

QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Mary and Tom were married in 2000, after graduating from college together. Using money from their wedding, they put \$10,000 down on a house. Tom began his career as a grade school teacher and Mary found an entry level management position in a renewable energy company. They did not have children.

In 2002, Tom's father died, leaving him a \$75,000 inheritance. Tom used \$5,000 to pay off the loan on his car and put the rest of the money into a certificate of deposit (CD) titled in both his and Mary's names. Mary quickly moved up the corporate ladder as her employer's business grew.

In June 2010, Mary and Tom decided to separate. Unbeknownst to Tom, Mary was having an affair with a business associate. She wrote out a short agreement providing that she would stay in the marital home and be solely responsible for the mortgage payments. At that time, the fair market value of the home had decreased to the point that it was roughly equal to the remaining amount owed on the mortgage. Mary noted in the agreement that Tom was willing to give up any interest he had in the home if his name could be removed from the mortgage. Both Mary and Tom signed the agreement and Tom moved into an apartment. Mary refinanced the mortgage on the home with a loan in her name alone.

Mary confessed her infidelity to Tom in January 2011, and filed for divorce. The significant assets of the parties were their retirement accounts, the CD, the home, the home furnishings, and joint savings and checking accounts to which both had contributed. By that time, Mary earned significantly more than Tom.

When the parties met to discuss the division of their assets, Tom claimed that the agreement he signed was invalid and that he was entitled to at least \$5,000 from Mary for his half of the down payment on the home. He also argued that Mary's affair was the reason their marriage failed, and because of her fault in causing the divorce and the fact that she earned far more than him, he would receive more than half of the parties' marital assets should the case go to trial. Mary claimed that the CD was marital property, or that at a minimum, the interest earned on the CD during the marriage was marital property.

Analyze: (1) Tom's claims regarding the parties' written agreement and his alleged entitlement to more than half of the parties' marital assets; and (2) Mary's claims regarding the CD.

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