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1. Yes, the Texas Family Code (TFC) allows a married couples to partition and/or exchange their community property (CP), including future income, increases and after-acquired property. Under the TFC, married persons and non-married persons are allowed to enter into agreements to partition or exchange after-acquired property. When done before marriage it is by a prenuptial agreement and after marriage by a postnuptial agreement. However, only after marriage are parties allowed to partition their community property and make it Separate property (SP). Under the Texas Constitution, income is characterized as community property (whether this be income from wages and earnings or SP) and increases in separate property during marriage are treated as income (if livestock, increase is unborn young, but not increase in value). Generally the increase in teh actual value of SP during marriage stays the SP of the spouse that owned the property. However, increase in CP during marriage is CP. But, the TFC allows married couples to partition their income and increases and after-acquired property and make it either the SP one of the spouses. There is no rule that there has to be an equal division of the CP when partitioned. CP is the property that is acquired or income earned during marriage. SP is property acquired before marriage, or after marriage by gift, devise or decent.

In this case, we are told Robert gave Betty has as her SP, the family home and its contents, a car, and \$100,000. We are also told Robert gave himself as SP, all interest in Charter Air (a CP business because started with CP funds during marriage), its equipment, a car and a boat. Then we are told the agreement partitioned to Robert and Betty both as their SP, their future earnings and income, after-acquired property, and all increases of their SP. The last part of the partition agreement dealing with income, increases and after-acquired property is allowed under the TFC and it does not have to be equal or fair on its face. Both parties are simply required to sign the agreement.

2. Betty will be able to assert the statutory defense of either involuntarily signed document or unconscionability. Under the TFC, once a party has determined if they will stake a claim under involuntary or unconscionable, they also have to prove that they had no notice and full and fair disclosure of hte extent of the property involved, that they they did waive the right to full and fair disclosure and that they did not know and they should not have known of the full nature of the

property involved. If this is proven, the agreement will be set-aside and upon divorce, a Just and Right division of property will be conducted.

In this case, we are told Robert expressed to Betty that his sole reason for the agreement was because his company, Charter Air, was beginning to experience financial difficulties and to protect the family assets from financial ruin, this agreement needed to be made. We are also told that during their 30 years of marriage, Betty never worked, Robert controlled and directed all of the financial affairs and he rarely gave Betty any information about their finances. However, we are also told that when Robert had the agreement drafted, he told Betty she should take it to an attorney to get some advice before signing. Upon his suggestion, Betty had their attorney neighbor read the agreement. The neighbor, Jane, told Betty the agreement appeared to be one-sided and that Betty should obtain full disclosures of the family's net worth, audited financial statements concerning Charter, and information about Robert's present income. She also told Betty not to sign the agreement until she fully understood the effect of the partition and was fully satisfied it was fair. We are then told Betty asked Robert for all of the information and he gave her a list of the inventory of Charter and told her his opinion of the family's net worth. He also reiterated the purpose of the agreement and said she had nothing to worry about and he would never try to enforce it against her. Relying on those representations, Betty signed the agreement and 10 years down the road, Robert has filed for divorce and wants to enforce the agreement.

When applying the statutory defense requirements to the facts above, Betty is not going to have a very good chance of proving that she did not voluntarily sign the agreement because she got advice from Jane and got information from Robert and signed on her own free will. Betty will have a stronger argument under unconscionability because we are told she never worked, Robert always handled the finances and he gave her a minimal portion of the CP compared to his receipt of Charter. Jane's statement that the agreement was very one-sided in Robert's favor is also evidence of unconscionability. We also know Betty relied on Robert's representations when signing the agreement. The problem with this defense arises when we have to apply the factors. Although Betty did not have full disclosure of all of the family's net worth, she only relied on what Robert told her and she was given an inventory of Charter's assets, the court could see that as being sufficient notice of the nature and extent of the property. The waiver requirement is not applicable because we are not given facts indicating Betty waived her right to notice. However,

she will also have issues with the requirement that she did not or should not have known the extent. This is again because she was given legal advice putting her on notice of an issue and because we are told Robert gave her information and she relied on it.

because Betty was given notice, although it may not be as full and fair as it could have been, she voluntarily signed the agreement, although it was unconscionable and she did so with notice of the property and against the advice of the attorney (that is until she fully understood the partition and thought it was fair). therefore, Betty will likely not prevail on this statutory defense.

3. the TFC does not allow common law defenses to be plead when dealing with partition and exchange agreements. The TFC says the remedies allowed in the Code are exclusive. If common law defenses are to be used, they can be used as proof of duress or a bad act, but they cannot satisfy the elements of the claim needed under the TFC and should not be relied on by a judge. The TFC remedies are exclusive and CL defenses do not apply in Texas.

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1. The question presented is whether Texas law allows a married couple to partition or exchange their community property and if so can it include a partition for future income, increases, and after-acquired property. Under Texas law, spouses are allowed to partition and exchange their community property as long as the agreement is signed both parties, specifically states that property is being partitioned and exchanged, and specifically describes the property to be partitioned and exchanged. This kind of agreement can include partition of future earnings and income, income from their separate property (and any increases), and after-acquired property. Thus, yes Texas law does allow a married couple to partition and exchange their community property and it is proper that such agreement to include partition of future earnings, increases in their respective separate estates, and after-acquired property in their name.

