termination action?

30. In the alternative, June has stated that she would waive any child support if Joe Tom waives visitation rights. What should Joe Tom's attorney tell him about this offer?

Four years after divorce, Joe Tom is in arrears in child support in the amount of \$10,800. He was \$3600 in arrears eighteen months ago, and has paid no support since then, adding another \$7200 to the debt. However, he is also able to prove that he was laid off from his job eighteen months ago as the result of a work-related injury, and was not been able to work until he was released from therapy two weeks ago. He has now been rehired at an adjusted income of \$3600/month. In addition, he recently inherited \$5,000 from his great-aunt.

31. Which of the following is correct:

- The court should order Joe Tom to pay \$10,800 in arrears.
- The court should order Joe Tom to pay \$3600 in arrears
- The court should order Joe Tom to pay arrearages back to the date the petition was filed
- The court should order Joe Tom to pay arrearages unless he can prove that it was impossible to make the payments.

32. Which of the following is correct:

- The court should order future support of \$720/month.
- The court should order future support of \$720/month plus a lump sum of \$1000.
- The court should order future support of \$570/month.
- The court should order future support of \$570/month plus a lump sum of \$1000.

33. What argument can June make that the court should deviate above the child support guidelines?
