

## Question 5 – July 2019 – Selected Answer 1

A.1 The stock is considered separate property because it was a gift to each individual.

All property owned or acquired before the marriage is separate property. All property owned or acquired as a gift, devise or descent during the marriage is separate property. When a person gives a gift to both husband and wife, each takes a 1/2 separate property interest in the gift. Because the stock was given as a gift, the court should characterize 2,500 shares of the stock as the husband's separate property and 2,500 shares of the stock as the wife's separate property. Absent a written agreement by the husband and wife to turn the separate property into community property, the stock is considered separate property.

B.1. There is not equitable claim for reimbursement from the stock because the separate property stock was not used to buy anything in the community estate.

A.2. The money in the husband's savings account is community property because income from separate property is community property.

Any income from separate property is considered community property absent an agreement otherwise. Even though the stock is considered separate property, the income from separate property is considered community property. Income includes things like stock dividends, rent from separate property, interest on separate property and the like. Because of this, the court will find that the Savings Account is community property.

B.2. There is not an equitable claim for reimbursement from the community estate because the Savings account is community property.

A.3. The residence is community property because it was bought after the marriage occurred and there is a presumption that any property acquired during the marriage is community property.

Any property acquired during the marriage is presumed to be community property. The residence was bought in 2010 a year after the marriage and is presumed to be community property. This presumption can be overcome by a showing in writing that the husband and wife agreed that the property would become one of their separate properties. Further, the fact that the husband and wife both signed the note shows that the court should characterize the property as community.

B.3. There is a claim for equitable reimbursement for the wife for the amount of \$50,000 because the wife used separate property funds to put the down payment on the house.

All property owned or acquired before the marriage is separate property. All property owned or acquired as a gift, devise or descent during the marriage is separate property. Gifts are presumed separate property. The wife used a gift from her mother of \$50,000 to put a down payment on the house. While the wife has no claim of right to be reimbursed, the court can use the equitable principle of reimbursement to reimburse the wife if the court, in its discretion so chooses. The reimbursement claim would be against the community property estate and not against the husband's separate estate.

The wife has no claim for reimbursement of her employment earnings that were used to pay the mortgage on the house because employment earnings during a marriage, absent a written agreement otherwise, are categorized as sole management community property. Because there is only a claim for reimbursement for money or time coming out of a separate estate, the wife's earnings cannot be used as a claim for reimbursement.

A.4. The ranch is presumed to be community property because it was acquired after the marriage even though title was only taken in the husband's name.

Any property acquired during the marriage is presumed to be community property. The Ranch was bought in 2015 after the marriage and is presumed to be community property. This presumption can be overcome by a showing in writing that the husband and wife agreed that the property would become one of their separate property. Further, the fact that the husband and wife both signed the note shows that the court should characterize the Ranch as community.

The fact that the husband is the only person on the deed does not rebut the community property presumption. If the lender would have, in writing, stated that they are only considering the finances of one of the spouses on the loan and such, it is possible to have taken the loan out as community property, but this was not done.

B.4. The wife has an equitable claim for reimbursement of \$75,000 against the community estate, but the husband has no claim.

Because the wife used her inheritance, which is separate property, to help the community estate, she has an equitable claim for reimbursement against the community estate. The claim is for \$75,000 because she paid \$75,000 down directly

on the note. The \$25,000 used for improvements cannot be claimed can only be for the amount that the improvement increased the value of the land. Because the land is still only worth \$400,000, the \$25,000 cannot be claimed for reimbursement.

The husband has no claim for reimbursement of her employment earnings that were used to pay the mortgage on the Ranch because employment earnings during a marriage, absent a written agreement otherwise, are categorized as sole management community property. Because there is only a claim for reimbursement for money or time coming out of a separate estate, the Husband earnings cannot be used as a claim for reimbursement.

### **Question 5 – July 2019 – Selected Answer 2**

#### **I. Characterization of Property**

The issue here is how the Court should characterize the interest in the assets according to how and when the assets were acquired.

