

(1) No, the trial court did not abuse its discretion by awarding the house to the Father and 100% of the community property to the Mother. Here the facts indicate that the house was purchased prior to the marriage by Father. Under the inception of title rule, the house would be classified as Father's separate property. The facts also indicate the mother had contributed a portion of her salary (here community property) to pay a portion of the mortgage payment on Father's separate Property. When community property is expended to benefit the separate property of another, the contributing party is entitled to a reimbursement claim for the community property expended on the separate property. The fact that that community assets were expended on Father's separate property can help support the court's decision for the award as stated. Also, the facts indicate that Father sold two of the family's autos during the pendency of the divorce. The facts do not indicate if the proceeds from this sale were placed into his own separate account or not.

The Mother's 401(k) plan would need to be classified according to its status. However, the facts only indicate this property is community. As community property, Father would be entitled to a portion. Here the court has decided to make it just and right division of the assets as stated. Given Mother was entitled to a reimbursement claim for the community funds expended on Father's separate property, coupled with the facts in the record (Here: sold 2 family cars during pendency of divorce; pawned community property), the court's decision has to take all of these into condition to establish its just and right division of the assets. The judge has to evaluate the credibility of all witnesses. This exercise and division was not an abuse of discretion.

(2) Child custody is based on the Father's net income. Two children would be provided 25% of the Father's net income under the statutory framework for child support. Here the Father is disabled and the children will continue to receive \$300 per month per child because of their Father's disability. Given Father's disability and the social security benefit established for each child, the court's decision to increase the amount above the social security benefit would be viewed as an abuse of discretion in the absence of additional facts to support the court's decision. Here the record does not contain support for the court's decision anything above the \$300/ month/ child social security payment would need to be explained. The benefit established by the social security office represents an award that should be considered in the best interest of the child. The decision was based following Father's disability and what amount was needed to replace Father's lost wages following the 2000 car accident. The absence of facts in the record to support the increase indicates the trial court abused its discretion in setting the \$250/child/month support payment by Father.

**END OF EXAM**

7)

1. Distribution of the Property

The trial court did not abuse its discretion in its distribution of the community and separate property.

The issue here concerns the just and right distribution of the community property at the time of divorce. In Texas, property acquired during marriage is presumed to be community property unless it can be shown by clear and convincing evidence it is separate property. The determination is based on inception of title. Property obtained prior to marriage is considered separate property. Earnings on separate property during marriage belongs to the community. Earnings from salary during the marriage is community property. Disability can be considered earnings if it is replacing the salary an individual would be earning during the marriage.

If an individual owns an asset such as a house as separate property and the other spouse contributes to mortgage payments during the marriage from her earnings, the community may be entitled to reimbursement for these contributions.

Contributions towards retirement plans during a marriage are also community property (401(k), pensions).

When it comes time for the court to divide community property, Texas does not require an equal split. Texas uses the just and right allocation based on a number of factors. It will consider such things as cause for divorce, separate assets of the spouses, length of marriage, earning potential, and whether a spouse was more of a homemaker caring for the house instead of outside employment.

Here, the father brought the house into the marriage. It was acquired before the marriage and will maintain its characterization as separate property. However, the court likely considered the amount of money the mother contributed to the mortgage payments. The court likely considered the money she contributed as something that could be reimbursed from the community. The court determined that her 401(k) plan was part of the community. This is likely due to her funding this plan during marriage. Other than these two assets, the court only had the household good and

furniture to consider. The court likely considered the allegations that the father took assets away from the community for personal reasons and not as a benefit to the community to reduce his share of the community.

Due to the fact that the court does not have to split the community 50/50 the court has discretion to make an appropriate split based on the factors above. Since part of the community property is actually included in the house value, the court truly did not award the wife 100% of the community property. The husband was entitled to his house as it was separate property. The court did not abuse its discretion in awarding a larger share of the the community property to the wife.

## 2. Child Support Order

The trial court abused its discretion in the award of the child support order.

In Texas, it is presumed that child support provided according to the statutory tables is appropriate and in the best interests of the child unless there are other factors involved such as medical issues with the child. The amount of child support is based on the number of children of children involved. For two children, it would be 25%. The court uses the paying parent's income as a basis for the calculation. The court will only consider the first \$7,500 per month for this calculation. Courts will also consider the paying spouses ability to pay the child support as well as the ability to earn money.

Here, father's monthly resources is \$1,000. The appropriate level of child support would be \$250 ( $1,000 \times 25\%$ ) which is what the trial court ordered. The father could argue that despite the fact that \$250 matches the statutory table, the children are already receiving \$300 per month based on his disability. Disability payments are replacement for lost income due to a disability. The trial court appeared to double dipped in this situation. Although the \$300 comes from the government, the court should consider this income as if it came from the father. The amount of \$300 is above what the tables would require based on his salary. The court should not have awarded this child support payment. The children will continue to receive the disability money until they reach the age of majority which would also be the time when child support payments would have stopped as well.

**END OF EXAM**

7)

The trial court did not abuse its discretion by awarding the house to the father and 100% of the community to the mother. The trial court did abuse its discretion by awarding the child support order.

In a divorce proceeding, a husband is entitled to keep his separate property and a wife is entitled to keep her separate property. In Texas, separate property is property a spouse owned before marriage, property a spouse acquires during marriage through gift, will, or devise, or property that was agreed to be separate property. In Texas, all other property is community property. During a divorce it is the trial court's responsibility to make a fair and just division of the community property. Although there is a presumption that each spouse owns half, the court has the discretion to award one spouse more community property than the other if fairness demands. Here, the husband has admitted that he sold off some of the community estate and has kept the proceeds for himself. This can be taken into account when distributing funds and can result in the husband taking less of the community estate than the wife. Also, there is evidence that the wife used her salary (community funds) to aid the husband's house (separate property). The wife could have asked the court for reimbursement to the community for the value added to the land from community funds. Here, however, that may not be the most feasible solution. Here, the husband lives on the property and is disabled. Forcing a division or a sale of the property might not be in the interests of fairness. If the court determined that the community made significant contributions to the husband's separate property, the court could allow the husband to retain the house free and clear and deduct a fair amount from the husband's share of the community. If the court finds that it would be fair to let the husband keep the house and to let the wife keep the community estate the court did not abuse its discretion.

The trial court has abused its discretion in awarding the child support order. Normally, a parent can be made to provide for their child after divorce when the other spouse has custody. This amount is supposed to be in relation to the non-custodial parent's economic means. Child support orders are not to exceed 20% of the non-custodial parent's income for the first child, and can be increased only 5% more per additional child. Although the court's award is within the statutory limits for child support awards, the court is required to look to the parent's ability and what is in the best interest of the child. Here, the wife is the working parent and the husband is disabled. The sole source of income for the father is \$1,000 a month through a disability award and the husband has no other earning capability. Further, the children are each already receiving a \$300 a month social security benefit due to the husband's disability. Awarding more from the husband would not serve the interests of fairness.

**END OF EXAM**