

## ESSAY QUESTION NO. 8

### Answer this question in booklet No. 8

In 1991, Hy and Winnie wed in Anchorage, Alaska. Both parties are in good health and are currently in their early forties. Hy has worked part-time as a gardener since he primarily cared for their sons, Mike and Chip. He earns about \$6,000 a year. Mike is a 20 year old college sophomore and Chip is a ten year old fifth grader. Winnie is a telecom executive earning \$200,000 per year.

Prior to their separation in October, 2010, Winnie paid Mike's fall college tuition of \$11,000 with her individual credit card. When they separated, Hy informed Winnie that he was not going to be responsible for any more of Mike's college expenses. Winnie has made minimum payment on her credit card so that most of the fall tuition remains on the card. Last month, she used the same credit card to pay for Mike's spring tuition of \$11,000. She wants Hy to pay half of the credit card obligation.

Hy was gifted a two room cabin in the Mat-Su Borough by his parents three years ago. Only his name is on the title. The couple occasionally used it on the weekends for family outings. The cabin's value remains unchanged since Hy received the cabin. The yearly property taxes of \$200 were paid from their joint account.

Their marital estate is valued at about 2.5 million dollars with 2.3 million invested in various retirement accounts. These retirement accounts will not be accessible to the parties for many years due to the qualifying conditions of the plans. The remaining assets are their home equity and personal property. They have about \$10,000 in savings. The couple is now divorcing.

1. Hy wants to complete his degree in education. He has a little more than one year of full time classes to complete his degree. Analyze whether Hy will be able to receive spousal support.
2. Explain what responsibility Hy has for the charges on Winnie's credit card.
3. Discuss whether or not Winnie has a claim on the cabin.

## **GRADERS' GUIDE**

### **\*\*\* QUESTION NO. 8 \*\*\***

#### **SUBJECT: FAMILY LAW**

#### **(1) SPOUSAL SUPPORT: (40 points)**

AS 25.24.160(a)(2) allows for the awarding of spousal support in a divorce action. In *Dixon v. Dixon*, 747 P.2d 1169, 1173 (Alaska 1987), the Alaska Supreme Court announced a policy of encouraging trial courts to provide for a divorcing party's financial needs by property division rather than by alimony.

In Alaska, there are three types of spousal support available: reorientative support, rehabilitative support and permanent awards of spousal support. Hy is requesting that this court grant him spousal support so that he can complete his Masters Degree. The purpose of rehabilitative alimony is to allow a recipient spouse who exits a marriage with few job skills and little earning capacity to secure a means to earning income. *Nicholson v Wolfe*, 974 P.2d 417 (Alaska 1999). A party seeking rehabilitative alimony must present an educational or job training plan to the court so the court can determine whether and what support award is necessary and appropriate. *Tybus v Holland*, 989 P.2d 1281 (Alaska 1999). In *Dixon supra*, 1174, the appellate court held that the policy that favored property division over spousal support did not preclude rehabilitative spousal support.

In determining whether to award spousal support, the court must use the statutory factors it considers in deciding distribution of marital property. These factors are known as the "Merrill Factors" and are cited at AS 25.24.160(a)(2)(A-G). They are the length of the marriage and the parties' station in life during the marriage, parties' ages and health, the spouses' earning capacities (education, training, work history, length of time absent from job market, and custodial responsibilities for children during the marriage), financial condition of the parties (including the availability and cost of health insurance), conduct of the parties, the division of the marital estate, and any other factor the court determines is relevant to the individual case.

In this case, the amount of marital property is known. The marital estate is approximately 2.5 million dollars. It does appear though that the majority of the marital estate is tied up in retirement plans that are either not easily accessible or are accessible only by cashing them in and incurring taxes and penalties. The parties seem to have a relatively small amount of cash assets available.

Hy needs to present a definite education program outlining the costs of additional schooling, the time it will take to achieve that degree and how that degree will increase his current earning capacity.

This is a long term marriage of almost twenty years. Both parties are in good health. Both parties are in their early forties. Winnie has a superior earning capacity at \$200,000.00 a year. Hy has been the parent who had the larger responsibility for child care. His child care duties have impacted his ability to work full time and to complete his education. It is very likely that the court will order Winnie to pay rehabilitative alimony to Hy.

In addition to rehabilitative alimony, Hy may also be awarded reorientative alimony by the court. Reorientative alimony is essentially transitional. It is awarded to enable a spouse to adapt to changing financial circumstances following a divorce. See *Jones v Jones*, 835 P.2d 1173 (Alaska 1992), *Gallant v Gallant*, 945 P.2d 795 (Alaska 1997).

**(2) CREDIT CARD OBLIGATIONS: (30 points)**

Absent a showing that the parties intended debt to be separate, a trial court must presume that a debt accrued during the marriage is marital and should consider it when dividing the marital estate. *Leis v Hustad*, 22 P.3d 885 (Alaska 2001). Debt acquired after a couple's physical separation which leads to divorce, is usually separate property. *Dodson v Dodson*, 955 P.2d 902, 910 (Alaska 1998).

**Mike's Fall Tuition:** Mike's fall tuition was a debt that was incurred prior to the parties' separation in October, 2010. There is no evidence that this debt was intended by either party to be separate debt. It is, therefore, a marital debt and will be considered as such by the court in its distribution of the marital estate.

**Mike's Spring Tuition:** Mike's spring tuition was a debt acquired after the couple's physical separation. Nothing in the facts suggests that Hy agreed that this would be a marital obligation. Neither party has an obligation under Alaska law to provide any post-majority support to a child. In *Gallant v Gallant*, 679 P.2d 480 (Alaska 1984), the Alaska Supreme Court held that the Alaska legislature did not intend to provide for post-majority educational support in a divorce action. This court would find that Mike's spring tuition is an obligation solely of Winnie's since she decided to provide that support to their son.

**(3) CABIN: (30 points)**

Hy acquired the cabin as a gift from his parents during the final years of the marriage. The title was held by Hy. The cabin would become part of the marital estate only if the court found the cabin became transmuted into marital property by the couple's intent and conduct exhibited by them which reflected such an intent. *Green v Green*, 29 P.3d 854 (Alaska 2009).

In *Green*, the court outlined four factors which a trial court must utilize to determine whether separately held property had been transmuted into marital property. These four factors are:

1. whether the parties used it as a marital residence;
2. whether both parties contributed to the ongoing maintenance and improvement;
3. whether both parties had title; and
4. whether both parties used the non-titled spouse's credit to improve the property.

All four factors need not be present. *Chotiner v Chotiner*, 82 P.2d 829, 832 (Alaska 1992).

Applying the *Green* factors to this case, the Mat-Su cabin was not used as a primary marital residence but used as a second home on occasions by the family. There is no Alaska case law at this time concerning non-primary residences owned by a party. It is an open question as to whether a trial court would find that the usage constituted this cabin becoming a marital asset. The facts do not suggest that either Hy or Winnie did anything to improve the cabin's value. Title was only held by Hy. Neither party's credit was used to improve the land. It is doubtful that the court would hold that the payment of the minimal taxes was sufficient to give Winnie any interest in the cabin.

It is an open question as to whether the court would find that the cabin's usage by Hy, Winnie and the boys was sufficient to transmute it from Hy's separate property into marital property.

If the applicant addresses Harrower – credit.