

ST. MARY'S UNIVERSITY SCHOOL OF LAW

COMMUNITY PROPERTY
Summer 1995

FINAL EXAMINATION
Professor Douglas R. Haddock

INSTRUCTIONS

1. There are eleven problems on the following six pages, numbered from page 2 to page 7. You have two hours and fifteen minutes in which to complete the examination. Problems 1-8 are multiple choice problems. Problems 9-11 are essay problems. Problems 1-3 are based on two factual situations that are new to you. Problems 4-11 are based on the Factual Information that was distributed during the last two weeks of class. Additional information is presented with some of the problems. Record your answers to the multiple choice problems (a, b, c, or d), as well as your essays, in the bluebooks. If you wish to explain your choices on the multiple choice questions in any way you may do so. Each multiple choice problem should require approximately three to five minutes to answer and each essay problem should require about twenty to thirty minutes.

2. 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. On essay problems, you should discuss all issues, even if your disposition of some of the issues would resolve the problem as a practical matter. On multiple choice problems you will receive full credit for a correct choice; if you explain your choice, both your answer and your explanation will be considered in grading.

3. There is a limitation on the length of your examination answers. Your responses to all eleven 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.

4. Except for those instances in which the Factual Information or the specific facts of a problem suggest otherwise, you are to assume (a) that the parties are domiciled in Texas at all pertinent times and that all events occur in Texas; (b) that people identified as husband and wife are married to each other at all pertinent times; and (c) that the parties have not entered into any agreements affecting their property.

5. 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.

6. 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.

Problem 1

Susan and Mario are married and have resided in Texas during their three years of marriage. Both are employed outside of the home. Susan is a participant in a defined benefits retirement plan sponsored by her employer. Under that plan, Susan must be employed for 10 years before her interest in the plan vests and she has been working for the employer for only five years. Assume you are a friend of Susan and she has asked you whether her husband will be entitled to any of her retirement benefits if Susan and Mario divorce. Which of the following comments would you be likely to make in response to Susan's question?

I. Because Susan's interest in the retirement plan is contingent, Mario will not be entitled to any of Susan's retirement benefits if they divorce before she has been working for the employer for 10 years.

II. To the extent they have been acquired during the marriage, Mario will be entitled to 50% of Susan's retirement benefits in the event of a divorce.

III. Mario will not be entitled to a share of Susan's retirement benefits because Texas follows the "inception of title" doctrine in classifying marital property, and Susan began her employment before her marriage to Mario.

IV. Mario will be entitled to a share in Susan's retirement benefits because of the community property presumption.

- a. Not I, II, III, or IV
- b. II and IV, but not I or III
- c. II, but not I, III, or IV
- d. I, but not II, III, or IV

Problems 2 and 3 are based on the following facts:

W and H have been married since 1970. Their current assets include (a) \$20,000 in a savings account in the name of H, funded entirely by H's salary during marriage and interest earned on funds in the account; (b) shares of stock inherited by W, presently valued at \$10,000; (c) a house, in which H and W reside, purchased during the marriage with a 20% down payment from salary received by both H and W during the marriage and proceeds of a loan for which both W and H are indebted. W and H have two children and W has one child from a previous marriage. All three children are now adults and are themselves married and living in their own homes.

Problem 2

May a creditor use the \$20,000 in the savings account to satisfy a contractual debt incurred by W alone?

- a. Yes, because the money is community property.
- b. Yes, because the money in the account is subject to joint management by the parties.
- c. No, because the money is subject to sole management by H.
- d. No, because the money is H's separate property.

Problem 3

Which of the following statements accurately describe(s) succession to W's interests in the property (a, b, and c) in the event W dies without a will?

- I. W's children will take nothing and H will take all because of the policy favoring postponement of intergenerational transfers of wealth.
 - II. W's children will take all of W's interest in the savings account and the house.
 - III. W's children do not have a possessory interest in the house.
 - IV. H inherits a $\frac{1}{3}$ interest for life in the shares of stock.
- a. I and III, but not II or IV
 - b. II and IV, but not I or III
 - c. I, but not II, III, or IV
 - d. II and III, but not I or IV

Problems 4-11 are based on the Factual Information distributed during class.

Problem 4

According to paragraph [4] of the Factual Information, Wanda and Herb resided in North Dakota from 1984 to 1989. During that time, Herb was receiving a substantial income and Wanda was working as a nurse. Herb accumulated \$500,000 in liquid assets during the period the couple resided in North Dakota; Wanda saved \$10,000 in an account in her name alone during the same period of time. The parties brought these sums with them to Texas and deposited them in separate accounts. Herb has periodically transferred any interest or income from the \$500,000 to another account and has constantly maintained the balance in the original account at \$500,000. Wanda has continued to make deposits to her account; as a result of the deposits and accrued interest, the account that was opened with \$10,000 brought from North Dakota now has a balance of \$25,000. Based on these facts, which of the following statements is most accurate?

- a. Each account consists of the respective spouse's sole management community property.
- b. Herb has successfully avoided commingling of separate property and community property, thereby avoiding the possibility that Wanda could obtain any of the \$500,000 in the event of a divorce.
- c. The \$500,000 in Herb's account is his separate property but the funds in Wanda's account have become community property.
- d. A provision in Herb's will bequeathing the \$500,000 in the account to his sister would not put Wanda "to an election" between the will and her marital property rights.

