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Property obtained during marriage is presumed to be community property. This presumption may be overcome by clear and convincing evidence that the property should be classified as separate property. Separate property includes property that either spouse had before marriage, property received by gift, or property received by inheritance.

(1) There is a claim of separate property of the Husband for the \$40,000 of the savings account.

When separate property and community property are commingled the court will attempt to use tracing in order to figure out the amount owed to owner of the separate property. If it is an account where money is withdrawn the general rule is that the community property is used first. Most income during the marriage is considered community property.

The initial \$40,000 in the account was separate property because the Husband owned such property before marriage. While the husband only deposited community earnings into the account during marriage, this will not destroy the separate property classification of the \$40,000 because the Court may use tracing in order to determine what amount is separate and what amount is community. The interest earned on the account in addition to the amount added to the account will be considered community property. Through tracing the Court will likely determine that \$40,000 of the interest bearing savings account is Husband's separate property and the remaining \$60,000 is community property.

(2) The car will be separate property of the Husband if only the credit was used to purchase the car. If the credit was a down payment and community property was used to purchase the vehicle then it will be community property because it was purchased during the marriage and the Husband will be entitled to reimbursement from his separate property down payment.

When separate property is transformed into different property, the different property will still be considered separate. If the separate property is used as a partial payment on a piece of property then the property will be considered community property and the separate property used may be sought as a reimbursement.

The truck was separate property because it was owned by the Husband before marriage. The Husband then traded in the truck for a car and received a \$5,000 trade in credit. If the \$5,000 was used to purchase the car then the car was separate property. If the credit purchased the vehicle then the new car will be separate property because it was an exchange of separate property. If the separate property was used as partial payment and community property paid the rest then the car will be community and the husband may request a reimbursement for the separate property payment portion.

(3) The Spousal Maintenance is the property of the Ex-Wife and Wife cannot claim reimbursement.

Spousal maintenance or child support paid using community property cannot be recovered by either party upon the subsequent divorce of the community property couple.

The payments to the Husband's ex-spouse is the property of the Ex-Wife. The current Wife may not claim reimbursement on such payments because the Texas Family Code does not allow such a reimbursement in this case. Thus, the spousal maintenance is the property of the Ex-Wife and there is no claim for reimbursement for the current Wife.

(4) The tuition of the children's school will not be reimbursed to the Husband.

A parent has a duty to raise their child and pay for various expenses of the child including medical care, schooling, and providing basic necessities. Such money used for these requirements of a child may not be used against the parent later by a step-parent for reimbursement.

A parent is required to send their child to schooling and pay for the cost of such. While the Wife is the natural parent of the children and Husband is the step-father of the children, the wife was still required to pay for what is required as her parental duties. The Wife wanted to send the children to a private institution and the Husband disagreed with such action. The husband cannot use the wife's responsibility of providing schooling for her children against her for a claim of reimbursement. While the Husband can argue that the cost of the schooling was unreasonable and thus he deserves some reimbursement when he did not agree to send them to such an expensive school, his argument will likely not be held valid and the Court will not require a reimbursement for the Wife's children's schooling.

(5) The home will be separate property of the Wife and the Husband will be entitled to reimbursement based on the \$50,000 paid with community property.

The inception of title decides when a particular piece of property is owned. In Texas, when a house is initially purchased the title begins there. If the purchaser of the house later marries and they use income to pay off the mortgage on the house, the house will still be considered separate property of the initial purchaser but the new spouse will be entitled to reimbursement based on the amount of community property used to pay for the house.

The Wife purchased the house before she married the Husband. Thus, through the inception of title, the Wife was the owner of the house at the time she purchased it even though there was a mortgage on it. The house will be the separate property of the Wife. After marrying the Husband, the Wife and Husband used income earned by both of them to pay the remaining balance on the mortgage of \$50,000. The income from both is considered community property, thus community property was used to pay off the \$50,000 balance owed on the house. As such, the Husband is entitled to reimbursement on the community share of \$50,000 used to purchase. The Court will decide a just and right division and when doing so they shall set a general amount that will be reimbursed to the Husband based on the community shared used.

