12)

1. The court did not err in finding the prenuptial agreement enforceable.

Under the Texas Family Code, a premarital agreement can partition or exchange property, then owned or to be acquired, among the spouses-to-be. It can be used designate that earnings from separate property shall be separate and that future earnings shall be separate. The only thing that a premarital agreement cannot accomplish is to recharacterize separately owned property as community. This can be done by agreement after the marriage, but not by premarital agreement because there is no community estate between people who are not yet married to each other.

There are two primary defenses to enforcement of a premarital agreement. The first requires that (1) the agreement was unconscionable when made, (2) the spouse seeking to avoid the agreement signed without fair notice of the nature and value of the other spouse's property and obligations, (3) the spouse seeking to avoid the agreement did not waive such notice, and (4) teh spouse seeking to avoid the agreement had no knowledge or opportunity to learn of the nature and value of the other spouse's property and obligations. The second defense requires a showing that the agreement was signed involuntarily. This defense is exceptionally narrow. Courts will not find an agreement was signed involuntarily simply because a big wedding is already planned, or because of pregnancy, or because of age, or because of disparate earning capacity. They will find that the agreement was signed involuntarily based on disparate bargaining power and undue influence.

Here, Gloria is only asserting the second defense. She is attempting to avoid the agreement on the basis of her signing being involuntary. The only evidence she has set forth regarding involuntary signing is that she was forty, unmarried, pregnant, and had limited earning capacity. None of these are bases for finding that her signing was involuntary. These arguments go to how desperately she wanted to get married. And her conundrum was that Henry would only marry her if she signed the premarital agreement. However, her desperation to get married and Henry's refusal to be married without her execution of the premarital agreement is not enough to make her signing involuntary.

2. Yes, the court did abuse its discretion in dividing the property not covered by the premarital agreement.

According to the Texas Constitution, community property consists of all property acquired during marriage except by gift or devise or descent. On dissolution of a marriage, a presumption exists in favor characterizing whatever assets are on hand as community property. Community property is subject to a just and right division on divorce. The burden is on the party asserting that the property is separate to prove its separate character by clear and convincing evidence. Generally, for funds in an account, this involves tracing the funds back to amounts held before marriage or received through gift or inheritance.

Here, Henry has merely asserted that the $300,000 in the savings account was separate property. He has not produced any evidence such as bank records or deposit receipts to show the source of the funds in the account. Henry's bare assertion is not enough to overcome the community presumption. While, Gloria has testified that she had no previous knowledge of the savings account, it is not encumbent upon Gloria to prove that the account is community property. Instead, it is up to Herny to rebut the presumption in favor of the community, by proving that the savings account is separate property by clear and convincing evidence. His unsubstantiated assertions are insufficient to accomplish that. The court abused its discretion by mischaracterizing the savings account.

The court must make a just and right division of community property on divorce. A host of factors may be considered, including (1) the spouses' separate assets, (2) ability of the spouses to support

themselves, (3) custody of any children of the marriage, (4) any finding of family violence, and (5) fault grounds for the divorce. Here, the court made an equal division of the remaining $100,000 of community property. There was no fault ground asserted by either spouse. While Henry clearly has $500,000 of separate property and a higher earning capacity, it is difficult to say that a 50-50 division of community assets is patently not "just and right." It is unlikely that the court abused its discretion by dividing the $100,000 community estate equally.

Mischaracterizing the $300,000 as Henry's separate property is an abuse of discretion. The court should have characterized the property as community and subjected it to a just and right division. However, dividing the remaining $100,000 of community property equally is probably not an abuse of discretion in spite of Henry's separate property and earning capacity.

END OF EXAM

12)

1. No, the court did not err in finding the prenuptual agreement unenforceable.

In order for a prenuptual agreement to be enforceable, it must be in writing, made voluntarily, and signed by the parties. A prenuptual agreement cannot characterize serparate property as community property, but it can designate that community property will instead be characterized as separate property. Notably, when separate property generates income, the income is classified as community property, and parties to a prenuptual agreement can agree that this income will remain the separate propery of the income-generating property's owner. The prenuptual agreement can not be unconscionable, and a voluntariness can be challenged by demonstrating that the non-drafting party did not obtain legal advice before signing the agreement, did not receive a proper inventory of the drafting party's separate property, or was obtained under duress or by trick.

