

## EXAMINERS' ANALYSIS OF QUESTION NO. 15

**Spousal Support:** An award of spousal support must be just and reasonable under the circumstances of the individual case. MCL 552.23; *Maake v Maake*, 200 Mich App 184, 187 (1993). The objective of awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished. The factors that the trial court should weigh when ordering spousal support are (1) the past relations and the conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source of and the amount of property awarded to the parties (5) the ages of the parties; (6) the ability of the parties to pay spousal support; (7) the present situation of the parties (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties (11) whether either party is responsible for the support of others; (12) the general principals of equity. *Parrish v Parrish*, 138 Mich App 546, 554 (1984). **NOTE: Courts must make findings on each factor that is relevant to the claim before it. *Sparks v Sparks*, 440 Mich 141, 159 (1992). Therefore, the examinee need only list the factors that are pertinent to the fact pattern.**

Past Relations of the Parties: This factor includes how the parties conducted their marriage as well as the conduct contributing to the breakdown of the marriage (fault). *Hanaway v Hanaway*, 208 Mich App 278 (1995). Here, Mike has been having an affair for 5 years. Fault is only one factor, and it should not be given disproportionate weight. However, his past conduct is the reason for the divorce.

Length of the Marriage: The parties have been married for 30 years. This is a long-term marriage. Sally has spent more than half of her life married to Mike.

The Ability to Work: Sally has the ability to work, but she is going to need time to refresh her professional skills as a nurse. This will require more education, prior to conducting a job search.

The Ages of the Parties: Sally is 58 and Mike is 60. Entering the work force at age 58 is will be difficult for Sally. Many people at this age are contemplating retirement.

Ability to Pay: Sally will argue that Mike is a pilot for a private airline earning \$400,000 per year. He has more than enough money to be able to comfortably support himself and will easily be able to pay spousal support.

The Needs of the Parties: Sally took herself out of the work force during this 30 year marriage assuming the primary noneconomic role of mother and homemaker. Mike assumed the economic role of taking care of the family. Sally currently has no marketable skills and will need educational training before re-entering the workforce. She will likely be reduced to a lower standard of living as a result of the divorce. She has a minimal chance of finding a job that can adequately support her. Thus, she will need spousal support to assist with her financial survival.

Prior Standard of Living: This couple is accustomed to living with a high income. They are able to afford a home with beach access and have a boat that is located at the yacht club. Sally's opportunity to earn a meaningful income is small. Once divorced, Sally will not be able to maintain this lifestyle unless she receives some support.

Responsibility for Supporting Others: All the children are over the age of 18. So neither party has any responsibility for supporting them.

General Principles of Equity: The court will balance income, needs and abilities. *Parrish v Parrish*, 138 Mich App 546, 554 (1984). Sally has no income. There is great economic disparity between Sally and Mike. It is highly unlikely she will ever achieve the earning capacity Mike enjoys, even if she refreshes her nursing skills. Mike can reasonably afford to pay spousal support to her because his \$400,000 annual income is more than sufficient.

All of the above relevant factors favor Sally receiving spousal support from Mike. In particular, his high income, fault in the matter, and her need for financial support and educational training make an extremely strong case for her to

receive spousal support. Without it, she will almost certainly be impoverished.

**Jurisdiction:** On the date of filing for a divorce, one of the parties must have resided in Michigan for at least 180 days and resided in the county of filing for at least 10 days. MCL 552.9 (1); *Stamadianos v Stamadianos*, 425 Mich 1 (1986).

Here, Sally and Mike currently reside in Ingham County. However, within the next month they are to move to Van Buren County. Sally has two choices. Because she has lived in Ingham County for 30 years, she clearly satisfies the residency requirement there and can immediately file for divorce in Ingham County. If she moves to Van Buren County, she will need to wait 10 days there prior to filing for divorce in order to meet the residency requirement.