

## Family Law 2009-2010

February 2009

### QUESTION 5

Shirley and Robert, Texas residents, had three children before divorcing in 1999. In the divorce decree, Robert was ordered to pay a total of \$1,000 per month in child support. He never paid any child support.

Robert married Marcia in 2000. They also resided in Texas. Their community property consisted of Robert's earnings, jointly held savings accounts, a jointly held portfolio of securities, all acquired with Robert's earnings, and a pension plan benefit that Robert received from his employer.

In 2008, Robert and Marcia filed for divorce. At the same time, Shirley filed a motion in her old divorce proceedings to require Robert to pay all child support arrearages (which, by this time, amounted to over \$100,000) out of the community property of Robert and Marcia's marriage. The trial court appointed a receiver and ordered Robert to turn over all of Robert and Marcia's community property, pending resolution of Shirley's motion.

Robert and Marcia objected to the court's receivership order and made the following contentions:

1. that, because the three children of Robert's marriage to Shirley are now over 18 years of age, the court has lost jurisdiction and Robert is no longer responsible for the child support arrearages;
2. that, in any event, Robert's earnings, the savings accounts, and the portfolio of securities are not subject to Robert's child support obligation, if any; and
3. that Marcia's community share of Robert's retirement benefits is not subject to Robert's child support obligations, if any.

**How should the court rule on each of these contentions? Explain fully.**

## QUESTION 6

Carmen and Alex were married in Texas in 1968. Carmen filed for divorce in 2005, alleging insupportability, adultery, and cruel treatment. The court heard the following evidence in a bench trial in 2008:

Both spouses worked outside the home during the marriage. Carmen had worked for thirty-five years and had taken an early retirement two years before trial. Alex was still employed at the time of trial.

Since her retirement, Carmen had devoted her time to household matters and had not sought other employment or job training.

At the time of trial, the community estate contained a number of real and personal property assets including the marital home, a rental property, retirement and savings accounts, two automobiles and household furnishings. The total value of the community estate, less debt, was \$500,000.

At the trial, Carmen testified that she filed for divorce, in part, because of Alex's adultery.

Throughout discovery and continuing at trial, Alex denied having committed adultery. However, both videotape and live witness testimony confirmed that Alex had, in fact, committed adultery.

The trial court awarded Carmen 60% of the community estate, a value of \$300,000. Carmen contends, however, that Alex's adultery and his consistent denials entitled her to an even more unequal division than ordered by the court.

Carmen also sought an award of spousal maintenance. She argued that, during their many years of marriage, Alex was the dominant provider, developing his career, while Carmen worked at low-paying jobs. Carmen proved that her monthly expenses exceed her available retirement income and that she could not meet her reasonable minimum needs with just her monthly retirement check. The trial court denied her request for spousal maintenance and for a greater share of the community property.

- 1. Did the trial court err in denying Carmen's request for a greater share of the community property? Explain fully.**
  
- 2. Did the trial court err in denying Carmen's request for spousal maintenance? Explain fully.**

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**QUESTION 11**

When Child was three months old, Mother relinquished actual care, control, and possession of Child to Aunt and Uncle. Mother did this because she was concerned that her own personal problems and her need to take care of Child's older sister prevented Mother from giving Child the care and attention Child needed. A few months later, the Texas Department of Family and Protective Services ("The Department") got involved. Pursuant to a safety plan implemented by The Department, Aunt and Uncle were temporarily given exclusive care and control over Child.

When Child was 18 months old, Mother told Aunt and Uncle that she was ready to take Child back full time. Before returning Child to Mother, Aunt and Uncle filed a petition in District Court in Travis County, Texas, seeking to be appointed Child's managing conservators or, in the alternative, to maintain access to Child by being appointed Child's possessory conservators. Mother opposed the petition.

At the trial, the evidence showed that Mother had voluntarily surrendered possession of Child to Aunt and Uncle when Child was three months old. The case manager of the family residence center, where Mother was residing with Child's sister, testified that the interactions between Child and Mother had been positive and case manager had no concerns about Child being returned to Mother. The supervisor for The Department, who had earlier implemented the safety plan, testified that The Department recommended reunification of Child with Mother and that it was in Child's best interest to be returned to Mother.

The trial court denied all relief requested by Aunt and Uncle. The trial court applied the parental presumption and appointed Mother as Child's sole managing conservator. The trial court denied Aunt and Uncle's request for access to child.

