

MEE Question 1

In 2012, David and Meg had a baby girl, Anna. At the time of Anna's birth, David and Meg were both 21 years old. For the next four years, they lived separately. David and Anna lived with David's mother (Anna's grandmother). The grandmother cared for Anna while David worked. David cared for Anna most evenings and weekends. During this period, Meg attended college in a distant city; she called weekly but visited Anna only during school breaks and for one month each summer.

In 2013, David bought an auto repair business with money he had saved. The grandmother continued to care for Anna while David was working in his auto repair business.

In 2016, David and Meg were married in a small wedding held at the grandmother's house. One week before their wedding, David surprised Meg by asking her to sign a premarital agreement prepared by his attorney. The agreement provided that, in the event of a divorce,

1. all assets owned by each spouse at the time of the marriage would remain the sole property of that spouse;
2. neither spouse would be entitled to alimony; and
3. the spouses would have joint physical custody of Anna.

Attached to the proposed agreement was an accurate list of David's net assets (his personal possessions, the auto repair business, a used car, and a small bank account), a list of his liabilities, and his tax returns for the past three years.

David told Meg that he would not proceed with the marriage unless she signed the agreement. Meg believed that the marriage would be successful, and she did not want to cancel or postpone the wedding. She therefore signed the agreement and appended a list of her own debts (student loans); she correctly indicated that she had no assets other than her personal possessions.

Since the wedding, David, Meg, and Anna have lived together and the grandmother has continued to provide child care while David and Meg are at work. Meg has worked full-time as a computer engineer, and David has continued to work full-time in his auto repair business. Their incomes are relatively equal.

They have the following assets: (a) the auto repair business (owned by David); (b) stocks (owned by Meg, which she inherited last year); and (c) the marital home (purchased by David in his name alone shortly after the wedding). The down payment and all mortgage payments for the marital home have come from the couple's employment income.

Last month, David discovered that Meg had been having an affair with a coworker for the past year.

David wants a divorce. He also wants to obtain sole physical custody of Anna; he believes that Meg's adultery should disqualify her as a custodial parent. His plan is to live with the grandmother, who would provide child care when he is unavailable.

This jurisdiction has adopted a statute modeled after the Uniform Premarital Agreement Act.

1. May either spouse successfully enforce the premarital agreement in whole or in part? Explain.
2. Assuming that the premarital agreement is not enforceable, what assets are divisible at divorce? Explain.
3. Assuming that the premarital agreement is not enforceable, may David obtain sole physical custody of Anna based on (a) Meg's adultery or (b) other factors? Explain.

1) Please type your answer to MEE 1 below When finished with this question, click to advance to the next question.

1. May either spouse successfully enforce the premarital agreement in whole or in part?

Either spouse may successfully enforce the premarital agreement as it pertains to the division of property and alimony, but not custody of Anna. The issue is whether the premarital agreement is enforceable. A premarital agreement is enforceable if entered into voluntarily and knowingly, and it does not violate public policy. The agreement is entered into voluntarily if there was no fraud or duress. Factors to look at are the length of time an agreement was made before a wedding, whether the party to be bound was able to receive counsel from an attorney, and the level of sophistication of the party to be bound. The agreement is entered into knowingly if the drafter properly discloses all relevant assets. And agreements as to alimony may be contracted; however, custody of children may not.

Here, The agreement was voluntary. David asked Meg for the agreement one week before the weddings. Anna had the opportunity to seek counsel; however she chose not to because she thought the marriage would work. Furthermore, Meg is a college educated computer engineer, so she was sophisticated enough to enter into the agreement. Secondly, the agreement was entered into knowingly because David (as well as Anna) properly disclosed all assets. Finally agreements as to the division of property and alimony do not violate public policy. However, an agreement as to the custody of childred does violate public policy. The best interes of the child should always be the determinative factor. For these reasons the premarital agreement is enforceable except for the provision about child custody.

2. What assets are divisible at divorce?
