

SELECTED ANSWER

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Part 1 - Child Support Arrears

The court should overrule Robert (R) and Marcia's (M) objection to the assertion that because the children are over 18, the court has lost jurisdiction R is no longer responsible for child support arrearages.

The rule under the Texas Family Code is that both parents of a child are obligated to care for that child. If parents divorce, the spouse which becomes the possessory conservator (here R) will be required to pay the managing conservator of the child(ren) child support. The amount of support is dictated by a percentage of the obligated parent's net resources and should be paid until the child(ren) turn 18 or graduate from high school (whatever event occurs later). If a parent falls in arrears on his/her child support payments, these payments may be collected at any time. The fact that the child has graduated high school or is over the age of 18 will not discharge the paying parent's liability for any arrearage obligation incurred.

The original suit determining parental rights and obligations upon the divorce of Shirley and R is known as a Suit Affecting the Parent Child Relationship (SAPCR) and would have been joined in their divorce action. The SAPCR court has continuing jurisdiction regarding the parent/child relationship and child support issues. Simply because the children affected by this particular SAPCR action have reached the age of majority does not mean that the SAPCR court loses jurisdiction.

The arguments made by R&M here are invalid and will not suffice as a valid objection to the court's appointment of a receiver.

Part 2 - Resources Subject to Child Support Obligation

Generally, if an obligated parent falls into arrears in his/her child support payments, the court may file liens on the property of the obligated spouse and may issue a writ against property of the obligated spouse which is held by a financial institution. Here, all of these pieces of property will be validly subject to R's child support obligation because the facts indicate that none of the property is Marcia's sole management community property or separate property. However, Marcia may have the ability to file a motion with the court (or the receiver) to release the lien or writ against some or all of the community property on the basis that the lien or writ would operate

to cause undue hardship on Marcia. Marcia probably has a good chance of having the liens/writs released on some of the property.

Thus, the court may rule that some of the property will not be subject to R's support obligation.

### Part 3 - Community Share of Retirement for Support Obligation

Marcia's community share of the retirement support obligation should not be subject to R's child support obligations.

Similar to what is stated in Part 2, Marcia would likely prevail in an argument that any lien or attachment on her community share of R's retirement benefit would operate to unduly burden her interests. R's retirement benefit will be considered community property because it was "earned" during the marriage of R and Marcia. All earnings of either spouse, absent agreement, during marriage are community property. Upon divorce community property is subject to a "just and right" division as determined by the trial court. If all of the community property of the couple is encumbered by liens imposed because of R's child support obligation, this would not allow the court to affect a "just and right" division. Thus, the court may release the retirement benefits from the support obligations and grant the benefits to Marcia...leaving R with encumbered property.

**END OF EXAM**

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1. Robert and Marcia's first contention - that because Robert's children with Shirley are over the age of 18, the court has lost jurisdiction - is wrong, and the court will probably not accept it. In TX, it is true that child support is only payable until a child turns 18 (or possibly until the child graduates from high school, if that happens after the child is 18, but only before he turns 21). However, the statute of limitations to seek child support arrearages is 10 years from the date on which the child reaches the age of majority (18). Accordingly, Shirley has until each child turns 28 to pursue child support arrearages for the support of that child. Since child support was awarded in 1999, the children must have been under the age of 18 (or still in high school) at that time, and only 9 years passed until the 2008 divorce proceedings, so the 10-year statute of limitations running from each child turning 18 could not possibly have run by 2008. The children may be over age 18, but they could not be over age 28. Accordingly, the court has not lost jurisdiction solely because the children are now over 18 years of age, and indeed, the court maintains jurisdiction since the statute of limitations (of 10 years from the child reaching the age of majority) has not yet run. Thus, the court should reject Robert and Marcia's first contention.

