

Family Law Education Reform Project

Problem Four – Dissolution of MARRIAGE

OVERVIEW

Students should work with a partner on this two-week problem. For the first week, students focus only on the dissolution of the marriage; for the second week, students will focus on property distribution and spousal support, and will negotiate with another team.

EXPLANATION AND COMMENTS

This exercise has two-parts and is aimed to immerse students in both a preliminary dissolution of marriage and, later, a negotiation based on the preliminary questions from the first part of the exercise. The exercise contains problems, questions and background for each part of the two-week program.

ABOUT THE AUTHOR

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Problem Four

Bob and Betty have been married for thirty years, and have spent all of their marriage in Gainesville, Florida. They have raised three children together who are all grown and out on their own, and have their first grandchild. Betty returned to school to complete the bachelor's degree that she long ago abandoned when she had the first of three children and became a full-time homemaker. She is completing her degree in art history, and having a ball. She began hiking with the college adventure club and through their activities realized that there were lots of things that she wanted to do with her life that Bob did not enjoy. In fact, they had been living "parallel lives" for a long while, with him pursuing his passion for opera and theatre while she is passionate about the outdoors, environmental issues, and art.

They agreed to separate, although initially they continued to live in the same house. It has a huge "mother in law" suite, so Betty moved in there so that they could each have separate space. They continued to live as they always have financially, with everything in a common "pot," and Betty taking care of paying bills and managing the household. They are both 55 years old. Bob is a physician and makes a very comfortable income. In addition, they continue to have family gatherings with their children, and maintaining "the family" is very important to both of them.

Betty meets Frank, whose wife died after a long battle with cancer. He has one grown daughter. Betty and Frank have a blast doing things together, but it is a long time before they begin a romance. Betty likes her independence and is not sure she ever wants to marry again. Frank exhausted much of his savings caring for his wife. Frank is a high school teacher and coach, and loves his job. He is 7 years younger than Betty. He makes a modest income. He is about to take a job in New York City, and Betty has arranged to do an unpaid externship there in order to complete her degree, which will also give her a year to find a job with a museum or gallery, and she will live with Frank. It is possible that she could establish residency so that any divorce would be governed by New York law.

Bob was initially stunned by the separation but recovered quickly. He has been dating quite a bit and currently is spending most of this time with a woman 20 years younger with 2 children still at home, a former opera singer. It is too early to determine how serious this is. Her ex-husband returned to Italy and she has had no luck with child support from him. Bob is looking forward to retiring at 65 or earlier.

Because they have both moved on, Bob and Betty have decided to file for divorce. It is over a year since they separated, and they have put the house on the market. Both are now consulting attorneys for the first time.

Client Assignments: Odd numbered teams: Betty
Even numbered teams: Bob

You should work with your partner on this problem this week and next week. For the first week, focus only on the dissolution of the marriage, which we will discuss briefly in class; for the second

week, you will focus on property distribution and spousal support, and will negotiate with another team.

First week (Week 9)

1. Do you foresee any issues with respect to dissolution of the marriage?
2. Does it make a difference that the parties separated? That they separated but have lived in the same residence?
3. Does it make a difference that both are involved in romantic relationships? Will it make a difference if either has had sexual relations in those relationships?
4. How do you see your role as counsel?
5. If either of the parties had come to you earlier when they first decided to separate, what if any advice would you have given them?

Second Week (Week 10)

Negotiation Assignments: You should negotiate this Problem during the second week that we work with it, and you will negotiate with the same team that you worked with on Problem Two (Megan and Ian).

Betty and Bob have a house, his pension, and some savings, and grown children who no longer need their support. She is entering the job market at 55; he is about to leave the job market and retire on a generous pension. She would like at least a modest house (or if she stays in New York, an apartment) and an income since she has no idea whether she can make any money and after all, it's an art history degree. She also needs tuition money and living expenses to finish her last year. Betty sacrificed for years for Bob to get through med school and then establish himself, and while he helped with the children, she raised the children and ran the household (and has continued to manage the household through their separation). It will cost no more for her to live with Frank than if she shared an apartment with another student in her program. She sees this as a chance to see if the relationship with Frank has long term potential.

Bob would like to be fair but also does not want to support her if she decides to live with her boyfriend. He also is concerned that if his current relationship becomes more serious, he will now have a second family to support.

One other confounding factor is the current economic situation. When they began thinking about divorce and drafted the attached financial statement, it reflected the value of their assets prior to the economic downturn.

Sort out the financial issues, including property division and spousal support. Assume that the parties have agreed to collaborative lawyering. Be prepared to discuss a proposed settlement within the framework of collaborative lawyering with the lawyers representing the other party.

Negotiation: The negotiation will take place on October 30; the discussion of the negotiation will take place October 31. On October 30, everyone must come to Rm. 355C to sign in and then immediately begin the negotiation. You may meet in the classroom or in another location in the law school that you have previously agreed upon with opposing counsel. At the negotiation, you should propose and negotiate for any changes you wish to make to the Agreement. **After 50 minutes, STOP.** Whatever you have negotiated becomes the new Draft Agreement, subject to the approval of your clients. Be sure to write a brief summary of the agreement and/or draft paragraphs.

What follows is the agreed financial statement of the parties' assets and debts.

Joint Financial Statement (drafted 12 months ago when the parties separated)

House, valued by real estate broker at \$350,000. Remaining mortgage of \$50,000.

Undeveloped land (purchased for retirement), lot with view of Intercoastal Waterway and beach/ocean access. Purchased twenty years ago when Betty inherited \$50,000 from her favorite uncle; has now increased in value to \$300,000. Originally Bob and Betty hoped to build a retirement home here and leave it as a gift to be shared by their children.

Personal property, furnishings, artwork-will be divided by the parties

2003 Toyota Forerunner (paid off) (Betty's car)

2002 BMW sedan (paid off) (Bob's car)

Pension Plan: \$800,000 fully vested

Stocks: \$200,000 current value

Health insurance: Covered under Bob's family plan through his medical practice

College tuition: \$7,000 per year plus \$500 books and supplies per year; living expenses in New York City will be \$20,000 for one year.

Liabilities:

Credit card debt: \$10,000 (outstanding charges primarily made by Betty with Bob's full knowledge and approval)(both parties have independent Visa and Master Charge accounts; debt is on one Visa that both use for expenses)

Home improvement bill: \$60,000 to contractor, for construction of a music room for Bob's opera collection with special soundproofing and wiring for his stereo system

Bob's salary: \$275,000 annually from his medical practice during the past 5 years; he hopes to reduce his hours until retirement and thus his income may drop by as much as \$75-100,000

Betty's salary: Jobs for art historians are few and far between; galleries pay minimum wage; at best she might make \$35,000 IF she is able to get a job.