

ST. MARY'S UNIVERSITY SCHOOL OF LAW

COMMUNITY PROPERTY
Spring Semester 1995

FINAL EXAMINATION
Professor Douglas R. Haddock

INSTRUCTIONS

1. There are four problems on the following two pages. Problems 1, 2, and 4 have four, three, and four parts respectively. You have two hours in which to complete the examination. Times suggested for each problem total one hour and forty-five minutes. **There is a limitation on the length of your examination answers. Your responses to all four problems must be contained in one blue book (16 two-sided pages), with writing on no more than (a) every other line on both sides of each page or (b) every line on one side of each page. Typewritten responses are limited to six 8½" x 11" pages, double-spaced with 12-point (or larger) type and one-inch margins. Material that exceeds these limitations will not be considered in the grading process.**

2. **Unless the facts of a problem suggest otherwise, you are to assume that the parties are domiciled in Texas at all pertinent times and that all events occur in Texas. Each problem involves two people, identified as W and H, and some problems involve other individuals. Unless the facts of a problem indicate otherwise, you are to assume that W (Wife) and H (Husband) are married to each other at all pertinent times.**

3. You are allowed to use any printed or written material you wish, including the text, your notes, and your outlines. You are not allowed, of course, to give help to, or get help from other persons during the examination. **Your answers will be graded according to how well you recognize and how thoroughly you analyze the issues presented by the problems, in light of assigned readings and class discussions. You should discuss all issues, even if your disposition of some of the issues would resolve the problem as a practical matter.**

4. St. Mary's University School of Law prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify herself or himself in an examination is a violation of this policy and of the Code of Student Conduct.

5. When you have finished with the examination, by the end of the examination period, place the examination inside the bluebook and turn both in to the proctor. Place your Exam Number on the cover of the bluebook and in the space provided below.

EXAM NUMBER

Problem 1

(Suggested Time: 20 minutes)

In each of the following cases, classify title to Blackacre for marital property purposes. Briefly explain your conclusions.

a. W purchased Blackacre in March of 1985 with a down payment of \$10,000 and proceeds of a \$90,000 loan secured by a ten-year mortgage. W was then single but she married H in 1986. All but \$1,000 of the \$90,000 principal amount of the loan was repaid with salary earned by W during her marriage to H. The \$1,000 was paid with salary earned by W before her marriage to H.

b. Blackacre was deeded to W as sole grantee. Consideration for the purchase came from funds withdrawn from an account. All deposits to the account were from salaries of W and H.

c. Blackacre was purchased for \$100,000 by H and W. They paid \$50,000 from an account received by H through his father's will and borrowed the other \$50,000 from a mortgage lender. Both H and W executed all loan documents and both are named as grantees in the deed. They have made monthly payments from their salaries to the mortgage lender and the balance still due on the loan is \$30,000. The current market value of Blackacre is \$150,000.

d. Assume now that the facts are identical to those presented in paragraph c, except that only H executed the loan documents and only H is named as grantee in the deed. The loan documents do not specify any sources from which repayment of the loan is expected.

Problem 2

(Suggested Time: 25 minutes)

a. H and W were married in 1975. For five years they saved money from their salaries, depositing the money on a monthly basis in a joint savings account with no survivorship rights. In 1980, they withdrew \$30,000 from the account and used it to purchase five acres in the country. Only H was named as a grantee in the deed to the property. In 1985, H and W contracted with a builder to build a house on the five acres. The house cost \$125,000 and at the time the house was completed, the lot and house together had a value of \$160,000. Assume that H and W have used the five acres as their home since 1985. They have decided to move to a condominium and have put their house on the market. An offer to purchase the property has been received and H has decided to accept it. **Discuss whether both H and W must sign the contract for it to have any legal effect.**

b. **Discuss whether your response to a would differ if H had received the five acres and house as a gift from his parents.**

c. **Discuss whether your response to a would differ if H and W had moved to the condominium first and only then put their house on the market.**

Problem 3

(Suggested Time: 30 minutes)

