

Question 6 – July 2015 – Selected Answer 1

1. The Court should characterize the ownership of the assets as listed below. The issue here is which of these should be community property and which are separate property.

(a) The savings accounts are separate property. Gifts are considered to be separate property. Here, the wife and husband both transferred their equal shares of the gift into savings accounts. The savings accounts are thus separate property. However, the husband may have \$10K in community property in his savings account from the stock dividends paid out during marriage.

(b) The stock in X corporation is the husband's separate property. Under tracing principles, we can see the husband used \$25K of the \$50K separate property in his checking account to buy the stock. Thus, it was also separate property.

(c) The 1969 Mustang is separate property. Through tracing, it is clear the husband used his separate property funds to purchase the Mustang, making it separate property.

(d) The home is $9/10^{\text{th}}$ community property and $1/10^{\text{th}}$ separate property of the husband. The gift by the husband's property was his separate property that he applied towards the house. So the \$500K house was paid for with the \$50K separate property money and \$450K community property money.

(e) The condominium is community property, as no separate property funds were used for its purchase. The \$200K the wife used to pay down the principle does not affect its community property status.

2. The rights to reimbursement are listed below. The issue is when a contribution made during marriage can be reimbursed at divorce.

(a) The husband does not have a reimbursement claim on the house. His \$50K down payment acted to give him a $1/10^{\text{th}}$ separate interest in the house. He cannot be reimbursed when the separate interest is the benefit he received.

(b) The \$40,000 spent to restore the Mustang may not be reimbursed. Generally, gifts from one spouse to another are not subject to reimbursement. Here, the \$40K restoration payment could be seen as a gift to her husband and not subject to be reimbursed.

(c) The \$200K payment made to reduce the principal can be reimbursed. Since the payment occurred after the house was bought as community property, it cannot act to give the wife any separate property interest. The inheritance from her father is separate property and can be traced to her \$200K reduction in principle on the condo. Therefore, the wife is entitled to reimbursement from her separate property contribution to a community property asset.

Question 6 – July 2015 – Selected Answer 2

1. All determinations against presumptions must be done by clear and convincing evidence.

A The savings accounts

The savings accounts with the wife father's money is separate property while the dividends are community property. Property acquired during marriage is presumed to be community property. However, property acquired through tort recovery, gift, or inheritance is considered separate property. Even property gifted to the husband and wife together is considered $1/2$ separate property to the husband and $1/2$ separate property to the wife. Income on separate property is community property. Here, the wife's father gave the husband and wife \$100,000. \$50,000 would go to the husband as separate property and \$50,000 would go to the wife as separate property originally. The husband had \$50,000 of separate property that was reduced by \$25,000 from the stock purchase and \$10,000, so there was only \$15,000 left of separate property to go along with his

\$10,000 in dividend income. The \$15,000 left in the savings account from the gift is considered separate property. There was \$10,000 in dividends from stock that the husband earned in the savings account. This counts as income earned during the marriage which is community property. It does not matter that he placed the income into his individual savings account as that does not change the characterization of the money.

B. The stock in X Corporation

Husband owns the stock as separate property. Inception of title usually applies where if something is acquired during marriage it is presumed to be community property. However, separate property used to purchase property will remain separate property. Normally the stock in X corporation was acquired during marriage so it would be presumed to be the sole managed community property of the husband. Here, the husband used his \$25,000 of his the \$50,000 he acquired as a gift to buy the stock in X corporation. Therefore, the husband should acquire it as separate property.

C. The 1969 Mustang

The husband owns the 1969 mustang as separate property. Inception of title usually applies where if something is acquired during marriage it is presumed to be community property. However, separate property used to purchase property will remain separate property. Normally, the 1969 Mustang was acquired during the marriage so it would be presumed to be the sole managed community property of the husband. However, he used \$10,000 of his separate property to purchase the mustang, so the mustang should acquire it as separate property.

