

QUESTION #2

H and W were married in January 2003. Before they were married, they lived together for five years in the house W had inherited from her parents. They had a son in 2000. H refused to marry W during her pregnancy. So, W did not name any father on son's birth certificate. When W became pregnant again in 2002, they decided to marry. Daughter was born 6 months after their wedding. The birth of daughter required substantial renovations to the house, including building a new addition. After the marriage, both partners contributed to the mortgage, insurance, improvements and upkeep of the property.

Both H & W were college- educated professionals. H had an M.B.A. from Bryant University and worked at Fidelity Investments. W was a middle school art teacher, who was employed by a local system since 1998. H, being a broker, started an investment account, when he started working at Fidelity in 2000. The children were cared for by a nanny while their parents worked. H worked long hours during the boom times and often missed supper and bedtime with the children. But, each spring he coached his son's baseball team on the weekends.

Their wedded bliss began to deteriorate when the stock market plunged in 2008. H was laid off in October 2008. Now he was home all day, depressed and discouraged. H became the caretaker for the children and the nanny was dismissed. W and H argued more frequently, especially about the children. H tended to be more laissez-faire while W liked rules and structure for the children. As money was tight, H insisted that the children be withdrawn from private school despite W's strong objections. W constantly nagged H to find a

job. The money woes exhausted the marriage and extinguished any passion left between the spouses.

Feeling ill, W returned home early from school one day in January 2009 and found the ex-nanny and H consoling each other in bed. W filed for divorce the next week and asked for sole and exclusive possession of the house during the pendency of the divorce. She demanded sole custody, sole physical possession of both children and child support. She demanded the entire interest in the house and her pension and one-half H's investment account. If you were the judge how would you decide? Respond to the questions by citing the factors/arguments that may be raised for and against as well as your conclusions. State your assumptions, if you make any.

1. Will you award sole custody of son and daughter to W?
2. Will you award sole physical possession to W?
3. If you award sole physical possession to one of the parents, will you award child support? If so, how will it be determined?
4. Is the house part of the marital estate? If so, how will you equitably distribute it?
5. W has demanded the entire interest in her pension and one-half interest in her husband's investment account. Are these part of the marital estate? If so, how will you distribute them?
6. Will you remove H from the house during the pendency of the divorce?