Page limitations in the second edition placed a natural practical limitation on the number of problems that we could share with student readers. However, the web provides us with the opportunity to supplement several of the sections in the Second Edition of the Examples and Explanation book. We believe that these new problems will further enhance a student’s ability to master family law and provide an added intellectual boost when preparing for final family law examinations.

Please read the introductory material for each section before you begin work on the following additional problems.

Note: This material is available only to a student who has purchased the first or second edition of the Family Law Examples and Explanations book. It may not be copied or reproduced in any form without the express written consent of authors. Students who have purchased the second edition may, of course, download and print out this supplemental material for their individual use.

**Chapter 4: Section 4.14(a) Mental Cruelty versus Extreme Mental Cruelty**

Mental cruelty as a ground for divorce is generally defined as a course of unprovoked, offensive conduct toward one's spouse which causes embarrassment, humiliation, and anguish as to render the spouse's life miserable and unendurable, *In re Marriage of Ducey*, 428 N.E.2d 1165 (Ill. App. 1981), and which affects the spouse's physical or mental health.

Extreme mental cruelty is also a ground for divorce in various jurisdictions. Illinois courts have defined extreme and repeated mental cruelty as: “[a]n unprovoked ‘course of abusive and humiliating treatment, calculated or obviously of the nature to torture, discommode, or render miserable the life of the opposite spouse, which conduct actually affects the physical or mental health of the spouse.” *In re Marriage of Kirkpatrick*, 768 N.E.2d 808 (Ill. App. 2002). New Jersey has defined extreme mental cruelty as “that degree of cruelty, either actually inflicted or reasonably inferred, which endangered the life or health of the aggrieved party, or rendered his or her life one of such extreme discomfort and wretchedness as to incapacitate him or her physically or mentally from discharging the marital duties.” *Kinsella v. Kinsella*, 696 A.2d 556, 573 (N.J. 1997).

Example: Assume that P and D were married for ten years when the relationship breaks down and P files an action to divorce D. P alleges in her petition alternative grounds for the divorce. In paragraph #1 she alleges mental cruelty and in paragraph #2 she alleges extreme mental cruelty. D denies both allegations.
At the divorce trial, P testifies that D falsely accused her of being unfaithful and giving him an infectious venereal disease. She claims that D was obsessed with his physical health, was convinced that he was dying, and invited his parents to move into the marital domicile over her objection. P testified that she asked D to see a psychiatrist and requested that D ask his parents to leave the marital domicile. D refused both of her requests. P also testified that this conduct caused her to be emotionally upset and anguished and that life in the marital domicile was intolerable. She stated that she had done nothing to provoke D’s conduct. P’s testimony was generally corroborated by her sister. D testified that P disliked his parents and that was the only reason she was seeking a divorce. On which ground (or both) should the court grant the divorce? Or, has P failed to produce sufficient evidence to support her divorce complaint on the basis of either mental cruelty or extreme mental cruelty?

Explanation. A court will most likely grant P a divorce on the ground of mental cruelty. D’s acts toward P, including his accusations that P was unfaithful and had contracted and transmitted a disease to him as well as his refusal, after P’s request, to remove his parents from the marital domicile when it had become apparent that the arrangement was not harmonious, will be viewed as offensive conduct toward P that would cause any reasonable person embarrassment, humiliation, and anguish such as to affect their physical and or mental health.

D’s claim that P failed to prove the requisite lack of cause or provocation on her part will not prevail. P testified that she had done nothing to provoke D’s conduct. In most jurisdictions, the burden of proving lack of provocation remains with the complaining party; the burden of going forward shifts to the defending party once it has been denied, explicitly or implicitly, that acts alleged to be mental cruelty were provoked. Here, the hypothetical is void of any evidence introduced by D that supports a claim that the acts P complained of were provoked by P.