

R.I. LOCAL ESSAY QUESTION #2

Fred and Ethel were married in June, 1992. At the time they were married, Fred, age 25, was studying for his MBA and Ethel, age 24, had been a public school teacher since she graduated from college in 1990. Three children were born of the marriage: Joseph, dob: 6/12/93; John, dob: 9/5/99 and Sally, dob: 7/4/2005. Ethel retained her job as a public school teacher throughout the marriage taking a semester of maternity leave after the birth of each child. Fred finished his MBA in June 1993 and promptly obtained a job as a financial planner with a large investment firm. Both participated in the care and support of their children, although Ethel was the primary homemaker. Fred was good at his job, earning substantial bonuses each year. They spent freely and bought a newly constructed home in 2006 (at the height of the housing bubble). Due to the sale of their prior marital domicile, they were able to use their earned equity (\$200,000) to reduce their mortgage on the new home purchased in 2006. They saved little, thinking they were young and their good fortune was unending. Each had a credit card in his/her own name. They also jointly held a credit card from Bank of America.

Fred's parents retired in June, 2007, sold their home in RI and moved to Florida. Being of a generous nature, Fred's parents decided to confer an early inheritance on Fred after they sold their home. However, to avoid federal gift tax, each parent gave each spouse a check for \$10,000 in July, 2007. Ethel placed her gifts in a two year certificate of deposit in her name. Through Fred's employment, he had a 401K, to which he made the maximum contribution. Ethel had a teacher's pension.

In September, 2008, as a result of the "Great Recession", Fred's investment account decreased by 50%. His 401K also declined. He continued his employment as a

financial planner, but business was slow and there were no more bonuses. Rather, in March 2009, Fred was laid off. By April 2009, Fred and Ethel were constantly at each other's throats due to their inability to pay their debts. The couple had been growing apart for the past five years and the financial strains pushed Ethel over the edge. She filed for divorce in June 2009. She demands joint legal custody and physical possession of the children, child support, a deferred sale of the marital domicile and equitable distribution of the other assets of the couple and the marital debt.

The debt of the parties consisted of a mortgage of \$250,000, with monthly payments for mortgage, taxes and insurance of \$2000/month, Bank of America credit card - \$10,000, Fred's credit card - \$5,000 and Ethel's credit cards - \$3,000. Fred obtained a current appraisal on the house that valued it at \$399,000.

Fred comes to you to represent him.

1. Fred wants to know your opinion on what the court will consider to be the assets of the marital estate and what he is entitled to. Since he earned twice as much as Ethel during the marriage, he thinks he should get 2/3 of the marital estate.
2. Fred wants the marital domicile sold and the proceeds equitably distributed.
3. Fred wants the \$20,000 in checks, given to his wife in 2007 by his parents and the interest gained on that \$20,000, to be considered to be a gift to him by a third party. He says the checks were made out in her name for convenience and tax avoidance purposes only.
4. Fred tells you his wife is an inveterate spendthrift and the Bank of America credit card is primarily a debt related to her expensive taste in clothing and jewelry. He tells you he doesn't want to pay any of the Bank of America credit card debt or any of her personal credit card debt.
5. Fred tells you that he can't afford to pay child support because he is

unemployed and collecting only \$628.00 weekly in unemployment benefits.

6. Fred tells you that his 16 year old son wants to live with him and he wants physical custody of his son, Joseph. Joseph is an honors student with no special needs.

What is your advice to Fred on each of these issues? In advising Fred, you must not only analyze the strength of his demands in light of the relevant law but make some assessment of his chances of prevailing on each.