2. Robert and Marcia's second contention - that Robert's earnings, their joint savings accounts and their joint portfolio of securities is not subject to child support obligations - is also wrong and should be rejected by the court. Under TX law, Robert's separate property, his sole management community property and their joint management community property would all be subject to child support obligations. There is a presumption that earnings earned and assets acquired during marriage are community property. Moreover, a spouse's earnings and the assets acquired therewith would be that spouse's sole management community property. In this case, Robert's earnings are clearly his sole management community property since they are earned by him. The savings accounts and the securities portfolio would also be his sole management community property since they were purchased entirely with his earnings. Thus, his earnings, the savings accounts and the securities portfolio are all Robert's sole management community property and are thus subject to child support obligations. Even if there was some commingling of Marcia's earnings or her separate property in the savings account or securities portfolio causing the accounts and portfolio to be classified as joint management community property, joint management community property is still subject to child support obligations, so either way, Robert and Marcia's second contention is in error.

3 (and 2). Robert and Marcia's final contention - that Marcia's community share of Robert's retirement benefits is not subject to Robert's child support obligations - is also incorrect, and the

court should not accept it. In TX, child support is treated as a contract obligation of a spouse, comparable to a "necessary" (e.g., food, shelter, health expenses). Accordingly, child support obligations are subject to being paid out of the obligor spouses's separate property, sole management community property and joint management community property. Thus, during their marriage, not only would Robert's separate property and sole management community property be reachable, the joint management community property of Marcia and Robert would be reachable as well. Marcia's separate property would not be reachable, but there is no argument here that Robert's pension plan is Marcia's separate property. The community property of Robert and Marcia would be subject to just and right division upon divorce, and, once distributed to Marcia, it would no longer be reachable. Moreover, child support obligations *arising* post-divorce (i.e., not existing as of the time of the divorce and the just and right division) would not be payable out of Marcia's share of community property. However, the child support payments arose during the marriage of Robert and Marcia, and thus, if they had been paid promptly and properly, would have been payable out of the couple's community property at that time. Marcia cannot escape her portion of the community property being subject to Robert's child support obligations just because they were divorced by the time the payments were *enforced* - since the obligations were during their marriage and should have been payable then, the couple's joint management community property, including Robert's retirement benefits and Marcia's community share thereof, are subject to Robert's child support obligations.

**END OF EXAM**

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1. The court should rule that it does have jurisdiction and that Robert is still responsible for the child support arrearages. The court where the support order was entered, the suit affecting parent-child relationship (SAPCR) court, has exclusive and continuous jurisdiction. Marcia filed the suit in the SAPCR court because the facts state that she filed the motion in her old divorce proceedings. This would be the SAPCR court because the custody suit would be joined with the divorce proceeding. The court cannot enter an order requiring Robert to pay child support past the children's 18th birthday, but they can require him to pay support for any arrearages that he owed for supporting the children up until their eighteenth birthday. The statute of limitations for bringing a claim for failure to pay child support is 10 years from the child's 18th birthday. Despite the fact that Shirley and Robert were divorced in 1999 and she did not file the motion until 2008, when Robert and Marcia filed for divorce, the SAPCR court still has jurisdiction to require Robert to pay arrearages. The obligation to pay child support arrearages does not go away unless the statute of limitations runs for bringing a suit for payment. They cannot even be discharged in bankruptcy. Therefore, the court does have jurisdiction and Robert is still responsible to pay child support.

2. The court should rule that Robert's earnings, the savings accounts, and the portfolio of securities are all subject to Robert's child support obligation. The court can order Robert to pay child support out of any of his separate property (none is indicated) or out of his sole management community property or joint management community property. All of the property here is classified as either of these two. All of this property was acquired with Robert's earnings. Robert's earnings are his sole management community property, the joint savings account is joint management community property and the jointly owned portfolio of securities is joint management community property. The joint account and joint portfolio are both funded by Robert's earnings and there is no indication that Marcia contributed her own effort to accumulating them. Robert and Marcia's divorce proceeding has not been concluded and no just and equitable division of the community has been made, so it remains classified as above. Therefore, these assets would be subject to the child support obligation.

3. The court should also rule that Marcia's community share of Robert's retirement benefits are subject to Robert's child support obligations. As discussed above, Marcia does not yet have a vested interest in Robert's retirement benefits because the divorce court has not issued a distribution of the community estate. Also, Marcia did not contribute to the accumulation of these assets so she is not entitled to argue that it is unfair to take them from her to pay for Robert's support obligation.