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1. Yes. As Teddy was born during Jane & Carl's marriage, Carl is the presumed father of Teddy under the Texas Family Code. While paternity suits may be brought at any time when there is no presumed father under, the Code provides a **4 year statute of limitations** period when a man is a presumed father. Carl waited until Teddy was 17 to bring suit establishing paternity, so the court probably should have dismissed the claim on these grounds. There is an exception, however, that is applicable when the man alleges that he did not have a sexual relationship with the mother at the time of conception, and that he did not ever treat the child as his own. While Carl has attempted to establish such facts, Jane has also presented evidence that he has paid child support up until very recently, that Carly voluntarily listed himself as Teddy's father on Teddys birth certificates and that he has listed Teddy as a dependent on his taxes. These facts may have supported a claim that Carl's suit should be barred under the statute of limitations.

Additionally, Jane may have asserted the doctrine of **paternity by estoppel**, and the trial court may have applied the doctrine here due to Carl's conduct during Teddy's lifetime, which is wholly inconsistent with Carl's refutation of paternity. When the parties have conducted themselves in a way that establishes acceptance of paternity, either party may be estopped from denying the parent-child relationship.

Moreover, the court could have put an end to the issue by ordering genetic testing of Carl and Teddy. If the paternity test indicated that there was a 99% chance out of a 100 point index that Carl was Teddy's father, then Carl would be adjudicated the father, and only future contrary genetic results could disturb that finding.

Given the fact that Carl was the child's presumed father and had conducted himself like Teddy's father for the last 17 years, the statute of limitations provision for presumed father's should have likely ended the suit. If Carl's objections persuaded the court that Carl could defeat this statute of limitations provision, then the paternity by estoppel doctrine also may have ended the suit. As discussed, genetic testing could have also ended the suit and ended in a proper adjudication of whether or not Carl is the father.

2. Child support should not be used to offset Jane's reimbursement claim, nor should it ever be used to offset reimbursement claims. Here, Jane is entitled to reimbursement of 12,000 because the court incorrectly offset Carl's child support obligations. Under the inception of title doctrine, the court was correct in ordering that the tract of land belonged to Carl, since it was brought into the marriage and retains its character as separate property during the marriage (so long as Carl has established by clear and

convincing evidence that the property was indeed purchased prior to the marriage). However, Jane is entitled to reimbursement because community funds were used to pay off the land. A spouse is entitled to reimbursement when, as here, community property is used to benefit one spouse's separate property, though it does not alter the separate nature of the underlying property.

The court is to make a just and right division of the community property, and the court abused its discretion in offsetting Jane's reimbursement with the child support obligation, though other obligations between the parties could have supported a denial of reimbursement. Again, this is because the court, in its discretion, determines what is "just and right," and may consider such things as the income of the parties, the nature and extent their separate estates, and so forth, but not child support obligations.

END OF EXAM

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1. The court did err in finding that Carl was not Teddy's father.

Under the Texas Family Code, a father's paternity of a child is presumed in several circumstances. A paternity presumption arises when (1) the child is born during the marriage, or within 300 days of the marriage, (2) the father voluntarily lists his name on the child's birth certificate as the father, and (3) when the father publicly acknowledges paternity and lives with the child for the first two years of the child's life. Additionally, a man may be estopped from denying paternity when he voluntarily assumes a duty of care and support for the child by paying child support. When these presumptions are met, the man is legally presumed to be the father. Furthermore, if a man does not challenge the paternity of a child within the first four years of a known child's life, the man will be estopped from denying paternity.

Here, all of the presumptions apply to Carl with respect to Teddy. First, Teddy was born in 1996, during the middle of Carl and Jane's marriage. Thus, Carl is presumed to be Teddy's father. Secondly, Carl listed himself as the father on Teddy's birth certificate at the hospital. This creates another presumption that Carl is Teddy's father. Third, Carl held himself out as Teddy's father publicly through school records and tax returns, and he lived with Teddy for the first two years of his life. These actions create yet another presumption that Carl is Teddy's father. Fourth, Carl voluntarily assumed a duty of support by paying child support to Jane after they split up. He also failed to deny paternity within the first four years of Teddy's life. Therefore, Carl is also estopped from denying paternity with respect to Teddy.

Considering all of the presumptions in favor of Carl being Teddy's father, the court erred in its conclusion that Carl was not Teddy's father. The parties could not conclusively and uncontrovertedly state that they did not have sexual intercourse during the time of Teddy's likely conception. Further, a lack of bonding between father and son is not a grounds for overturning a paternity presumption.

