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An initial step in making a just and right division of property upon divorce is first characterizing all of the assets.

Part 1)

\$28,000 of \$30,000 in the Wife's Retirement Account should be treated as Wife's separate property. At issue is the character of a retirement account based on where there were increases in value.

In Texas, retirement accounts are considered community property only to the extent that contributions were made during the marriage. For all payments made into retirement accounts before or after marriage, these accounts are separate property. Wife contributed to the IRA while she worked at Company before marriage. She stopped working there the day before her wedding and thus never made any contributions during their marriage. Therefore, the \$20,000 value of the IRA on the day before her wedding is entirely separate property because it was acquired before the marriage.

When separate property generates income during the marriage, that earned income is community property even though the underlying asset remains separate property. For investments this applies to cash dividends. Therefore, the \$2,000 increase in value from reinvested quarterly cash dividends will be considered community property because they occurred during marriage that both Husband and Wife hold together.

This income from separate property does not extend to market appreciation. The mere increase in value of separate property during marriage is not characterized as community property, even upon sale.

Additionally, the reinvested capital gains distributions are not community property even though they occurred during marriage. Separate property remains separate property so long as the party can trace the use of the funds from one thing to another by clear and convincing evidence. Capital gains are essentially sale proceeds and when reinvested they are easily traceable directly back into the separate property. Therefore, the \$3,000 increase from reinvested capital gains can be easily traced from separate property back into the IRA as separate property.

Therefore, \$28,000 of the Wife's IRA is Wife's separate property and \$2,000 is community property. Note that if ERISA governed this retirement account it would preempt any state law regarding community property and all \$30,000 would be Wife's separate property.

Part 2)

The Boat is community property but Husband will be entitled to seek contribution for the \$10,000 in separate property that paid off the boat. At issue is how separate property funds effect the character of community property.

Under the inception of title rule, anything purchased during marriage is presumed to be community property unless rebutted. The boat was acquired during marriage and is thus community property.

Property acquired by gift is separate property, even if acquired during marriage. If a gift is intended to be a gift to husband and wife it must be explicit and then each party gets 1/2 interest

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as separate property. Husband's father gave Husband a \$10,000 check to pay off the balance on the boat. It was payable to Husband, and thus a gift to Husband as separate property. While Wife may argue the memo line mentions her, it does not show any intent to give the gift to Wife, just that Husband's father thought Wife may get some benefit too.

In Texas, when one marital estate benefits the other marital estate, they are entitled to contribution upon divorce. Thus, the husband's separate estate benefited the community property estate by \$10,000 when he paid off the remaining balance. Therefore, while the boat is community property, the community property estate owes Husband's separate estate \$10,000.

Part 3)

Husband's Rental Property is Husband's separate property but the community property estate is entitled to \$50,000 contribution for paying down the mortgage, plus taxes and insurance. At issue is how much the community property estate benefited the Husband's separate property.

Property acquired prior to marriage is separate property in Texas unless there is an agreement after marriage to the contrary. Therefore, Husband's rental property is separate property because he purchased pre-marriage.

However, income produced from separate property during the marriage is considered community property. Therefore, the rental income from the property is part of the community estate.

The community property rental income was used to pay down the mortgages, taxes, and insurance. This benefited Husband's separate property and thus the community estate is entitled to contribution from the Husband's separate property (which will offset the contribution owed by the community estate from the boat payment). The measure of the benefit is the amount the principal decreased during the marriage. This was \$40,000 and thus the community property estate is entitled to \$40,000 in contribution. It does not include any interest paid by the rental income (community funds) during marriage.

The \$10,000 in taxes and insurance from the community property also creates a right to contribution because these were expenses the separate property needed to make and it used community funds for the rental house's own benefit.

It does not include the \$20,000 in appreciation as the mere increase in value of separate property during marriage is not community property.

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(1) The first step in characterizing any asset is determining the inception of title of the asset, whether it was prior to, during or after marriage. Using the inception of title doctrine, Wife's IRA was acquired entirely before marriage. On the date of Wife's last day of work, the IRA was valued at \$20,000. The \$20,000 that the account was worth on the last day of Wife's job is separate property as it was earned entirely before marriage. An increase in the value of an asset does not create a community property interest in the asset. With respect to the \$5,000 increase from market appreciation, that asset is also separate property. Capital gains paid out from separate property that is reinvested in separate property is also separate property, however cash dividends are not. Thus, the \$3,000 in reinvested capital gains distributions is separate property and the \$2,000 reinvested quarterly cash dividends are community property. Thus, \$28,000 of the Wife's Retirement Account is the separate estate of Wife and \$2,000 of Wife's Retirement Account belongs to the community estate.

(2) The boat is community property. The initial payment for the boat was made out of the couple's own funds, during the marriage, and characterization occurs at the inception of title. Separate property is property that was (1) owned before marriage, or (2) devised, descended, bequeathed, or gifted to the a spouse during the marriage. Community property is everything that is not separate property. As the boat was community property at its inception, the fact that Husband's father paid off the remainder of the boat for Husband's birthday does not change the character of the property. Husband may have a claim for reimbursement from the community, but the boat is community property.

(3) The husband's rental property is separate property. Through the doctrine of inception of title, the property was purchased before marriage. Separate property is property that was (1) owned before marriage, or (2) devised, descended, bequeathed, or gifted to the a spouse during the marriage and as the spouse purchased the house before marriage, the house is separate property. An increase in value of property during the course of the marriage does not change its characterization. Neither does the reduction during marriage of the amount of a mortgage or lien owed on separate property. The community estate may have a claim for reimbursement however. Income or rent derived from separate property during marriage is community property and all mortgage payments, taxes and insurance on the husband's rental property have been paid out of the rental income payments from the house. However, regardless of a valid claim for reimbursement, the Husband's rental property is Husband's separate property.

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