W and H were married in Iowa. They lived there for ten years and then moved to Texas. During the time they resided in Iowa, H saved 10% of his salary each month and placed it in a money market account. By the time they moved to Texas, there was \$50,000, from deposits and interest, in the account. He continued to make deposits from his salary after the move to Texas, and after the couple had resided in Texas for five years there was \$100,000 in the account. H then withdrew the \$100,000 and purchased a house with the money. W and H moved into the house with their two children. They have resided in the house since then, except that the two children are both married and have families and homes of their own. H recently died without a will, survived by W and the two children. The fee simple interest in the house is now worth \$200,000. **Discuss the present interests in the house.**

Problem 4

(Suggested Time: 30 minutes)

H and W own the following assets:

1. A house in which they reside, purchased with community funds and credit extended during the marriage, valued at \$100,000 and subject to a \$50,000 mortgage;
2. An automobile purchased with savings from H's salary;
3. An automobile purchased with savings from W's salary;
4. \$20,000 in a savings account, composed of \$15,000 inherited by W and \$5,000 in interest earned on that \$15,000;
5. \$10,000 in a mutual fund created with the salaries of both H and W.

Assume that W and H have the following debts. **In each case, discuss which of the assets listed above the creditor could look to, if necessary, for satisfaction of the debt.**

- a. A college loan obtained by H before marriage.
- b. A loan obtained solely by H to pay his daughter's college tuition.
- c. A loan obtained solely by H to buy an expensive home entertainment system.
- d. A loan obtained by both W and H to finance a vacation.

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FINAL EXAMINATION ANALYSIS
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Problem 1

a. In classifying title to marital property, Texas follows an "inception of title" approach. This means that the nature of ownership is characterized according to facts and circumstances as of the time the title has its beginning. In this example, we look to 1985, when W purchased Blackacre. Because she was single at the time, her \$10,000 down payment was presumably separate property. The rest of the purchase price (\$90,000) was financed by a loan which was procured on her credit alone, as a single person. Under this approach to classification, the means used to repay the mortgage loan will not change the character of the property. Blackacre in this case is therefore W's separate property.

b. The instructions tell us to assume that W and H were married at all pertinent times. Salary earned during the marriage is community property and all of the money deposited and later used to buy Blackacre was from that source. Blackacre is simply a mutation or change in form, from money to real property, and therefore is 100% community property. The fact that W alone is named as grantee does not affect this conclusion in the absence of additional evidence, such as evidence of a gift from H to W. The form of title, i.e., whether the property is held in the name of one spouse or both spouses, is not determinative and does not overcome the community property presumption.

c. In this instance, Blackacre was purchased with a combination of (a) funds received by H as a testamentary gift and (b) loan money. Because of "inception of title," discussed in a, the property will be classified according to the nature and proportions of the funds with which Blackacre was purchased. Property received by will is separate property. We can easily trace one-half of the original purchase price to money willed to H, and one-half of Blackacre is therefore separate property of H. The other one-half was derived from credit extended during the marriage of H and W and therefore would be considered community property. Under the inception of title doctrine, monthly payments on the mortgage do not alter this characterization.

d. With the change suggested in paragraph d, the answer presented in c remains the same. The fact that only H executed loan documents and was named as grantee on the deed changes neither the community presumption as to title nor the nature of credit extended to a married person. Because the loan documents do not suggest that the creditor is looking solely to H's separate property for repayment, that portion of the ownership of Blackacre remains community property.

Problem 2

a. The question posed here is whether both H and W must sign the contract in order for it to have any legal effect. There are several pieces to this question, all revolving around the subject of property management. Although it is community property, a married person's salary is subject to the sole management of that spouse under Texas law. When one spouse's sole management community property is mixed with the sole management community property of the other spouse, as in this case, the mixed property is subject to joint management of the spouses (absent an agreement to the contrary). We are told, however, that only H was named as a grantee in the deed to the property. This doesn't necessarily change the management of the property, but it is an important fact, since property held in one spouse's name is presumed to be subject to the sole management of that spouse, and a third person dealing with that spouse may be able to rely upon that spouse's authority to deal with the property. This might suggest that the contract would be effective even if H alone signed it. There are qualifications to this third party protection, however. The person dealing with the spouse can not have actual or constructive notice of the spouse's lack of authority. This brings us to another piece of the puzzle.