END OF EXAM

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1) All comingled property is considered community property unless the party claiming the property is separate property can show, by clear and convincing evidence, that the property is separate property. Typically, this is shown using the method of tracing, which is showing the path from separate property funds to characterization of the item in question. Additionally, when the item in question is a bank account, the party claiming the property is separate property comingled with community property, the court applies the presumption that the community property left the bank account first and will trace the bank records. Whatever the lowest balance the account held was, if that amount is less than the initial separate property deposited in the bank account, will be determined to be the amount of separate property in the bank. The remainder of the money in the account will be deemed community property.

Here, the bank account came into the marriage with \$40K in Husband's separate property funds. There does not appear to be any evidence that the account dipped below \$40K, so Husband will retain \$40K of the \$100K in the account as separate property. In order to retain the \$40K as separate property, Husband will need to provide clear and convincing evidence that he came into the marriage with that amount of money in the account already. The \$60K not accounted for as Husband's separate property will be labeled community property unless Husband can also trace those funds to another separate property source by clear and convincing evidence.

2) In order to determine the separate or community classification of property, the courts will look to the inception of title rule. If the party gained title to the property, it is separate property. If the party gained title after the marriage, it will be community property. Additionally, using the principles of tracing, the court will follow the funds to determine whether community property funds were used to pay for a separate property item, or whether funds from the sale of a separate property item were used to purchase subsequent items, which will also retain the separate property characterization.

Here, under the inception of title rule, Texas law classifies Husband's truck as separate property because he came into the marriage with it. Further, it appears that the truck was already paid off because there is no evidence that community funds were used to make payments on the truck after the marriage began. Thus, Wife will not have a reimbursement claim for any community funds spent on the truck because it doesn't appear that any community funds were expended on it. When Husband sold the truck and used the funds to purchase new car, the funds retained their separate property characterization and thus the car he now drives is also characterized as separate property, so long as Husband can successfully show, through tracing, that the money used to buy the car was separate property funds with clear and convincing evidence. If the \$5000 trade in credit was enough to purchase the car outright, the car will be separate property. If the community funds were used to make payments above the \$5000 trade-in credit, Wife will have a claim for reimbursement to the community estate of any funds expended in paying off the car.

3) Under Texas law, Spousal Maintenance and Child Support payments are not reimbursable expenses to the community estate. Therefore, Wife will not be able to seek reimbursement for the \$12000 spent on Husband's first wife in spousal maintenance fees.

4) Under Texas law, community funds spent raising children is not a reimburseable expense, even if the children are not of the marriage. However, unnecessary funds spent in raising the children, such as private school and other expensive endeavors, may be established to attempt to get a reimbursement claim to the estate. While the burden remains clear and convincing

evidence, the trial judge will ultimately determine whether reimbursement for thus unnecessary expenses will provide a just and right division of the property.

Here, Husband can attempt to claim that the \$80K in private school expended from the community estate was a needlessly wasteful and that he didn't consent to use of the funds in that manner. He will need to prove his lack of consent by clear and convincing evidence and submit an \$80K claim for reimbursement to the community estate. However, because this reimbursement claim is related to the care and education of children, he will have a more difficult time showing this claim than other typical reimbursement claims.

5) Inception of title for the home occurred prior to marriage, and therefore the Wife will be able to claim it as separate property. However, the funds spent paying off the mortgage can be submitted as a reimbursement claim by Husband. As already discussed above, Wife must first claim the home is her separate property and show that inception of title occurred prior to marriage, by clear and convincing evidence, and that the home is her separate property. However, Husband can also make a reimbursement claim for the \$50K expended in paying off the mortgage from the community estate. The facts show that the funds used to pay off the mortgage were from income by both Husband and Wife. Income is presumptively community property, absent a partition or premarital agreement to the contrary. Therefore, because the funds used were income, the community property is entitled to reimbursement for the money expended in paying off the mortgage.

END OF EXAM