- 1. Did the trial court err in appointing Mother sole managing conservator? Explain fully.**
- 2. Did the trial court abuse its discretion in denying Aunt and Uncle access to Child? Explain fully.**

## QUESTION 12

Jackie sued her husband, Richard, for divorce. In the divorce petition, Jackie asserted fault grounds against Richard as the cause of the breakup of the marriage, sought an unequal distribution of the marital assets, and asserted that certain assets were gifts to her from her parents.

At the trial, Jackie described Richard as manipulative and controlling, and she testified that he refused to seek medical help for a condition that caused him to be irrational and irritable. Richard admitted that he had threatened Jackie, that he had done so intentionally, and that he had probably done so more than once. Richard admitted that he used threats to make her do what he wanted and that, on the day the parties separated, Richard ordered Jackie to get out of the house or else he would kill her. Richard testified, however, that his threat to kill Jackie was an idle threat made in anger with no present intention of carrying it out.

Jackie claimed twelve items of farm equipment as her separate property. Jackie's mother testified that, when her husband retired, he gave these items of farm equipment to Jackie. Richard agreed that the farm equipment was a gift from Jackie's parents, but Richard also testified that this gift was made to both Jackie and Richard.

The trial court ruled that the farm equipment was a gift to Jackie solely and was her separate property. The trial court also held that Richard was not an innocent spouse. The trial court awarded Jackie 75% of the community estate.

Richard asserts that the trial court erred in its ruling as to the farm equipment and in awarding Jackie 75% of the community estate.

- 1. Did the trial court err in ruling that the farm equipment was a gift to Jackie solely and was her separate property? Explain fully.**
  
- 2. Did the trial court err in its division of the community estate? Explain fully.**

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**QUESTION 1**

John and Susan married in 1977 and separated in 2007. John filed for divorce in 2008. At the divorce trial, the evidence showed the following:

- Susan's minimum expenses were \$1,700 per month.
- Susan was a high school graduate. Before the separation, Susan had not worked outside the home for over twenty years, and John was the only source of income.
- Since the separation, Susan had sought employment and had obtained a job at \$6.50 per hour, but only worked for a week because, as she testified, she was physically unable to do the work.
- Susan testified she had a deteriorating disc in her lower back and that she suffered from depression.
- John testified he believed Susan could support herself; that she could cook, perform household chores, and drive.
- Susan's mother testified that Susan suffered stress and frustration when she had to perform her work too quickly or under pressure.
- Susan did not have any separate property.
- Both Susan and John admitted to several episodes of marital infidelity each had during the marriage.

The trial court awarded Susan 75% of the community estate. Her share consisted of a savings account worth \$10,000 at the time of trial; a 2002 motor vehicle worth \$5,000; a house worth \$90,000; and all clothing, jewelry, and other personal effects in Susan's possession.

Over John's strenuous objection, the trial court also ordered John to pay spousal maintenance of \$1,000 per month until further order of the court.

- 1. Did the trial court err in ordering John to pay any spousal maintenance at all? Explain fully.**
- 2. Did the trial court err in ordering John to pay spousal support for an indefinite period? Explain fully.**

## QUESTION 2

Cindy and Michael married in 2003, and Cindy filed her divorce petition in 2008. After a bench trial, the trial court entered a decree dividing property valued at \$1,500,000. The court characterized a certificate of deposit in Michael's name as community property, and awarded half of it to Michael and half of it to Cindy.

The court also awarded Cindy \$25,000 damages as a result of an assault and battery by Michael.

The evidence at trial established that Michael had purchased the certificate of deposit in his name prior to the marriage and that it had a pre-marriage balance of \$50,000. At the time of trial, the balance was \$60,000, the additional \$10,000 being interest that had accrued during the marriage.

Regarding the award of damages for assault and battery, Cindy testified that Michael had grabbed her and choked her during an argument. Michael testified that he reached for Cindy after she cursed at him, but he denied choking her. The investigating police officer testified that Cindy's face and neck were red, but he did not see any specific hand marks on her neck. Cindy's treating physician, who saw Cindy three days after the event, testified that Cindy had marks on her throat at the time he saw her. On cross-examination, the physician admitted that he was a friend of Cindy.