2. The question presented is what statutory defenses does Betty have to prevent enforcement of the agreement, and whether she will succeed. The only statutory defenses that Betty has to the enforcement of the agreement is either she signed the agreement involuntarily or the agreement is unconscionable. In order for the agreement to be unconscionable three elements must be met. The party opposed to enforcing the agreement must prove that they did not receive full disclosure of the property divided in the agreement, they did not waive their right to full disclosure, and they did not have constructive notice or any other way to obtain full information on the property. In the case at hand, Betty cannot argue that she did not voluntarily sign the agreement because she did. In fact she only signed the agreement after consulting with an attorney and asking questions she thought were sufficient of Robert. The only other argument that Betty can make is that the agreement is unconscionable though she is unlikely to prevail under this theory as well. The first element of not receiving full disclosure of the property is met because the agreement did not state any details as to the value of the property and because she was a housewife and Robert had controlled and directed all the family's financial affairs she did not know the value of their property on her own. The second and third elements will prevent Betty from prevailing under this theory. Robert can argue that Betty waived her right to full disclosure because Robert told her to consult with an attorney, and once she did the attorney told her that the agreement was very one sided and she should request to see audited financial statements, information about Robert's present income, and disclosures about the family's net

worth before signing the document. Betty asked Robert for this information, and when he just showed her the inventory and gave her an estimate of their net worth she did not question him further and so may have waived her right to full disclosure. Lastly, Betty may not be able to argue that she had no way to get full disclosure to their property because since the Charter Air at least was owned by the community estate, she was just has entitled to information on the company as Robert was. The fact that she did not exercise that right will be held against her. Thus, Betty is unlikely to succeed on her assertion that the marital agreement is invalid because it is unconscionable or because she signed it involuntarily.

3. The issue is what common law defenses if any does Betty have to prevent enforcement of the agreement. Under Texas law, there are no common law defenses available to invalidate marital agreements. The only defenses available are the statutory defenses of signing the agreement involuntarily or that the agreement is unconscionable. Thus, Betty does not have any common law defenses to invalidate the marital agreement.

END OF EXAM

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Texas law allows a married couple to partition or exchange their community property and it is lawful to partition future income, increases, and after acquired property.

A married couple can convert their community property into separate property after marriage by a partition or an exchange. A partition or exchange allows a married couple to contract concerning then-existing or to be-acquired property. The couple can also contract that any earnings or future income from the separate property will remain the separate property of a spouse. The partition or exchange must be in writing and signed by both spouses. Thus, through a partition or exchange, Robert can properly convert Charter Air from community property into separate property AND make any future income or earnings from the property his separate property.

The statutory defenses she can assert for a partition or exchange are that (1) her signature was not voluntary, and (2) that the agreement was unconscionable AND there was no fair and adequate disclosure

Only 2 defenses are allowed in Texas for partition and exchanges. No common law defenses are allowed; only the defenses in that statute may be asserted. The two defenses available are (1) that she did not voluntarily sign the agreement, and (2) the agreement was unconscionable AND she received no fair and adequate disclosure of the assets in the agreement, and she did not waive fair and adequate disclosure, and she had no actual adequate knowledge of the assets. In Texas, courts rarely overturn these contracts because they were involuntarily signed. Nothing in the facts indicate that she was forced to sign. In other states, she may win by claiming that she was falsely induced to sign when her husband stated that the agreement was only to prevent creditors from reaching their assets and he would never enforce the agreement; thus, she did not sign voluntarily. However, Texas requires something more akin to almost physical duress to claim involuntariness. Thus, she likely can't assert that defense. For unconscionability, the agreement must be so grossly one-sided AT THE TIME OF THE AGREEMENT to be unconscionable. In addition to being unconscionable, there must have been no fair and adequate disclosure. Fair and adequate does not mean that the disclosure must be detailed. Nor does it mean that she must get

an attorney. Here, a court may not find the agreement to be unconscionable because she did receive the family home and its contents, an automobile, and \$100,000 in cash. The agreement doesn't seem completely one-sided although the attorney said otherwise. Texas courts are reluctant to find unconscionability and likely wouldn't here with such assets be given to Betty. Also, Robert gave Betty an opportunity to get an attorney before signing (also showing voluntariness). Thus, the courts are even less likely to find unconscionable. Robert's disclosure of inventory of Charter Air probably alone, isn't enough for fair and adequate disclosure. He didn't tell her the company's net worth or its net liabilities. Although he told her the family's net worth, he neglected to give her much information about Charter Air. From the facts, she also could not have possessed actual knowledge. However, the court may hold that she waived fair and adequate knowledge because she chose to sign after she knew that she did not have all the information concerning his present income or the specific financial information concerning the company. An attorney told her to get audited financial statements concerning the company or information about Robert's financial income. However, she may try to argue that he induced her to waive adequate disclosure by telling her that he would never try to enforce the agreement and the agreement was solely to protect the family's assets from creditors. In a prenuptial agreement, a court would definitely find that she waived financial disclosure. However, because the parties were married, the court may hold that a fiduciary duty applied between the spouses and find that she did not knowingly waive fair and adequate disclosure.

No common law defenses are allowed in Texas

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