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I

Mrs. Phelps brought an action for a divorce against W on the ground of two years separation. W set up a cross-bill claiming H had deserted her and requesting alimony pendente lite, counsel fees and a writ of possession of a residence owned by the parties as tenants by the entirety. H filed no pleading in response, but he testified that W was habitually intoxicated and this was the reason he left home. W objected that the evidence was inadmissible, but the court permitted the plaintiff to file a response conforming to the evidence. The defendant W made a motion for a continuance based on surprise which the court denied. The court then dismissed W's cross-bill, granted H a divorce, gave W permanent alimony and ordered H to pay alimony pendente lite and counsel fees and to give W possession of the residence. Discuss the problems raised by this case and state how you think they should be resolved explaining your position.

II

W and H lived in Virginia after their marriage. H was in the military service and has at all times been a non-resident of South Carolina. In 1963 H and W separated and W returned to her mother in South Carolina where she has remained. At the time of the separation they entered into an agreement providing the wife was to have custody of the children with visitation rights in the husband; that the husband would pay the wife $100 for her support and $100 for the support of the children. The agreement provided for settlement of all property rights including division of the proceeds of the sale of their home in Virginia. H also agreed to maintain life insurance in the sum of $23,000, primarily for the benefit of the children. H has performed the agreement and continues to do so. In 1965 W commenced an action in South Carolina seeking a divorce for desertion and introduced the agreement into evidence. The South Carolina court held the support provided was inadequate and ordered the husband to pay the wife $200 a month for the children in addition to $100 for the wife as alimony, and ordered the husband to pay the wife's counsel fees. Although the children were visiting friends in Florida at the time, the court confirmed custody in the wife by decree. H, who was in Iran, was served by publication. He now appears specially to strike the provisions of the divorce decree with respect to alimony, child support, attorney's fees and custody. Discuss the approach taken by the South Carolina court and any other approaches which could be made to resolve the problems involved.

III

W was a devout churchwoman who did not wish to marry a divorced man and asked H before their marriage whether or not he had been divorced and whether he had been unchaste. He answered he had not been divorced and he had not been unchaste. H also promised W when they were married by civil ceremony that he would have a religious marriage thereafter, although he had no intent at the time to do so. W testified that two years after the marriage she discovered H had been divorced twice, and she, in the company of a friend who also testified, had seen H going into a house of ill fame on several occasions. She also testified that H had told her at the time she discovered he had been divorced that he would not have a religious ceremony and had never intended to have one. While the parties were married W had a child with the consent of H by artificial insemination by an unknown donor. W sought annulment of the marriage, or in the alternative a divorce for adultery because of the actions of her husband. She further sought custody and support for the child. H sought by cross-bill a divorce for the adultery of his wife in conceiving a child by artificial insemination and contended he could not be held responsible for support of a child which was not his. He further argued that should an annulment be
granted the wife the court would have no authority to decide custody and support. Discuss the points raised and indicate how they should be resolved giving the basis for your answers.

IV

Mrs. Kasey was married to Mr. Kasey who was confined to the penitentiary after their marriage. In 1944 she entered into a relationship with Mr. Simple which continued until 1957. They lived together and maintained a home in Roanoke, Virginia, holding themselves out as husband and wife during this time and living together as husband and wife. They had a child Patricia in 1948. Mr. Kasey died in 1956. Mr. Simple and Mrs. Kasey separated in 1957. In a partition suit Patricia claimed an interest in the real property of Mr. Simple as his child. What are Patricia’s rights. Explain.

V

H and W in connection with a divorce entered into an agreement with respect to support and education of their child, the agreement providing a more substantial sum as the child approached and reached college age and containing a clause by which H agreed to maintain life insurance to provide a fund in case of his death to carry out these objectives. A few years after the divorce the father instituted a proceeding to modify the decree with respect to support and the required premiums on insurance. The child appeared by guardian ad litem contending he was a third party beneficiary under the contract and that the contract could not be modified without his consent. What should the holding of the court be? Explain.