- 1. Did the trial court commit reversible error by awarding the certificate of deposit half to Cindy and half to Michael? Explain fully.**
  
- 2. Did the trial court commit reversible error by awarding Cindy damages for assault and battery by Michael? Explain fully.**

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**QUESTION 3**

In 1980, Robert and Betty married in Texas. After the marriage, Betty never worked outside the home. Robert controlled and directed all the family's financial affairs and rarely gave Betty any information about their finances. In 1990, Robert founded an air transport company called Charter Air using community assets.

He managed the business without Betty's involvement and never shared with her any information about the operation and condition of the company.

In 1999, Charter Air began to experience financial difficulties. Robert told Betty that, to protect the family's assets from financial ruin, it would be necessary for them to enter into a marital property agreement to partition or exchange their community estate. Robert presented a draft of an agreement that purported to partition to Betty, as her separate property, the family home and its contents, an automobile, and \$100,000 in cash. The agreement partitioned to Robert, as his separate property, all interest in Charter Air and its equipment, an automobile, and a boat. The agreement also partitioned to Robert and Betty, as their separate property, their respective future earnings and income, after-acquired property in their respective names, and all increases of their respective separate properties. Aside from the recitations of the property to be partitioned, the agreement contained no details as to the value of the property.

When Robert gave Betty the draft agreement, he told her she should take it to an attorney to get some advice. Betty consulted Jane, her neighbor, who was an attorney. Jane told Betty the agreement appeared to be one-sided, especially because it partitioned to Robert the entire interest in Charter Air. Jane told her she should obtain from Robert full disclosures of the family's net worth, audited financial statements concerning Charter Air, and information about Robert's present income. She also told Betty not to sign the agreement until she understood the effect of the partition and was fully satisfied that she was getting a fair deal.

When Betty asked Robert for this information, Robert showed her a list of the inventory of Charter Air and told her his opinion of the family's net worth. He told her that his only purpose in suggesting the agreement was to protect the family's assets from creditors during the hard times Charter Air was currently experiencing. He also told her not to worry because he would never try to enforce the agreement against her.

Relying on Robert's representations, Betty signed the agreement.

In 2010, Robert filed for divorce and sought to enforce the agreement.

Betty retained an attorney to represent her in the divorce action. She seeks advice on the following:

- 1. Does Texas law allow a married couple to partition or exchange their community property, and, if so, is it lawful for such a partition to include partition of future income, increases, and after acquired property? Explain fully.**
- 2. What statutory defenses, if any, does she have to prevent enforcement of the agreement, and what is the likelihood such statutory defenses will succeed? Explain fully.**
- 3. What common law defenses, if any, does she have to prevent enforcement of the agreement? Explain fully.**

#### **QUESTION 4**

Mother and Father had one son (“Child”) born during their marriage in 1998. In 2000, Mother and Father divorced and Mother was awarded sole managing conservatorship of Child. In 2009, Father filed a petition to modify the parent-child relationship, seeking to be appointed sole managing conservator of Child.

At trial, Father presented the testimony of Psychotherapist, who had seven therapy sessions with Child. Psychotherapist testified that, at their first session, Child claimed that Mother had been physically abusive to him and asked how he could escape from Mother’s home. Psychotherapist also testified, however, that Child loved Mother and that Child felt protective toward Mother.

Father also produced evidence that records from the local police department detailed several calls to Mother’s home. In one incident, Child reported that Mother threatened to strike Child with a skillet and that Child stated that Mother had made similar threats in the past. The principal of Child’s middle school testified that Mother’s contacts with the school were often contentious, while Father had always behaved appropriately.

Mother testified, denying that she ever hurt Child. Mother said Father constantly threatens her with legal action. Mother also testified that Child is involved in church, school, and sports activities and that Child wanted to continue in those activities; that Child loves animals and Child has several pets; that Mother provides Child with a nice home and that Child is happy living with Mother.

The Trial-Court awarded sole managing conservatorship of Child to Father. The Trial Court found that Mother’s monthly net resources are \$2500. The Trial Court signed a child support order requiring Mother to pay monthly child support in the sum of \$750, but the Trial Court did not file findings of fact with regard to the child support order. Although Mother did not make an oral request for findings of fact at the hearing and did not make a written request for findings of fact within 10 days of the date of the hearing, she contends on appeal that she was entitled to findings of fact with regards to the child support order.

- 1. Did the Trial Court err in awarding sole conservatorship of Child to Father? Explain fully.**
- 2. Did the Trial Court err in:**
  - a) Ordering Mother to pay child support in the sum of \$750?**
  - b) Signing the child support order without issuing findings of fact?****Explain fully as to each.**