

ST. MARY'S UNIVERSITY SCHOOL OF LAW

COMMUNITY PROPERTY
Fall Semester 1996

FINAL EXAMINATION
Professor Douglas R. Haddock

INSTRUCTIONS

1. Some, but not necessarily all, of the problems on your Final Examination will refer to the following Factual Information, comprised of three pages, excluding this page of instructions. The information is organized in 13 numbered paragraphs for reference purposes. Some additional facts and other information will be included with some of the problems. You should assume that those additional facts apply only to the problem in which they appear. The Factual Information in the following pages gives you general background and numerous clues as to problems that might be presented in the Examination.

2. Prior to taking the Examination, you are allowed to get assistance from any and all resources, including the problems and readings assigned during the semester, the daily Study Guides, your notes, and your colleagues, in studying and reviewing the Factual Information. You are encouraged to study the Factual Information thoroughly, individually and, if you desire, in groups, and to analyze questions you anticipate from reviewing the course.

3. During the Examination period, you will be allowed to use any printed or written material you wish, including the text, the workbook, the Texas Family Code, your notes and your outlines, and the daily Study Guides. Undue reliance on the fact that this is an "open-book" examination, either before or during the Examination, will almost certainly hamper your performance. You are not allowed to get help from other persons during the Examination period and your responses to the problems must be your own work, composed and written during the Examination period.

Community Property Final Examination Factual Information

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[1] The Mulrooney family -- Maureen, Maurice, and three children -- migrated to the United States from Europe in the middle of the 19th century. Six generations later, there are over 1,000 living descendants of Maureen and Maurice. Most of these descendants reside in the United States, but a number are living in Europe, a few in Asia, and some are in South America. (You will probably be relieved to know that we shall discuss only a few of the Mulrooney descendants in these pages.)

[2] In 1956, Alysson Appleby, the great-great-granddaughter of Maurice and Maureen, married Aaron Allen. Alysson and Aaron celebrated their 40th wedding anniversary earlier this year. They have three children and two grandchildren. After living in Indiana for most of their married life, Aaron and Alysson moved to Texas in 1990, following Aaron's retirement from the University of Indiana. He had worked for the University in several administrative capacities for almost 40 years. Two of the children of Alysson and Aaron and their two grandchildren live in Texas, and they moved from Indiana to Texas both to be closer to family and to enjoy the Texas weather.

[3] In 1958, Aaron and Alysson had purchased a small house in Bloomington, Indiana. They lived in that home until 1965. Their first child, Barry, was born in 1960 and their second child, Connie, was born in 1965. With a growing family, they decided to move into a larger house. The first house had been purchased with a down payment of \$1,000, which Aaron had received as a gift from his parents, and the proceeds of a \$15,000 loan. The deed to the house named Aaron and Alysson as grantees and also specified that they held the property as joint tenants. When they purchased the new house, they still owed \$13,500 on the loan. The proceeds from the sale of the first house (\$18,000) were used (a) to repay the rest of that loan, (b) to make the down payment on the new house (\$3,000), and (c) to buy a few pieces of new furniture. The purchase price of the second house was \$30,000.

[4] Before their move to Texas in 1990, Alysson and Aaron were still living in the second house. Rather than sell that house, which was no longer subject to a mortgage, they decided to rent it to a young family with whom they were acquainted through Aaron's work. That family lived in the house for two years, paying \$800 per month in rent, and Alysson and Aaron have leased the house to another family for the past three years.

[5] Upon moving to Texas, Aaron and Alysson purchased a condominium in Austin for \$150,000. To make the purchase, they used funds in a money market account they had started in 1975. From 1975 to 1990, deposits to the account were regularly made from income received by Alysson and Aaron, and they were able to pay \$100,000 of the purchase price of the condominium from the money in that account. The remaining \$50,000 of the purchase price came from a mortgage loan. They have been making the monthly payments on that loan with the rent from the house they own in Indiana. The rent is also sufficient to pay the taxes and insurance on both homes. The deeds to both homes name Aaron and Alysson as grantees, "as joint tenants, with rights of survivorship."

[6] During the years he worked for the University of Indiana, Aaron and the University had contributed to a "defined contributions" retirement fund on his behalf. There is a substantial amount of money in his retirement account and he is now receiving monthly payments from the fund. Both he and Alysson are also employed on a part-time basis and are receiving some income from that employment.

