

ANSWER TO QUESTION NO. 7

Spousal support would most likely be awarded on the basis of the factors outlined below. The particular amount of spousal support, if quoted by the examinee, is not important. The examinee's familiarity with the factors pertinent to making the determination is what is being tested.

A divorce court has the discretion to award alimony as it considers just and reasonable. MCL 552.23, *Ianitelli v Ianitelli*, 199 Mich App 641, 642-643 (1993). Relevant factors for the court to consider include the length of the marriage, the parties' ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case. *Id.* at 643; *Demman v Demman*, 195 Mich App 109, 110-111 (1992). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party. *Hanaway v Hanaway*, 208 Mich App 278, 295 (1995).

A full analysis of the pertinent factors would include the following:

(a) Length of the marriage. This is a 19-year, long-term marriage. This weighs in favor of spousal support.

(b) Parties' ability to pay. Jane has ample ability to pay. Disparity in income and lifestyle is relevant, but there is no legal right for the parties to live in the same lifestyle. This factor weighs in favor of spousal support.

(c) Past relations and conduct. Both parties worked hard and contributed equally--although differently--to the family unit. (A good answer should not weigh a contribution within the home as less valuable than one outside the *home--Hanaway*). This is a neutral factor in this matter.

(d) Their ages. The inference is George and Jane are middle-aged. That is young enough for George to retrain and re-enter the work force. Jane has already "arrived" in her career and enjoys a higher earning potential for that reason. This factor is more neutral.

(e) Needs. George will need more support than Jane because the children remain at home and that will impact his ability to earn. Also, George will need financial assistance because he has not supported himself and the family financially. This factor favors George.

(b) Ability to work. Jane can obviously work. George can work, but he has no relevant and timely training and has been out of the workforce for 19 years. This factor weighs in favor of George. On Jane's behalf, the examinee might note that George is expected to work and courts can assign income if they wish as if he was working.

(g) Health. There is no reason to think that either party has health issues.

(h) Fault. Jane is at fault for the breakdown of the marriage due to her extramarital affair. This will weigh in George's favor. Jane would emphasize, however, that the court should not use spousal support to punish her, nor may the court weigh this factor more heavily than the others.

Finally, an examinee may discuss George's contribution to Jane's acquisition of her degree as a property issue--this is a claim under *Postema v Postema*, 189 Mich App 89 (1991). The exam question is not a *Postema* question. A *Postema* claim is separate and distinct from spousal support; it is not a factor in a spousal support determination. Nevertheless, an astute examinee may note the issue. A grader should not penalize the examinee for such recognition, but reward it, particularly since Jane's advance degree can be considered a result of a "concerted family effort" under *Postema*.