Texas is a community property state. All property acquired by either spouse during the course of the marriage, other than separate property, will be presumed to be community property. Income acquired from separate property is community property. The presumption of community property may be rebutted by clear and convincing evidence. Separate property consists of property acquired by either spouse before marriage, property acquired during marriage by gift, inheritance, or personal injury recoveries not attributable to loss of wages. A gift cannot be made to the community, where a gift is made to the community it will be treated as separate property of both the spouses and they will hold the right to the property as joint tenants in common. Texas follows the inception of title rule, which states that the characterization of property will be determined at the time the property is acquired. Property opened solely in one spouse's name during marriage will be deemed to be that spouse's sole-managed community property. A spouse owes a duty of good faith and loyalty to the other spouse to protect the value of the property. Property purchased jointly by the spouses will be deemed joint managed community property. Upon divorce, a court must make a division of the marital estate that is just and right. The division does not have to be equal and is presumed correct unless there is a clear abuse of discretion. Commingling of community and separate property will not change the characterization of the property, so long as the property may be tracked.

(1) The issue is how the stocks given by the Husband's father to husband and wife should be classified.

The rules regarding inception of title and gifts to a community estate are outline above. Dividends of stocks are classified as income. Income from seperate property is community property.

Here, husband's father gave husband and wife 5,000 shares of Z-Corp stock, to husband and wife as their community property. Under the inception of title rule the property will be characterized as a gift acquired during marriage, and seperate property. Under the rules all gifts are considered to be seperate property. Thus, the stock will be deemed to be each spouse's seperate property held a tenants in common. Therefore, 2,500 of the stock will be deemed seperate property of the wife, and 2,500 will be considered seperate property of the husband as tenants in common.

Husband and wife will own the shares as tenants in common. The dividends will be considered community property.

(2) The issue is how the husband's savings account will be charecterized.

The rules regarding community property, seperate property, inception of title, and sole managed community property are outline above.

Here, the savings account was opened during the marriage in husband's name. Under the inception of title rule, the savings account will be presumed to be community property as it was property acquired during marriage. The husband may attempt to rebut this presumption by clear and convincing evidence, noting that the property was taken solely in his name, and funded solely with his share of dividends. However, dividends generated by the husband's seperate property stocks will be considered income. Therefore, because the account was opened during the marriage, and funded with income from the community property, the court should characterize the savings account as community property.

The savings account is community property that was acquired during marriage and funded with community property funds.

(3) The issue is how the residence should be characterized

The rules regarding community property, seperate property, inception of title, and joint managed community property are outline above.

Here, under the inception of title rule, the Residence will be presumed to be community property as it was acquired during the course of marriage. Further, the Residence was co-signed by both husband and wife and wife. Wife may have a claim

for reimbursement from the community estate, as outline below, because she used the \$50,000 she acquired by gift (seperate property) to pay down the note. The money from wife's employment is income earned during the marriage, which is community property.

The residence should be presumed by the court and characterized to be community property.

(4) The issue is how the Ranch should be characterized.

The rules regarding community property, seperate property, inception of title, and sole managed community property are outline above. Commingling of community and seperate property will not change the characterization of the property, so long as the property may be tracked.

Here, both husband and wife signed promissory notes and purchased Ranch for \$400,000. Because the Ranch was acquired during marriage, the Ranch will be presumed to be community property. The ranch will also be presumed to be Husband's sole management community property as title was taken in his name alone. Wife may have a reiumbursement claim as outline below for her \$25,000 inheritance for the barn and \$75,000 to pay down the principal.

The Ranch should be characterized as community property held as the husbands sole-managed community property.

## II. Claims for reimbursement

The isuses is what claims for reimbursement exists in the four assets due to the use of seperate property.

Where seperate property is used to pay down community property, the spouse who pays down the community property may have a claim of reimbursement from the community estate. The person who utilized seperate property will be able to recover the value of the property used in the division of the marital estate from the community estate. The rules regarding seperate property, community property, and inception of title are outline above.

Here, wife has a valid claim of the \$50,000 she used as a down payment for the Residence, as that \$50,000 was seperate property acquire by gift. Husband has no claim for reimbursement for the savings account, because it was funded with divdends which are community property. There are no claims for reimbursement in the stock as

it is property owned jointly as tenants in common. Wife has a reimbursement claim of \$100,000 regarding the Ranch asset, because the wife contributed \$25,000 to build a barn on Ranch and \$75,000 of her inheritance (separate property) to pay down the principal on the note.

Wife has a \$50,000 claim against the Residence, and a \$100,000 claim against the Ranch.