Here, the prenuptual agreement was in a writing and signed by both parties. The agreement set forth certain assets of Henry that were considered his separate property, and stated that the income of his separate property would be considered separate property. As such, with the exception of voluntariness, which is discussed next, the prenuptual agreement is enforceable. However, Gloria challenged the enforceability of the agreement stating that she had not signed it voluntarily. She presented testimony that when she signed it she was pregnant, fourty, desperate to be married, and Henry had made it clear that the only way he would marry her was if she signed the agreement. On this testimony alone, the court did not err in finding that the prenuptual agreement was enforceable, as this does not amount to duress or an involuntary signing of the document. Notably, however, the agreement itself only listed certain assets of Henry, and the facts do not indicate that an inventory had been given to Gloria, or that she had been represented by an attorney. Had Gloria challenged the voluntariness on these grounds, then the prenuptual agreement may have been unenforceable. However, she did not raise these issues, and on the tesitmony presented by Gloria, the court did not err in its finding that the prenuptual agreement was enforceable.

2. Yes, the court abused its discretion in its division of the property not covered by the prenuptual agreement.

In Texas, all property owed by a couple at divorce is presumed to be community property. In order to be characterized as separate property, the party seeking the characterization as separate property must produce sufficient evidence to rebut the presumption. Property is considered to be separate property if it was acquired before marriage, or by gift, bequest, or devise.

Here, 3/4 of the remaining property consisted of a savings account containing $300,000. As this account was not covered by the prenuptual agreement, the account is presumed to be community property. In order to classify it as separate property, Henry had the burden of providing evidence sufficient to demonstrate that the property was separate property. Henry provided oral testimony that the property was separate property, however did not present any documents to support his testimony. Although Gloria testified that she did not know of the account's existence, which tends to indicate that the property may have been separate property, this evidence alone is insufficient. This is because the community property estate consists of both sole-managing and joint-managing community property. Thus, the account could have been the Henry's sole-managing community property. Further, the account was not mentioned in the prenuptial agreement, which listed all of Henry's other property, indicating that the account was, in fact, community property. As such, Henry's oral testimony, in light of the facts, was not sufficient to rebut the presumption that the savings account was community property. Thus, the account should be considered community property when considering the division of the community property estate.

In making its division, the court must divide the marital estate by a just and right division. This does not mean that the estate should be divided 50/50. Rather, the court must take into account a number of factors, including the earning potential of both spouses, the length of the marriage, any fault resulting in the divorce, and the size of the separate property estates of each spouse.

Here, the evidence indicates that there was a community property estate of $400,000, consisting of the savings account and the other property. Eviddnce was presented that Henry had a monthly salary of $10,000, while Gloria earned roughly $1,000 per month. The divorce was a no-fault divorce, and the marriage was relatively short (6 years). Given the size of the estate, and the parties monthly earning potential, the court likely abused its discretion by awarding the entire savings account to Henry, and then equally dividing the remaining $100,000 between the two. This division resulted in $350,000 of the estate going to Henry, who had a large monthly salary, while only $50,000 went to Gloria, who was earning a small monthly income. As such, on the facts, this was not a just and right division because it did not properly take into account the factors relevant to the parties. Accordingly, the court did abuse its discretion.

END OF EXAM

12)

(1) No probably not based on the grounds she argued. The issue here is whether a prenuptual agreement was properly enforceable by the court. In Texas, future spouses can agree in writing to partition and exchange property. This agreement can be based on certain assets, the estate as a whole, or certain benefits or obligations that are incurred by divorce or marriage. This wil allow them to do almost anything exception: (1) transform separate property into community property before marriage; and (2) limit child support obligations. As long as they are in writing and voluntarily signed by both parties, they will be enforced. However, there are two defenses to enforcement of a prenuptual agreement: (1) the spouse did not sign it voluntarily; or (2) it was unconscionable. Gloria only argued the first ground, involuntariness, to the trial court. However, her stronger argument, which would still have been a stretch to win is that the agreement was unconscionable.