This particular property is not simply joint management community property; it is also a homestead. One of the special rules applicable to homesteads is that they cannot be sold or encumbered by one spouse without the joinder of the other spouse, whether they are community property or separate property of one of the spouses. The person who has offered to purchase the homestead of H and W is presumably on constructive (if not actual) notice that this property is a homestead of married persons. Therefore, because of both the law pertaining to homesteads and the law defining this particular property as joint management property independent of the law of homesteads, the offeror should demand that both H and W sign the contract.

The question asks whether both H and W must sign the contract "in order for it to have any legal effect." This brings us to another question, concerning which there is a difference of opinion in Texas courts. According to one line of thought, a contract or conveyance signed by one spouse is effective as to that spouse's interest in joint management community property, although it cannot bind the other spouse's interest. But as to homesteads, it is doubtful that such a rule would apply. And in any event, a better rule, which has been adopted by some Texas courts, is that joint management community property is just that, and cannot be affected without the joinder of both spouses. For these reasons, I conclude that both H and W must sign the contract for it to have any legal effect.

b. My conclusion would be the same but the reasoning would be based solely on the fact that the property is a homestead, which is also the most compelling reason for the answer given in a. As noted above, homesteads are subject to joint management even if they are separate property of one of the spouses. For that reason, both spouses must sign the contract. Because the gift is H's separate property, it would be subject to his sole management and control but for the fact that it is the couple's homestead.

c. If H and W move to the condominium before putting their house on the market, there would be a significant change of analysis. They can not have both the old and the new residences classified as homesteads at the same time. By moving out of the old home and into the new, they have probably abandoned the old as a homestead. As was discussed in a and b, classification as homestead was crucial to the analysis, both because of the joint management rule of homesteads and the fact that a third party would have notice of the necessity of joint management. In this scenario, however, the homestead issues are removed and the purchaser may be able to claim the benefit of the protection resulting from the fact that the property is held in H's name alone. Unless the purchaser has actual or constructive notice that the property is in reality joint management property, H's name on the contract will probably suffice to bind both H and W as to that purchaser.

Problem 3

We are asked here to discuss the present interests in a house in the context of the death of a spouse. Because H died intestate, and the laws of inheritance vary according to whether the property is separate or community in nature, it is necessary to classify the ownership of the house during the marriage before we can reach any conclusions about current ownership.

The house was purchased with \$100,000 accumulated from savings from H's income during marriage. Of that amount, \$50,000 was the result of savings from income, plus interest on those savings, during the time W and H were living (and presumably domiciled) in Iowa. It is customary to refer to the law of the domicile of the parties at the time of acquisition to determine the classification of personal property. The Texas Supreme Court has decided to follow the Restatement 2d ("most significant relationship") approach to "choice of law" questions, and on this issue the Restatement 2d also suggests a reference to the law of the place where the parties were domiciled at the time of acquisition.

Based on the foregoing analysis, we should look to the law of Iowa to determine the classification of the \$50,000 in the money market account when W and H moved to Texas. Iowa is not a community property state and they therefore follow a common law, individualist classification scheme for marital property. This means that the salary of H earned through his employment in Iowa would be owned entirely and solely by H, at least during the marriage. The same would be true of interest earned on that money. Although this "individual" property is not identical to "separate" property under the Texas law, the two are similar.

The other \$50,000 that was used to purchase the house apparently came from (a)H's salary earned after the couple moved to Texas, (b)interest on that money, and (c)interest on the \$50,000 earned in Iowa. Once the couple is domiciled in Texas, under the analysis presented earlier, acquisitions such as H's income will be classified according to Texas law. Salary earned during marriage in Texas is classified as community property. Also, income earned during marriage, from either community property or separate property, is community property. This presumably means that

all three components of the \$50,000, referred to in the first sentence of this paragraph, would be classified as community property.

