

ESSAY QUESTION NO. 9

Answer this question in booklet No. 9

Meg and Dan were married in Alaska in 2003. Their son, Sam, was born in January, 2005. The couple began to have marital problems. In May, 2007, the couple separated. Sam stayed with Dan in Anchorage, while Meg relocated to Fairbanks. Dan, due to his religious convictions, does not believe in divorce.

In August, 2007, the couple entered into a legal separation agreement. They agreed to shared legal custody of Sam with Dan having primary physical custody. Dan also agreed to pay Meg \$500 a month in spousal support for twenty-four months while she attends the University of Alaska, Fairbanks.

In January, 2008, Meg asked Dan to increase his monthly spousal support payment to \$800 because school costs more than she anticipated. Tuition will be increased next semester. She also misses Sam and wants him to spend more time with her in Fairbanks.

1. What are the grounds for a legal separation?
2. What are the grounds for a divorce?
3. Dan wants to know whether the legal separation decree can be modified. Explain.
4. Dan added Meg's last name to his when they were married. Dan would like to be restored to his last name only. Explain whether he can accomplish this in a divorce, legal separation, or otherwise.

GRADER'S GUIDE

*** QUESTION NO. 9 ***

SUBJECT: FAMILY LAW

(1) LEGAL SEPARATION GROUNDS. The grounds for a legal separation are set out in AS 25.24.410. (10 points)

AS 25.24.410 provides that:

“A legal separation may be granted by the court based on a finding that (1) an incompatibility of temperament exists between the parties; and (2) the continuation of the parties’ status as married persons preserves or protects significant legal, financial, social, or religious interests.”

(2) DIVORCE GROUNDS. Divorce grounds are listed in AS 25.24.050. (25 points)

“A divorce may be granted for any of the following grounds:

(1) failure to consummate the marriage at the time of the marriage and continuing at the commencement of the action;

(2) adultery;

(3) conviction of a felony;

(4) wilful desertion for a period of one year;

(5) either

(A) cruel and inhuman treatment calculated to impair health or endanger life;

(B) personal indignities rendering life burdensome; or

(C) incompatibility of temperament;

(6) habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action;

(7) Repealed.

(8) incurable mental illness when the spouse has been confined to an institution for a period of at least 18 months immediately preceding the commencement of the action; the status as to the support and maintenance of the mentally ill person is not altered in any way by the granting of the divorce;

(9) addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine, or a similar drug.”

(3) MODIFICATION OF DECREE OF LEGAL SEPARATION. (50 points)

A decree of legal separation can include provisions for the distribution of the marital estate, both assets and obligations. The decree must state whether it is

an interim or final order.
(AS 25.24.450(c))

If it is an interim order, the trial judge has to decide what each spouse's rights and responsibilities are toward any assets or debts that have not been finally allocated to one spouse or the other. The court also has to determine what the individual's spouse's responsibility and right may be to any asset or obligation accrued by either spouse while the interim separation decree is in effect. (See AS 25.24.450(c))

Whether it is an interim or a final separation agreement, all agreements concerning child custody and visitation are final orders that can only be modified if the conditions of AS 25.20.110 are met unless the couple's agreement specifically states otherwise. This means to modify custody or visitation, the moving party must prove that a substantial change of circumstances has occurred and it is in the child's best interests for a modification to occur.

The fact pattern does not give any information about changing custody except that Meg misses Sam. Her missing Sam is not a sufficient change of circumstances which would warrant the court revisiting the custodial arrangement.

To modify child or spousal support, the moving party must satisfy the conditions of AS 25.24.170 by showing that a material change of circumstances has occurred.

Meg wants to increase her spousal support payment by \$300 per month because school costs have increased. This may or may not be a significant change of circumstance. Meg requests 60% increase in what she is currently receiving which would appear to be a material change. A court could find that the tuition increase is a material change.

The facts do not say whether the entire increase Meg requests is equal to the tuition increase or whether she wants some of the money for other school costs. Even assuming a material change does not mean that she would automatically be awarded all or part of the requested increase. The court must also review Dan's financial circumstances. The court must weigh each spouse's age, earning capacity, financial positions (assets and debts), and health when deciding whether to order or modify spousal support. (Renfro v. Renfro, 84 P.2d 830(Alaska 1993))

Just because Meg may need more money doesn't mean Dan can afford to pay. The fact situation does not give any details about either Meg or Dan's age,
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health, earning capacity, etc. but the examinee should recognize that the court would need to consider those factors.

AS 25.24.170(b) specifically states that any significant amendment to the child support guidelines (which are found in Alaska Rule of Civil Procedure 90.3) is a material change of circumstances for the modification of child support.

Also, AS 25.24.170 provides that to comply with federal law a modification of child support can occur without a material change of circumstances if child support has not been adjusted within 3 years of the requested modification.

(4) NAME CHANGE. (15 points)

Dan cannot change his name in a legal separation. If he wishes to be restored to a prior name, he can do it in a divorce. (AS 25.24.165(a))

The only other way he can restore his prior last name is to do a separate legal action - a change of name under Alaska Rule of Civil Procedure 84. This procedure requires the filing of a verified petition, publication of the notice of change of name once a week for four consecutive weeks in a publication most likely to give appropriate notice, a hearing, and a one-time publication of the name change judgment.