[7] Barry, the oldest child of Alysson and Aaron, has been a graduate student at the University of Texas. He is married to Bonnie and they have two children. Bonnie is a lawyer and works in the State Attorney General's office. She enjoys her work and has been receiving a sufficient income to support the family and pay for Barry's educational expenses. They purchased a modest home several years ago, using money Barry had inherited (\$10,000) and the proceeds of a loan (\$90,000) to make the purchase. Bonnie is one of two children and her parents are quite wealthy. They have been life-long residents of Texas. They are generous people, especially with their children, and Bonnie frequently receives expensive gifts from them. They have also drafted wills which would set up a trust fund for both Bonnie and her brother when one of them (the parents) dies.

[8] David is the youngest child of Alysson and Aaron. He graduated from high school in 1990, just before his parents moved to Texas. David stayed in Indiana for several years to pursue an interest in golf. He worked during those years at a country club with a club professional and also spent many hours working on his golf game and playing in amateur tournaments. Two years ago he decided golf was not the best career for him and he is now a student at Trinity University in San Antonio, Texas. He has never been married but is engaged to Carly, also a student at Trinity. Carly is from California and is studying history. She wants to be a college professor. David has not yet decided what his career plans are. Carly and David plan to get married in the summer of 1997.

[9] The middle child of Aaron and Alysson is Connie. In 1985, she married Chuck and moved to California. Chuck and Connie were married for four years but that marriage ended in divorce. Connie remained in California and three years ago she married Carl. Carl is an interior designer and Connie is an employee of Wells Fargo Bank. They reside and work in the San Francisco metropolitan area. They have not accumulated very much property but they purchased a house in 1994, using money Connie had received under the divorce decree in her first marriage (\$10,000) and money borrowed by Carl from his father (\$10,000) as a down payment.

[10] Another descendant of the Mulrooneys is Emilio Esquivel. Emilio was born in 1950 in San Antonio, Texas. After graduating from high school in 1968, he joined the Air Force. During 20 years of service as a pilot in the Air Force, Emilio resided in Texas, Alaska, Japan, North Dakota, and Germany. In 1970, Emilio married Eve Ewing. Eve and Emilio have two children, born in 1972 and 1974. In 1980, after two years of marital difficulty while Emilio was stationed in Alaska, Emilio and Eve dissolved their marriage. The divorce was not bitter but it was an understandably traumatic experience for them and their children. The decree essentially divided the vested property of the couple equally and awarded custody of the children to Eve. Emilio was also ordered to pay both child support and alimony. Eve returned to Texas and in 1988 entered into a second marriage.

[11] After retiring from the Air Force in 1988, Emilio also returned to Texas. He has been working as a commercial pilot, and in 1990, he also married a second time. He and his wife, Ellen, live in Dallas. Ellen is rather wealthy, having inherited \$3,000,000 in stocks when her first husband was killed in an automobile accident. Ellen and Emilio live in an expensive home which had been purchased in 1980 by Ellen's first husband, just a few months before he married Ellen. Ellen and her first husband resided in the house from the time of their marriage until the husband's death. Since their marriage six years ago, Ellen and Emilio have made the house their home.

[12] Emilio receives a good salary as a commercial airline pilot. He is also receiving Air Force retirement pay. Each month, he deposits all of his retirement pay and some of his salary into two accounts -- a money market account which he opened in 1988 and a savings account in the names of both Emilio and Ellen. Some of the dividends from the stocks referred to in paragraph [11] have also been deposited in the savings account.

[13] The children from Emilio's first marriage are now both adults. The oldest, Henry, is 24 years of age. He lives in Texas and is engaged to Hannah. They have discussed the upcoming marriage in some detail and have signed the following agreement, which they drafted without any legal assistance:

PRENUPTIAL AGREEMENT
Between Henry Esquivel and Hannah C. Starr

In contemplation of our marriage, we (Hannah C. Starr and Henry Esquivel) hereby agree as follows.

1. Because of our deep love for one another, we shall hold all of our future income as community property and not as individual property. By this agreement, we intend that all property we receive, from any source whatsoever, shall be owned by us equally, as wife and husband.

2. Notwithstanding paragraph 1, Hannah will be entitled to any money or property received as inheritance from her parents. We acknowledge that this exception to paragraph 1 is entered into out of respect for the wishes of Hannah's parents.

3. In the event of divorce, all of our property shall be divided equally between us.

/s/ Hannah C. Starr

/s/ Henry Esquivel