D. The home valued at \$500,000

The home should be considered community property. Property acquired during marriage is presumed to be community property. Income earning during marriage is also presumed to be community property. Here, the husband and the wife co-signed on the home loan. This was also done while they were still married. It does not matter that all the payments on the home loan were made with the husband's earnings as those earnings are considered community property which belongs to both husband and wife. Therefore, the home is the community property of the husband and wife.

E. The condominium valued at \$300,000

The condominium should be considered community property. Property acquired during marriage is presumed to be community property. Title placed in one person's name may make that property sole managed community property. Here, both the husband and wife signed the loan to purchase the condo. While title may have been placed in the wife's name alone, that does not overcome the presumption that it is community property. Must be more evidence that this was meant as a gift from the husband to the wife by clear and convincing evidence. Without this, the condo should still be classified as community property especially when both signed the loan to finance the purchase price.

2.

A. \$50,000 down payment on the residence

The husband has the right to reimbursement of the \$50,000 down payment on the residence. Property acquired by gift is considered to be separate property. When separate property is used to finance a purchase for the couple's community property, if the couple later divorce, there is a right of reimbursement. Here, the husband acquired the \$50,000 as a gift from his mother. This would make that \$50,000 separate property. The fact that he used that \$50,000 to help purchase the residence means he could be entitled to reimbursement from the wife.

B. \$40,000 spent to restore the 1969 mustang.

The wife does not have a right to reimbursement of the \$40,000 spent to reimburse the mustang. Property acquired by inheritance is considered to be separate property. When separate property is used to contribute to someone else's separate property, then it would be considered a gift. Here, the wife acquired the \$40,000 through inheritance making it separate property. However, the \$40,000 was spent on the husband's separate property of the mustang. This makes it look like a gift and she cannot recover money that she used as a gift.

C. \$200,000 payment to reduce principal on condominium loan

The wife has a right to reimbursement of the \$200,000 spent to reduce the principal. Property acquired by

inheritance is considered to be separate property. When separate property is used to finance a purchase for the couple's community property, if the couple later divorce, there is a right of reimbursement. Here, as discussed earlier, the condominium is considered sole management community property. The fact that the wife spent \$200,000 of her inheritance money that is separate property on the couple's community property means she is entitled to reimbursement from the husband.

Question 6 – July 2015 – Selected Answer 3

1)
a)
The savings accounts are separate property to the extent that they contain the remaining portion of Wife's father's gift. The issue is how to characterize a gift given to both parties in a marriage. When a party takes property by gift during the marriage, that property is separate property. A gift given to a couple is presumptively one half each of the parties' separate property. Here, the couple received a gift of \$100,000. Because they took the property by gift, the property is separate and each took 1/2 of the property as separate property. The fact that it was Wife's father who gave the property to the couple, or that it was given in a context that suggests that it was a wedding present of sorts, does not alter this general rule. Indeed the parties seem to have understood the gift to be a gift of separate property: they each opened up savings accounts in their own names and deposited half of the proceeds therein. Therefore the original \$50,000 that stocked the accounts was separate property.

There is some additional analysis that we have to do, however. Husband's property contains \$10,000 in dividends from stock that he purchased using his separate property funds. That \$10,000 is properly characterized as community property. The income from separate property, whether in the form of rent, interest, or dividends is characterized as community property. Therefore that \$10,000 would go in the community pile.

b)
The stock in X corporation is Husband's separate property if it was purchased using money from the new savings account with \$50,000 in it. The issue here is how to characterize property purchased using separate funds. Texas law provides that when a person uses separate property funds to buy other property, that purchased property is properly characterized as separate property. Because the \$50,000 savings account was stocked with separate property funds by operation of Wife's father's gift to the couple (see above) the tracing principle would overcome the community presumption with regard to the purchase of the stock. The stock is Husband's separate property but as noted above the dividends are not and instead are community property.

