

## **ESSAY QUESTION NO. 9**

### **Answer this question in booklet No. 9**

Winona and Hy have been living in Alaska since their marriage in 1997. They have one child who is ten years old. Winona has filed for divorce. The parties have agreed to an equal property division but several issues remain to be resolved.

Winona is starting her senior year in college to complete her nursing degree. For the past three years, she has taken student loans to cover only the tuition and book expenses. Winona claims her student loans are marital debt. Hy believes they are her separate debts because she got exclusive use of the loans and he will receive no benefit from the loans. Winona worked part time at unskilled jobs during the marriage because she did not qualify for anything else and the increase in her future earning capacity will benefit her, not Hy.

In December, 2000, the couple received \$5,000 from Hy's wealthy parents. Hy contends this was a loan which the couple are obligated to repay. Winona believes it was a gift.

Winona is asking for spousal support. Hy does not believe she should receive any spousal support because they will each receive about \$125,000 in non-liquid marital assets which is an equal property division.

1. Are the student loans and the \$5,000 from Hy's parents' marital debts? Discuss.
2. Can Winona be awarded spousal support? Discuss.

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 9 \*\*\*

#### SUBJECT: FAMILY LAW

#### 1. Are student loans and the \$5,000 marital debts? (50 Points)

In Alaska, a trial court must utilize a three-prong analysis when distributing property in a divorce. The trial court must (1) determine what property is marital and non-marital; (2) value that property; and (3) divide the property equitably. Wanberg v. Wanberg, 664 P.2d 568, 570 (Alaska 1983); Lundquist v. Lundquist, 42, 46 (Alaska 1996).

##### a. Student Loans

Absent any showing that the parties intended a debt to be separate, the trial court must presume that a debt incurred during the marriage is marital and should consider it when dividing the marital estate. Veselsky v. Veselsky, 113 P.3d 629 (Alaska 2005); Leis v. Hustad, 22 P.3d 885 (Alaska 2001).

In McDougall v. Lumpkin, 11 P.3d 990 (Alaska 2000), the Alaska Supreme Court held that a spouse's outstanding student loans incurred prior to separation were marital debt subject to division because the debts were incurred during the course of the marriage.

There was no evidence that Winona incurred the educational expense as part of any agreement with Hy that she begin her education in anticipation of a divorce. In both Tybus v. Holland, 989 P.2d 1281 (Alaska 1999) and Notkin v. Notkin, 921 P.2d 1109 (Alaska 1996), the Alaska Supreme Court upheld the awarding of the wife's educational debt to the husband because he was in a superior economic position.

##### b. \$5,000 Loan

In Fortson v. Fortson, 131 P.3d 451 (Alaska 2006), the Alaska Supreme Court upheld the trial court's finding that the alleged loans from the wife's parents during the marriage were not marital obligation. In Fortson, the trial court had relied upon the failure of the parents to demand payment or interest was probative since the failure likely rendered at least one of the loans unenforceable under Alaska's Statutes of Limitations.

In the instant case, there is only one \$5,000 payment. There is nothing in the facts that indicate there was any writing recognizing the

obligation. There are no facts that any demand for repayment was ever made by Hy's parents.

The money was given in 2000, more than eight years ago. Under Alaska law, if Hy's parents sued on the loan the couple could claim as an affirmative defense, the statute of limitations because it has been more than eight years since the monies were given to them.

AS 09.10.053 requires that all actions based on contract or liability, whether express or implicit, must commence within three (3) years of the breach.

The timing of the \$5,000 being given in December would be more supportive of Winona's position that it was a gift. In December, the majority of Americans celebrate the holidays of Christmas and Hanukkah. Both these holidays involve the tradition of gift giving to one's friends and relatives.

## **2. Spousal Support (50 Points)**

There is a preference in Alaska to resolve financial concerns arising from a divorce by means of the property division. Brown v. Brown, 914 P.2d 206 (Alaska 1996). BUT alimony awards are allowable when just and necessary. Tybus v. Holland, 989 P.2d 1281 (Alaska 1999).

Permanent awards of alimony are disfavored. Harlon v. Harlon, 871 P.2d 229 (Alaska 1994).

Factors that a trial court may consider in awarding spousal support are the same factors that a trial court must consider in its division of the marital estate. (See AS 25.24.160(4)).

The purpose of both rehabilitative and reorientative support is to help a spouse adapt to a changed financial situation due to a divorce Jones v. Jones, 835 P.2d 1173 (Alaska 1992).

Rehabilitative support is awarded to allow a party to complete education or job training to secure a means of increasing his or her earning capacity. Nicholson v. Wolfe, 974 P.2d 417 (Alaska 1999). A party requesting rehabilitative support must have a detailed plan outlining what degree or certification the party will obtain, how long it will take, and the costs of the education or training. A party must also show that this educational plan will enable the party to become more financially secure in the future.

Reorientative support is awarded for brief periods to help with adapting to changing financial circumstances. Davila v. Davila, 908 P.2d 1025 (Alaska 1995).

A trial court may award both rehabilitative and reorientating support. Money v. Money, 852 P.2d 1158 (Alaska 1993).

Since Winona has already completed 3 of the 4 years that she needs to get a nursing degree, the trial court will find that she has a viable plan already in place. The educational costs for completing her degree are also known because there is a three year history of these costs.

Obtaining a nursing degree will certainly enable her to earn significantly more than the unskilled jobs that she previously held. Increasing her earning potential not only helps her future but will allow her to better provide for the parties' child. The nursing degree will also, likely give her more employment benefits (i.e. retirement) than she could have with an unskilled job.

The other spouse's ability to pay spousal support is an important factor in determining whether to order spousal support. It is also a factor when setting a proper amount of spousal support. An applicant should be given credit if they identify this issue. They may note that while the facts do not state Hy's income, his income and his ability to pay are relevant.

The applicant should also get credit for recognizing that the marital estate awarded to W is non-liquid, which may affect her ability to use the property awarded to her to fund her living expenses or education. This is a factor that weighs in favor of her receiving spousal support.

It is likely the court will award rehabilitative support to complete her training as a nurse. It is also possible this court will award her reorientative support for a brief time after the conclusion of the rehabilitative support so that she has a financial cushion while she seeks employment.