Having decided that 50% of the house was community property at H's death and 50% was not community property, we are ready to apply the laws of intestate succession. In §38 of the Texas Probate Code, we are told that real property "other than a community estate" (in this case, 50% of the house) passes as follows: $\frac{1}{3}$ for life to the surviving spouse (W) and the remainder ($\frac{2}{3}$ for the life of W and the remainder in fee simple) to the decedent's children. In this case, then, W takes a life estate in $\frac{1}{3}$ of 50% of the house and the two children share the remainder of the fee simple as to that 50%. As to the 50% of the house that is classified as community property, §45 of the Texas Probate Code now provides that all of the community property passes to the surviving spouse if all surviving children of the decedent are also children of the surviving spouse. This appears to be the case here and W would therefore own a fee simple interest in 50% of the house.

The foregoing discussion addresses the basic ownership interests in the house after the death of H. There is, however, one more interest that should be mentioned. Under Texas law, a surviving spouse is entitled to a "survivor's homestead" interest in addition to any other ownership interest she or he may have. In the instant case, this means that W is entitled to exclusive possession of the home as long as she lives and chooses to maintain the property as her home. The interests of the children would therefore be subject to this homestead interest of their mother.

Problem 4

In this problem, we are asked to determine which of certain assets could be used to satisfy four different loans. Under Texas law, marital property liability generally follows the management rules (rather than title) and this problem therefore requires an analysis of management as well as the statutes pertaining to marital property liability.

All of the debts in the problem are contractual in nature rather than tortious. This is of some significance, since Texas law makes some distinctions between the two. The basic framework of Family Code §5.61 and related sections for *contractual* liability is as follows:

- a. Community property subject to a spouse's sole management is not subject to liabilities incurred by the other spouse before or during marriage;
- b. Community property subject to a spouse's sole or joint management is subject to liabilities incurred by that spouse before or during marriage;
- c. Each spouse has a duty to support the other spouse and children and "a spouse or parent who fails to discharge the duty of support is liable to any person who provides necessaries to those to whom support is owed." Tex. Fam. Code §4.02.
- d. Homesteads (and possibly cars) are exempt from debts not related to the homestead itself.

These rules regarding liability can now be matched up with the assets listed in the problem according to management rules contained in Texas Family Code §5.22:

1. The house where the family resides, which is presumably the homestead;
2. An automobile purchased with savings from H's salary, which would be subject to sole management of H (a mutation of personal earnings);
3. An automobile purchased with savings from W's salary, which would be subject to sole management of W (a mutation of personal earnings);
4. \$20,000 in a savings account, from \$15,000 inherited by W and \$5,000 interest on that sum, all of which would be subject to sole management of W (separate property and revenue from that property) although the interest is community property;
5. \$10,000 in a mutual fund, from salaries of both H and W, which would be joint management community property (because sole management community property of each spouse has been mixed with similar property of the other spouse), at least in the absence of an agreement to the contrary.

The foregoing background can now be applied to the four debts that are presented in the problem:

a. A college loan obtained by H before marriage: H's sole management property and joint management community property (except for the homestead) would be liable for such a debt, i.e., H's automobile (2 - subject to possible exemption similar to homestead) and the mutual fund (5).

b. A loan obtained solely by H to pay his daughter's college tuition: The property liable here would be the same as that in a. Property managed solely by W apparently would not be affected under the provisions relating to the duty to support children and the liability to those who provide necessaries, since the support obligation ends upon graduation from high school and this loan was for payment of *college* tuition. The only qualification of this conclusion is that the duty of support of a child extends through the child's minority. If the child was still a minor when she started college, it might be argued that this was a debt for necessaries, making all non-homestead property accessible.

c. A loan obtained solely by H to buy an expensive home entertainment system: Again, the property liable in this case would probably be the same as that in a. If it is a "fixture" the stereo system could be a home improvement, possibly eliminating homestead exemption. It probably would not be a "necessary," provided for W (as well as H), but if so, W's sole management property (her automobile, unless exempt, and the savings account) would also be liable.

d. A loan obtained by both W and H to finance a vacation: In this case, of course, all property of both spouses, except for the homestead and cars, would be liable.