Problem 5

If Wendy Welford and Harold Hassel decide to dissolve their marriage later this year, which of the following statements would be accurate? (See paragraphs [2] and [3].)

- I. Harold could not agree to pay maintenance or alimony to Wendy because their marriage does not meet the requirements of the new statute providing for spousal maintenance after divorce.
- II. The court could award 100% of each of the spouse's retirement benefits to the employee spouse, i.e., award retirement benefits received from Harold's employment to Harold and those *received through Wendy's employment to Wendy.
- III. Because the marriage has lasted for only a short time, very little of the property owned by Harold and Wendy is subject to division by the court.

IV. Wendy and Harold could make their own agreement concerning property and the agreement would be binding on the court if both parties signed the agreement of their own free will.

- a. I, II, and III, but not IV
- b. II, III, and IV, but not I
- c. II and III, but not I or IV
- d. I and IV, but not II or III

Problem 6

As a faculty member at Midessa State University, Wendy Welford is participating in a defined contribution retirement plan. (See paragraphs [2] and [3]e.) Which of the following statements concerning that plan is/are accurate?

I. If Wendy's retirement benefits were not considered at the time she and Hillman Hilton were divorced, Hilton has a legally protected interest in those benefits.

II. The five percent contributed to the plan each month by the University will be characterized as separate or community property when it is actually received by Wendy.

III. For marital property purposes, Wendy has a present interest in the retirement fund because it is a vested rather than a contingent account.

IV. If Wendy has authorized the University to withhold five percent of her salary each month and deposit that sum in the retirement account, all funds deposited pursuant to that authorization during Wendy's marriage to Harold Hassel should be characterized as community property of Harold and Wendy.

V. It is possible that part of the retirement account would be classified as Wendy's separate property.

- a. I, III, IV, and V, but not II
- b. I, IV, and V, but not II or III
- c. II, III, and IV, but not I or V
- d. II and V, but not I, III, or IV

Problem 7

Although their short marriage has been a blissful one so far, assume now that Harold Hassel and Wendy Welford are considering a marital property agreement. Which of the following bits of advice would be **bad** legal advice?

I. You may express your wishes to one another orally and then kiss or shake hands to make the agreement binding.

II. You may provide by agreement that salary earned by each of you during marriage shall be separate property of each rather than community property.

III. Harold may agree that the salary earned by Wendy during the marriage will be her separate property.

IV. Marital agreements are not favored by law, and therefore the agreement might not be enforceable.

V. You may provide by agreement that the house (see paragraph [3]a) is community property.

- a. I, III, and IV, but not II or V
- b. II, IV, and V, but not I or III
- c. I, IV, and V, but not II or III
- d. I, III, IV, and V, but not II

Problem 8

Herb Hess has had a policy of insurance on his life since 1980. It has a present cash surrender value of \$100,000 and the proceeds payable upon his death are \$500,000. In 1988, he changed the designated beneficiary under the policy from his mother to Wanda Warbie. Which of the following is the best statement of the marital property implications pertaining to this insurance policy?

a. The cash surrender value of the policy is Herb's separate property, but if he predeceases Wanda with the insurance still in force the \$500,000 in insurance proceeds will be part of Wanda's separate estate.

b. The cash surrender value of the policy is property owned by Herb but the death benefit is not considered property as long as Herb is alive.

c. The cash surrender value of the policy is a combination of Herb's separate property and community property and the death benefit will be characterized at the time of death according to the source of the premiums for the period in which Herb dies.

d. The cash surrender value of the policy is part of the community estate of Herb and Wanda, but if Herb predeceases Wanda with the insurance still in force the \$500,000 in insurance proceeds will be Wanda's separate property.

Essay Problems

Problem 9

Harold Hassel is concerned about the house in Midessa, discussed in paragraph [3]a. His concerns are somewhat at odds with one another. He wonders whether his wife of one year (Wendy Welford) would be entitled to the house if something should happen to him or in the event of a divorce. On the one hand, he would like Wendy to be entitled to the house when he dies. He would, however, prefer that she not have any control over or interest in the house if the marriage relationship turns sour. How would you respond to Harold's concerns?

Problem 10

In terms of marital property, discuss the nature of the ownership and management of the Mercury described in paragraph [3]b. For this purpose, assume that Harold paid a \$500 entry fee to get into the golf tournament mentioned in paragraph [3]b.

Problem 11

Discuss the significance, as to marital property, of the fact that Herb Hess and Wanda Warbie made North Dakota their home from 1984 to 1989.

Problem 12

Wife purchased a residence just before marrying Husband ten years ago. The house had a value of \$100,000 at the time of purchase and at the present time is valued at \$150,000. Wife paid \$20,000 as a down payment and the remaining \$80,000 was borrowed by her. The loan was secured by a mortgage on the property. All payments on the mortgage note have come from the community estate of Wife and Husband. At 8% interest and a 30 year term for the loan, the payments have been \$587 per month. The payments made on the loan total \$71,000 and the balance due on the mortgage loan is 70,000. The community estate has also paid property taxes (\$20,000) and insurance (\$7,000) on the residence. The parties have now decided to dissolve their marriage. Husband has no separate property and a very modest earning capacity. The couple own community assets valued at about \$20,000. Wife is highly skilled and will likely continue to earn a good income. Assume you are a clerk to the trial judge handling the divorce of Husband and Wife. She has asked whether it would be permissible for her to divide the marital property so that Husband takes the residence. How would you respond to that question?