First, looking at involuntariness. It is a defense to enforcement of a prenuptual agreement if a spouse is able to prove that she did not voluntarily sign the document. Courts have typically meant that the spouse was forced to sign it, signed it under duress or coersion. However, in Texas, the fact the spouse was pregnant or a big wedding was planned is not a sufficient justification to determine that it was involuntary. Here, the only justification given by Gloria is that she was 40, unmarried, pregnant, had a limited earning capacity, and that he wouldn't marry her if she didn't sign it. However, none of those show that she did not sign it voluntarily. Instead, it shows that she weighed the costs and benefits of signing the agreement and chose to sign the agreement based on those factors. The agreement was voluntary and the court did not err by enforcing the agreement based on those grounds.

Second, the better defense that Glori could have raised was the the agreement was unconscionable. This defense will require: (1) no disclosure of the size or extent of obligations in the spouse's separate estate; (2) No waiver of the duty to disclose; and (3) the other spouse had not knowledge of the size or extent of the spouse's separate estate. Here, Gloria could likely succeed under these grounds. First, although he disclosed $500,000 of his assets, the facts indicate that is "certain" of his assets, but it appears that in reality it was the vast majority of his assets considering the small size of the community property estate at the end of the marriage. Second, the facts do not indicate that a waiver was signed. Finally, there is no indication that Gloria had any knowledge of the size of extent of Henry's estate. This is an argument that she may have been able to win, but it still woudl have been tough.

(2) Yes, the court erred in its division of property by giving the husband the vast share of the community property assets. The issue here is whether the trial court err by dividing property in a divorce. In Texas, which is a community property state, the divorce court is supposed to make a "just and right division" of the community property of the divorcing spouses. There is no exact proportion, percentage or test to use, but the court will be given discretion to apply certain factors to the facts at hand and determine what is just and right under the circumstances. Typically, the trial court is given wide discretion with just and right divisions; however, if the court's division is manifestly unjust, the court of appeals can overturn the judgment and remand back to the trial court. In determining what is a just and right division, the court is supposed to look at factors such as: age of the parties, the spouses' relative physical conditions, earning capacity and business opportunities, education, size of the separate estates, children of the marriage, the child care obligations of each parent, the expected benefit from each spouse from a continued marriage, any domestic violence, any fault for the divorce, and any acts or omissions of the spouses. The court should apply these factors and, based on the facts of the case andhand, and choose a just and right division. The just and right division may only be made of the community property of the couple, the court has no discretion to touch the separate property of a spouse except in limited conditions.

First, it is important to resolve the issue of the $300,000 bank account. As a general rule, any property that is on hand at the time of divorce is presumed to be community property unless the

spouse claiming it is separate property proves that it is separate property by clear and convincing evidence. Unless he provides the evidence, the property will be community property and subject to a just and right division. Here, there was a $300,000 bank account that was not covered by the prenuptual agreement. Since it is was on hand at the time of divorce, it is presumed to be community property of the marriage. This would require Henry to prove by clear and convincing evidence that the funds were all his separate property, or be able to trace his separate property funds to the bank account. Here, Henry failed to present any evidence except his tesimony that they were separate property. That is insufficient to prove they are separate property by clear and convincing evidence. These funds were clearly community property, and should have been subjected to a just and right division.

Second as to the division itself. Out of the $400,000 community property estate (which included the savings account above, the court gave 3/4 to the Henry and 1/4 to Gloria. However, applying the factors laid out above, this division is a complete departure from the factors. First, the difference in respective separate property of both spouses is huge. Henry set aside at leat $500,000 in assets aside as his separate property in the prenuptual agreement, while there is no indication that she had any any assets to set aside. Further, Henry's separate property includes the income from his separate property. Henry's separate property estate is likely hundres of times bigger than Gloria's, which it doesn't say specifically, but it implies she nothing becuase it states her limited earning capacity. Second, the earning capacity difference between the spouses is huge. Henry makes over 10 times more a month than Gloria. This difference in earning capacity is a huge consideration that weighs heavily in Gloria's favor. Further, Gloria would have received many benefits from continued marriage including support for life and money to provide for her necessities. Further, there is a child of the marriage and although it doesn't mention who will have custody, that will definitely be a fact. Quite simply, not a signle factor weighs in support of Henry receiving 3/4 of the community property of the marriage. This division is completely unjust and the trial court erred by failing to exercise its discretion properly.

END OF EXAM