c)
The Mustang is similarly Husband's separate property to the extent it was purchased with the separate funds from the new savings account. As with the stock, property purchased with separate property funds is separate property under the tracing principle.

d)
The \$500,000 home is 1/10th Husband's separate property and 9/10ths community property. The issue is how to characterize the money received from Husband's mother and how to characterize the overall purchase. The money from Husband's mother was a gift received during marriage and therefore was separate property. Husband used it to put the down payment on the house and thereby acquired a 10% separate property interest in the house. The remaining 9/10ths of the purchase price on the house was financed with a note that both of the parties to the marriage signed, meaning that they financed the house with community debt and therefore the remainder of the house is community property. The house is therefore 1/10th Husband's separate property and 9/10ths community property.

e)

The vacation condominium is community property. When property is purchased with community funds but titled in only one spouse's name, the property is still community property unless both of the spouses participated in the transaction and signed an agreement specifying that the title spouse was to take the property as her sole and separate property. Here the property was purchased using community funds because Husband and Wife both signed the loan to finance the purchase price. Wife took title, but there is no indication that the contract or conveyance gave it to her as "sole and separate property" or anything along those lines, or that Husband specifically participated in the transaction and signed such a document. Without these facts Wife cannot take the condo as separate property, so it is properly characterized as community property.

2)

A spouse who expends separate property to benefit the community estate or the other spouse's separate property estate in certain specified ways-- most notably by paying down principal debt on real estate, making capital improvements to real estate, or paying down principal debt for a personal obligation secured by real estate -- has a claim for equitable reimbursement upon dissolution of the marriage. This claim also holds if community property is used to benefit a spouse's separate estate (though of course the reimbursement claim is limited to the claiming spouse's half interest in the community property that went to benefit the other spouse's separate estate.

a)

Husband has no right of reimbursement for the \$50,000 purchase price on the home. A reimbursement claim is proper where the community estate or one spouse's separate estate benefits the other spouse's separate estate. Here, Husband's separate property contribution to the house simply resulted in him having a separate property interest in the house as discussed above. Husband therefore does not have a reimbursement claim here because he did not use separate property or community property to benefit wife's separate estate-- he simply financed part of a purchase with separate property and thereby gained a fractional separate interest in the property. His ownership of a 1/10th separate interest in the house is his compensation for the expenditure of separate funds and therefore he doesn't need reimbursement through exercise of the court's equitable powers.

b)

Wife has no right of reimbursement for the money spent on the Mustang. A spouse has a right of reimbursement only in limited circumstances where community or separate funds are spent to benefit a separate property estate, or separate funds are used to benefit a community estate, in certain specified ways. These specified ways include capital improvements to real property and principal reductions on mortgages. But contribution of separate funds for restoration of an auto owned by the other spouse is not one of the recognized claims for reimbursement. Wife did spend separate property money on the restoration project: she had inherited the money and therefore it was separate property. However, her expenditure on Husband's car is legally in the nature of a gift and does not give rise to a claim for reimbursement. If instead of the car Wife had spent the money on improving separate property real estate that Husband owned, her reimbursement claim would be measured by the amount of appreciation in value that her expenditures caused rather than the sum of the expenditures. Thus, even if the car was eligible for a reimbursement claim, her claim would probably not be for \$40,000. Rather, it could be higher or lower (perhaps substantially so) depending on the alteration to the car's market value that resulted from the restoration for which she paid.

c)

Wife has a claim for contribution for the money she spent to pay off principal debt on the condominium loan. A spouse who spends separate property money to pay down principal debt secured by real property owned by the community or by the other spouse has a reimbursement claim for the amount by which they reduced principal debt. Because the condominium loan was taken out in the community's name and the condominium

itself was community property as discussed above, Wife's expenditure of separate property funds to reduce the principal amount of the loan gives her a reimbursement claim. Her reimbursement claim would be for the amount by which she reduced principal debt on the property: here, \$200,000.