

PREMARITAL AGREEMENT EXERCISE

General Instructions: This exercise involves a negotiation and drafting exercise. It is designed to introduce you to issues that will run through the entire course. The exercise is mandatory, but will be graded on a pass-fail basis. It is likely to be the subject of a question on the final exam. It is due on Feb. 5th.

Case Files: Tom Marsh and Suzanne Biddle are an engaged couple who would like to enter into a premarital agreement. Suzanne has retained the firm of Lee and Levine; Tom has hired Rose and Rossi. You are an associate at one of the two firms. In preparation for the case, you have been asked to review 1) a note from your former family law professor who referred the case to you; 2) a copy of the proposed agreement the clients drafted on their own; 3) a time sheet on which you will tabulate billable hours. When you have completed the exercise, calculate the bill you would present to the client for your work. (Assume a rate of \$150 per hour.)

Governing Law: You are to assume that this takes place in a jurisdiction that has adopted the Uniform Premarital Agreement Act (UPAA) at pp. 875-76 of the casebook, and the California statute noted in Premarital Agreement supplement on Clarinet. You should also read the material at 853-81, particularly 870-75 and the Premarital Agreement supplement, but if there is any uncertainty, you should assume that the Act will govern. You are not expected to do outside research. You should assume that you are in a no-fault jurisdiction in which fault will be irrelevant to any divorce proceeding, and that the jurisdiction has adopted some form of marital property or community property scheme in which property acquired during the marriage will be subject to division at divorce.

Establishing Firms: I would like each person in the class to choose a partner. The two of you will jointly represent one of the parties to the transaction. Then, I will provide a sign-up sheet that will allow you to pair yourselves with an opposing group, who will represent the other party. You and your partner will be supplied with some additional information, and then join with the opposing group to complete the negotiation.

Pre-negotiation Memo to the Files: After you have had a chance to research the issues in your casebook, you should prepare the attached "Pre-Negotiation Memo to Files." Prepare this memo BEFORE the negotiation session. KEEP IT CONFIDENTIAL. In the memo, you should hypothesize what your client would instruct you to do on each issue likely to arise during the negotiation.

Negotiating with Opposing Counsel: Each team should arrange to meet outside of class. The negotiating session is not to last longer than one hour. As you negotiate, be sure to note the language on which you agreed. At the end of the allotted time, you should leave with a clear indication of which terms have been resolved and which, if any, are still in dispute.

Preparing Your Final Draft: Prepare a final draft reflecting the negotiated changes. Use [] brackets to identify those terms which are still in dispute.

Turning in Your Case File: Complete the attached post-negotiation memo and turn it in with your case file. The file should contain 1) the proposed agreement, 2) the two memos, and 3) your time sheet, including the total bill you would present to the customer.

Confidentiality: The information you obtain during the interview is confidential and should not be disclosed to anyone else in the class during the negotiation.

MEMO FROM THE DESK OF PROFESSOR CARBONE

Just a quick note to explain the background of the case I have referred to you. Tom and Suzanne are MBA students at the Business School. Tom Marsh has worked since he finished college in a business his late father, my old friend Able Marsh, started years ago. Tom has run it himself, since his father's death, I gather rather successfully. His fiancée, Suzanne, is the former curator of a private museum who decided after ten years in the non-profit sector to switch careers. Currently, Tom lives in a condo he owns in Center City and Suzanne lives in a Dorm near the Business School. Tom continues to work at his business while pursuing his studies, and his income has been more than sufficient to pay his way through school. Suzanne left her job to go back to school and I gather has more debts than assets. She has done extremely well, however, and tells me she has accepted a job at a top flight company where her prospects for advancement are excellent. Tom plans to continue his current business enterprise.

Apparently they saw a TV special last week about "writing your own prenup" and ran out and bought a book on how to write your own marriage contract. As I mentioned in our phone conversation, they wanted me to look over their "Draft Agreement" which they adapted from a draft in the book just "to see if we got it right." (Copy attached) As you can imagine, I strongly advised them to get competent advice from separate counsel. I referred one of them to you and one of them to another former student.

I have glanced at their draft and it seems as if they are both great believers in gender equality. Suzanne apparently rejects old fashioned ideas about female dependency. But they do seem to believe strongly in marriage as a binding commitment and they are planning a religious ceremony which seems to hold a great deal of significance to them. They do seem to be very much in love. They have set their wedding date for just a few weeks from now, and long ago arranged the ceremony and reception and sent out the invitations. This is why the matter is somewhat urgent.

It is my pleasure to refer this case (or half of it at least) to your competent hands and I wish you the best of luck.

JRC

PREMARITAL AGREEMENT

BETWEEN

SUZANNE O'BRIEN AND TOM MARSH

-- DRAFT --

WHEREAS Tom and Suzanne intend to be married; and

WHEREAS Tom and Suzanne, although spiritually united, intend to conduct their married lives as financially independent individuals and

WHEREAS neither Tom nor Suzanne wishes to make claims to the other's earnings or estate and

WHEREAS Tom and Suzanne have each been informed of the other's financial condition

1. The parties agree that after the solemnization of their marriage each of them shall separately retain as his or her own property any and all rights to any wages, income, earnings, investments or other assets of any kind whatsoever, real or personal, whether now owned or acquired hereafter and that such assets shall not be deemed joint, community, or marital property.
2. Suzanne shall retain her own surname and Tom shall retain his own surname.
3. Tom and Suzanne shall each continue to pursue their professional careers.
4. Tom and Suzanne shall share household duties equally.
5. Tom and Suzanne shall establish their marital domicile in the home Tom now owns in Center City and shall share equally the daily expenses of maintaining the joint residence.
6. Should children be born to Tom and Suzanne, Tom and Suzanne shall share equally in the responsibilities and costs of child rearing.
7. In the event of divorce, Tom and Suzanne shall have joint custody of any children and shall continue to share equally in the responsibilities and costs of child rearing.
8. In the event of divorce, Tom waives any right to alimony or support from Suzanne and Suzanne

waives any right to alimony or support from Tom.

TOM MARSH

SUZANNE O'BRIEN

MEMORANDUM TO FILES

Case Name and Number:

Attorney's Name:

Date:

Subject: Pre-Negotiation Memo

1. Enforceability of provisions:

a. The whereas clauses.

b. Paragraph 1.

c. Paragraphs 2 through 5.

d. Paragraphs 6 and 7.

E. Paragraph 8.

II. Suggestions regarding items client might wish to add or delete, and why:

III. Other issues and/or advice:

IV. Client's instructions:

TIME SHEET

Date

Description of Work

1/4 hrs

ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL

MEMORANDUM TO FILES

Case Name and Number:

Name of Attorney:

Date:

Subject: Post Negotiation Memo

1. Your goals and strategies going into the negotiation.

2. Issues on which you prevailed, compromised or gave in.

III. The likelihood that your client will accept the draft as negotiated. The likelihood the other party will accept the draft as negotiated.

IV. Whether the final draft meets the fairness requirements of UPAA section 6 based on the situation at time of execution.

V. Whether the final draft will be viewed as fair at time of enforcement and the relevance of this question to your negotiation strategy.

VI. Whether the firm's Legislative Policy Committee should advocate for any changes in the UPAA, based on this client's experience, and why.

In Re: The Marriage of: BUD HARRISON THOMAS and ALICE CAROLYN THOMAS. BUD HARRISON THOMAS, Appellant, vs. ALICE CAROLYN