

EXAMINERS' ANALYSIS OF QUESTION NO. 7

The court should reject Alice's arguments and enforce the prenuptial agreement. While a court may refuse to enforce a prenuptial agreement, its discretion to do so is limited. Regarding whether to enforce a prenuptial agreement, the court should consider 1) whether the agreement was obtained through fraud, duress, mistake, or misrepresentation or non-disclosure of a material fact; 2) whether the agreement was unconscionable when executed; and 3) whether the facts and circumstances have changed since the agreement was executed, so as to make its enforcement unfair and unreasonable. See *Booth v Booth*, 194 Mich App 284 (1992). The party challenging the enforceability of a prenuptial agreement bears the burden of proof and persuasion. *Reed v Reed*, 265 Mich App 131 (2005).

Alice's arguments cannot be squared with these limitations. First, while it may once have been a credible argument that prenuptial agreements made in contemplation of divorce were unenforceable, Michigan law has held otherwise for over twenty years. See *Rinvelt v Rinvelt*, 190 Mich App 372 (1991); *Booth*, *supra*, at 288-289; *Reed*, *supra*, at 142. Such an argument has no validity to an early 2000's prenuptial agreement and marriage.

Second, that Alice did not have counsel prior to entering into the prenuptial agreement does not, per se, preclude its enforcement. Such a contention must be viewed through the prism of fairness delineated in the three factors above. *Reed*, at 149. The naked contention that the prenuptial agreement is not enforceable because Alice had no counsel, lacks merit. *Id.*

Third, Alice's unconscionability argument also fails because the agreement was not unconscionable when executed. The parties' premarital assets were roughly equivalent. Each was simply to retain what they had before the marriage, plus its appreciation. Moreover, both were young professionals starting their careers and neither had school debt. Significantly, the stocks in question were also nearly equivalent. Carl told Alice his stock could have significant upside potential. That similarly situated professional young adults would simply keep the property they owned before marriage, in the event of a divorce, hardly qualifies as an unconscionable agreement. This

point is underscored by the prenuptial agreement's indication that marital assets were outside the ambit of the prenuptial agreement. Alice has failed to prove unconscionability.

Finally, Alice's argument that the prenuptial agreement is void and unenforceable because Carl's separate asset appreciated significantly more than Alice's and, consequently, that his retention of that asset and its appreciation would be unfair, must be rejected. Again, while the concept of fairness is central to the enforceability of a prenuptial agreement, the facts and circumstances of these parties since the agreement are not so changed that its enforcement is unfair or unreasonable. Alice and Carl started out on similar footing. They enjoyed a marriage that brought them relative prosperity from successful careers. They are now as they began, on similar footing and situated to continue their respective lifestyles. Enforcement of an agreement that simply dealt with Alice's and Carl's separate property is neither unfair nor unreasonable. The appreciation of Carl's property beyond that of Alice's simply does not amount to the changed circumstances sufficient to satisfy Alice's burden of proof. *Reed* at 146-147. The outcome would likely be the same even if Alice had met her burden to void the prenuptial agreement. Carl's premarital assets increased without his active involvement during the marriage. Thus, these assets were separate, non-divisible property. *Reeves v Reeves*, 226 Mich App 490 (1997).

The court should enforce the prenuptial agreement.