

Answers to 2003 exam

1. Jeanie will argue that he must show a material change in circumstances in her home, that has an adverse impact on the children. She will argue that in MS, a custodial parent's relocation is not a material change in circumstances.

2. He will argue that the couple changed their custodial arrangement to de facto joint custody, with him actually having the children more than she. NOT COVERED IN DETAIL THIS YEAR. As a result, the court should treat this as joint custody and apply the Albright factors, rather than the traditional material change in circumstances test. He may also argue that the couple's new custodial arrangement was a material change in circumstances in her home.

3. They will argue that Doneva and TJ have constructively abandoned the children and accordingly have lost the presumption in favor of the natural parents. They have removed themselves from the children's daily lives and relinquished parental authority over the children to the grandparents. Under these circumstances, the court should apply an Albright analysis to determine the best interests of the children.

4. The natural parent presumption. Third parties may gain custody only if parents are proven to be unfit or to have abandoned the children. She has visited and provided some support and so has not abandoned them. Being a stripper does not make one unfit to be a parent.

5. He will argue that he has never been legally declared the children's father, and that even if he is, back support may only be awarded for one year.

6. The Albright factors/best interests test. An unmarried father has all the same rights with regard to custody as a married father.

7. She will argue that because of his history of family violence, it is presumed that he is not the best custodian for the children. He will have the burden of overcoming this presumption in order to even get to the Albright factors.

8. \$400, unless court gives some reduction for the children living in his home. Courts have discretion to allow this reduction or deny it.

9. If their own daughter is denying them visitation, they must prove that they have a viable relationship with the children, including overnight visits and financial support, that she has unreasonably denied them visitation and that visitation will not interfere with her parenting.

10. That he will no longer be liable for child support.

11. He will argue that the alimony is a hybrid of lump sum and periodic and, under MS caselaw, must be treated as periodic. Periodic alimony terminates upon cohabitation.

Even if it is treated as a lump sum hybrid, since it provides for termination upon remarriage, it should also terminate at cohabitation under the de facto marriage rule. She is refusing to remarry to avoid terminating alimony.

12. She will argue that the MS appellate courts have approved alimony hybrids very similar to this one and enforced them according to their terms. This states that it is lump sum alimony. It specifically provides for termination upon certain events, but does not provide for termination at cohabitation. It should be enforced according to its terms as a hybrid.

13. He will argue that the reduction in his income is a material change in circumstances in his income, justifying a reduction in alimony.

14. She will argue that the reduction was voluntary, since he chose early retirement. A voluntary reduction in income does not qualify as a material change in circumstances. Furthermore, the question is whether his income is lower now than at divorce.

15. Whether his retirement was necessitated by health reasons.

16. Whether it terminates at the payee's death.

17. Her increase in income is not a determinative factor. Each parent is expected to support the children at 20% of their earning capacity, not their actual earnings.

18. A stepparents' income is not considered in determining the appropriate amount of support.

19. His reduction in income was purely voluntary and cannot be the basis for modifying child support. His actual earning capacity is much higher and support should be based on that amount.

20. MS does not recognize escalation clauses (*no longer true; law changed since 2003*).

21. Parent's out-of-court agreement to modify child support is not binding.

22. Even if a parent is entitled to prospective modification, arrearages for past due child support cannot be forgiven.

23. Until seven years after the children's majority.

24. THROUGH 34 NOT COVERED IN SAME DETAIL THIS YEAR.

35. The Grand Oaks house may be deemed marital based on family use, (if they have been living there,) and commingling of funds (her marital income used to pay the mortgage). On the other hand, under new cases that recognize tracing rules, she may argue that the premarital value should be separate.

36. The \$25,000 increase in value in her UM pension will be marital because it was earned during the marriage. Pensions may be treated as mixed assets.
37. If the funds were deposited into an account with salary or other marital funds, it may be deemed marital because of commingling. However, she can argue that it should be traced using the clearinghouse rule, since some MS cases now permit tracing.
38. The trust should remain her separate property. The fact that the income has been used for family purposes does not convert the underlying asset into marital property.
39. If no temporary support order has been entered, marital property accumulation continues. Even if a support order was entered, any portion earned prior to the entry of the order will be marital.
40. Whether the house has been converted to marital will depend upon whether he used marital funds to improve the house, and whether any appreciation was active (caused by one of their efforts). Not enough information to be sure
41. A portion of the IRA will be marital, based on contributions during the marriage and the growth of those contributions. The value at the time of marriage, plus the growth of that portion, will be separate.
42. The increase in value in the accounting practice will most likely be marital. It has been his primary occupation. The growth will be viewed as active and therefore marital.
43. The condo will most likely be classified as marital based on family use.