2. The court abused its discretion in offsetting Jane's reimbursement claim with the child support.

In a divorce decree, the court is given the responsibility to split the community estate in a just and right manner, taking into account the rights of the parties and any children of the marriage. The court is only allowed to partition community property, but spouses may bring claims that community property has been converted by one or the other spouse. In such situations, a spouse may bring a claim for reimbursement. A reimbursement claim is most often utilized when one spouse has used community funds

to pay down a separate property debt. When this happens, the court may award a reimbursement to the other spouse for half of the community funds used to pay off the other spouse's separate property debt.

In a divorce action, the court may take all of these claims into account when making the final division of property. Thus, the division of property may not reflect the exact numbers of the reimbursement claim, as long as it is included in the final calculation. The court must, however, follow the law regarding community property rights and family law obligations when making a "just and right" division of property. A manifest disregard for the law will result in an abuse of discretion by the trial court.

Here, Jane has a reimbursement claim against Carl for using community funds to pay down his note on the La Salle property. Carl used \$24,000 of community funds, so Jane is entitled to a \$12,000 reimbursement for those payments from the community chest. The trial court considered the reimbursement claim, but it offset the award of \$12,000 with the \$12,000 that Carl had paid in child support. This decision presupposes that Jane would have owed Carl \$12,000 for the child support paid for a child that was not Carl's. However, the law presumes that Teddy is Carl's son, and therefore Carl would owe a duty of support to Teddy through child support payments. Carl already owed this duty, so he would not have a claim against Jane for this amount. Therefore, it was wrong for the trial court to offset the \$12,000 reimbursement claim with Carl's child support payments. Carl's community expenses to pay a separate property debt give rise to a valid reimbursement claim; his child support payments do not.

Because the trial court disregarded the law concerning family support obligations and paternity presumptions, it manifestly misapplied the principles to the property division, precluding it from being just and right. Therefore, the court abused its discretion in ordering the reimbursement offset.

END OF EXAM

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1. The trial court erred in finding that Carl was not Teddy's father because Carl was a presumed father.

The issue is when a presumed father's paternity can be challenged.

A father is the presumed father of a child if he is married to the mother at the time the child is born. Generally, a presumed father's paternity cannot be challenged after the fourth year of the child's life. However, a challenge is allowed when the father can demonstrate that he and the mother did not have sex during the probable time of conception and he never held the child out as his own.

In this case, Teddy was born in 1996 while Jane and Carl were married. Therefore, Carl is Teddy's presumed father. In addition, it has been longer than four years since Teddy was born; thus, Carl is estopped from denying his paternity of Teddy unless he can show he did not have sex with Jane during the probable time of conception and he has not represented to the public that Teddy is his child. Carl claims, and the court accepted, that he never had sex with Jane during the probable time of conception. Even so, Carl cannot meet the burden of overcoming the statute of limitations for presumed fathers: Carl is listed on Teddy's birth certificate as the father; Carl is listed on the school records of Teddy as the father; and, Carl listed Teddy as his son on his tax returns. Thus, Carl is estopped from denying his paternity of Teddy because he held Teddy out to the public as his child.

In conclusion, the trial court erred in ruling that Carl was not Teddy's father because Carl is the presumed father; it has been more than four years since Teddy was born; and Carl cannot overcome the statute of limitations for challenging his presumed fatherhood because he held Teddy out to the public as his child.

2. The trial court abused its discretion in offsetting Jane's reimbursement claim with child support.

At divorce, the trial court must make a just and right division of the community estate, and the court's ruling will not be disturbed absent a clear abuse of discretion. The community estate is entitled to reimbursement for community funds used to pay off debts on a spouse's separate estate. In Texas, parents have a statutory duty to support their children financially and such support is not eligible for contribution. Property acquired before marriage is separate property of the acquiring spouse.

In this case, Carl used \$24,000 of community funds to pay off a debt on a piece of land he acquired before marriage. Since the property was acquired before marriage it is Carl's separate property and the community estate is entitled to contribution. However, since Carl is indeed Teddy's father (see discussion above), Carl has a duty to support Teddy. Therefore, he is not entitled to contribution for the \$12,000 dollars he paid in child support while the parties were separated. Thus, the trial court clearly abused its discretion in allowing an offset of the community estate's contribution based on something that Carl had a duty to pay.

Therefore, the trial court clearly abused its discretion in allowing Carl to avoid his statutory duty to financially support Teddy by offsetting Jane's reimbursement of the community estate.

END OF EXAM