

## ESSAY QUESTION NO. 4

### Answer this question in booklet No. 4

Margo and Frasier were married in 1997 in Anchorage. They lived there throughout the marriage. Prior to their marriage, Margo inherited her mother's farm with her siblings. From the income of the farm, Margo used \$30,000 to remodel her and Frasier's marital home. The home's title is in both parties' names. The remodel significantly increased the home's value. Her farm funds also supported the family when Frasier was injured and out of work from an accident with a drunk driver in 2006 and paid for family vacations every year.

In 2005, the farm was sold. Margo deposited half the money into the couple's checking account. She opened her own individual brokerage account with the remainder.

Margo and Frasier separated in February 2008. They have twin daughters who are in kindergarten.

In March 2008, Frasier received a bonus based on his employer's profit for 2007. Frasier's lawsuit against the drunk driver who hit him is not scheduled for trial until January 2009. Frasier has asked the court for damages including lost earnings and pain and suffering.

Margo and Frasier have filed for divorce.

1. Margo has told Frasier she wants to be reimbursed all the money that she contributed to the family expenses, the home remodel and the checking account from the farm income. She also wants half the employment bonus and half the lawsuit proceeds. How would a court rule on Margo's entitlement to the farm income reimbursement, Frasier's bonus and his lawsuit monies? Discuss thoroughly.
2. Frasier is agreeable to Margo being the girls' primary physical custodian. But because he will pay the maximum child support, he would like to claim both girls as dependents under federal tax law. Explain whether that is possible under Alaska law.
3. The couple divorced. Both were relocated to different states by their employers. The girls remained with Margo. Three years later, Frasier is earning less due to an economic downturn. He wants to modify his child support. Where should Frasier file his modification request? Explain.

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 4 \*\*\*

#### SUBJECT: FAMILY LAW

#### 1. (60 points)

When dividing property between divorcing parties, the trial court must distribute all assets acquired during the marriage. (Lacker v. Lacker, 993 P.2d 413 (Alaska 1999))

Marital property includes all property acquired during the marriage, excepting only inherited property and property acquired with separate property which is kept as separate property. (Fortson v. Fortson, 131 P.3d 451 (Alaska 2006))

When distributing property in a divorce, the entire equity of a piece of joint property should generally be allocated. However, pensions, retirements, stocks or other capital, and compensatory damage awards may be divided into marital and separate portions. (Lundquist v. Lundquist, 923 P.2d 42 (Alaska 1996))

**A. Farm Income and Reimbursement:** Initially, the monies which Margo got from the farm were separate property because they arose from inherited property.

Margo's paying for vacations would be viewed as a gift to the family.

The monies she contributed to the house remodeling would be considered to have been transmuted into a marital asset, their home. Her monies went into the property the couple used as their personal marital residence which was jointly titled.

Because the monies were placed into real property, the trial court must find that the property was either marital or separate. The court, when characterizing real property, cannot find that part of the property was marital and part was separate. (See Lundquist v. Lundquist, 923 P.2d 42 (Alaska 1996))

Here, the court would characterize the entire house as marital because it is a jointly titled personal residence. Margo would not be entitled to repayment of the \$30,000.00 remodeling expenses. Her contribution to the \$30,000.00 would not require the court to give her a larger share of the house equity on the couple's entire marital estate.

The farm sale monies deposited in the couple's checking account would most likely be classified as marital. The monies were transmuted into a jointly titled account, presuming the couple used the account to pay their ongoing living expenses. (See Miller v. Miller, 105 P.3d 1136 (Alaska 2005))

**B. Frasier's Bonus:** Assets acquired during the marriage "as compensation for leave and marital services", most commonly, salaries earned by either spouse during marriage, are considered marital assets. (See Schmitz v. Schmitz, 99 P.3d 1116 (Alaska 2004))

The bonus is the result of Frasier's marital efforts at his job. It is based upon efforts expended while the couple was together. The fact that it is paid to Frasier after separation is irrelevant.

**C. Lawsuit Proceeds:** Whether it is an annuity or lump sum judgment settlement of a tort claim, all compensation for non-economic loss such as pain and suffering or loss of consortium is the separate property of the injured spouse. (Bandow v. Bandow, 704 P.2d 1346 (Alaska 1990))

If the damages award is to compensate for economic losses, the damages award may be marital or separate. If it compensates for lost earnings after separation, it is separate property of the injured spouse. If it compensates for lost earnings during the marriage, it is a marital asset subject to distribution by the court. (Lundquist v. Lundquist, 923 P.2d 42 (Alaska 1996))

The facts tell us that Frasier was out of work during the marriage due to the accident. Thus, the lost earnings component of Frasier's tort award would be a marital asset. Compensation for pain and suffering would be Frasier's separate property.

If the amount of the award is unknown at the time of the divorce hearing, the trial court may reserve that issue for later division when the settlement or judgment is reached.

The burden of proof is upon the spouse claiming that a portion of the settlement or judgment is for compensation of separate property. If there is insufficient evidence for the court to make a determination of whether the settlement or judgment is for loss of separate property, then the court will find the entire settlement or judgment to be marital. (See Bandow, supra)

**(2) (20 points)**

The trial court has discretion to award the federal tax exemption to Frasier. (See Skinner v. Hagberg, \_\_\_ P.3d \_\_\_, Op. 6250, Alaska 2008) The awarding of the federal tax exemption is allowable under Alaska Rule of Civil Procedure 90.3(k) and AS 25.24.152(a). However, an award to Frasier is not mandated.

AS 25.24.152(a) states:

"In an action for divorce, dissolution, or to declare a marriage void, the court may not unconditionally grant to a noncustodial parent the right to claim a child as a dependent under federal tax laws. The court may grant the noncustodial parent the right to claim a child as a dependent under federal law for a tax year if the noncustodial parent satisfies the requirement of federal law and was not in arrears at the end of the tax year in an amount more than four times the monthly obligation under

(1) a support order applicable to the child in cases when a payment schedule has not been established for payment of continuing support and accumulated arrears under the support order; or

(2) a payment schedule if a payment schedule has been established for payment of continuing support and accumulated arrears under a support order applicable to the child."

Civil Rule 90.3(k) says the allocation of the federal tax exemption between parents should be done "as is just and proper and in the child's best interests."

Thus, the trial court may give Frasier both girls as federal tax exemptions, if he is not overly behind in child support as outlined in AS 25.24.152(a). The court also has the discretion to award them both to Margo or give one daughter to each parent as an exemption.

**(3) (20 points)**

Alaska adopted the Uniform Interstate Family Support Act. Alaska has continuing exclusive jurisdiction over child support orders under AS 25.25.205(a) which states "(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued;"

Since both parties and their children have relocated to other states, Alaska no longer has continuing, exclusive jurisdiction. The facts do not tell us what states Margo and Frasier relocated to.

Margo's new state of residence is the only state that has personal jurisdiction over Margo so regardless of whether Uniform Interstate Family Support Act has been adopted there, Frasier must seek modification where she lives.