

#### **EXAMINER'S ANALYSIS OF QUESTION NO. 4**

First, to the extent Joni bases her "length of the marriage argument" on the period the parties cohabited but were not married, this argument fails. Effective January 1, 1957, Michigan no longer recognizes common law marriages. MCL 551.2. Because these parties began living together in 2008 - well after 1957, nothing about their cohabitation can be equated with a sanctioned marriage under Michigan law. As the Court of Appeals succinctly stated, "Cohabiting with someone is not the same as marrying them." *Reeves v Reeves*, 226 Mich App 490, 493, n 1, (1997). Accordingly, Joni's desire to extend the length of the marriage based on cohabitation will not succeed. *Carnes v Sheldon*, 109 Mich App 204, 211 (1981).

Second, the above conclusion directly impacts two of Joni's requests. Jason's investment property was clearly acquired before the parties' marriage and, therefore, is Jason's separate property; not marital property. In this regard, "marital property" seems to have similar but varying definitions: property that comes to the parties "by reason of the marriage," *Reeves, supra* at 493, and all assets not deemed separate. But by either metric, Jason's pre-owned investment property would not be part of the marital estate. See *Reeves, supra*, at 495-496 (down payment and equity built up before marriage should be considered separate property). Relatedly, while the length of the marriage is certainly a factor in determining whether an alimony award is warranted in a judgment of divorce, see *Korth v Korth*, 256 Mich App 286, 289 (2003), a marriage of less than two years could hardly be considered long enough for one spouse to become dependent on the other for financial security. The court in *Korth* found error where the trial court seemed to base an alimony award on the length of the relationship rather than the length of the marriage. *Id.* at 289-290. While *Korth* delineated numerous alimony factors, the facts here focus on the marriage length.

Third, Jason's argument that Joni's grandmother's bequest should be included in the marital estate holds no merit because the \$2 million is considered Joni's separate property. While it is true enough that Joni received the money during the marriage - as opposed to Jason's pre-marriage investment property - temporal considerations are not the sole factor in determining whether an asset is marital or separate. Indeed, an inheritance by one party is not typically property of the marital estate but remains separate especially if kept separately. *Reeves*, at 495; *Dart v Dart*, 460 Mich 573, 585 (1999) citing *Lee v Lee*, 191 Mich App 73 (1991).

The facts as stated cannot be construed to support Jason's claim that the \$2 million inheritance should be classified as marital property for a number of reasons. First, the bequest was made to Joni alone. Second, Joni's grandmother had no affection for Jason and, in fact, couldn't stand him. Third, her grandmother knew Joni had married Jason (she had boycotted the wedding and was with her estate lawyer signing the will) and the bequest could have been made jointly but was not. Finally, the bequest was received after Joni separated and filed for divorce and was maintained in a separate account. Therefore, despite the timing of the inheritance being during the marriage, the remaining facts compel the conclusion that the inheritance was Joni's sole and separate property.

As to the child support issue, Jason's argument is as well unpersuasive. Michigan statutes allow for a court to order child support both temporarily and in the judgment of divorce. See MCL 552.15 and 552.16. The support obligation is tied to supporting "...a minor child of the parties." The only issue becomes whether the baby is a child of the parties.

Jason's argument that the child must have been both conceived and born during the marriage finds no support in Michigan law. A child born during a marriage casts no doubt on the legitimacy of a child born within that marriage. See MCL 552.1 and MCL 552.29, the latter indicating "the legitimacy of all children begotten before the commencement of any action under this act shall be presumed until the contrary be shown." (Emphasis added.) Michigan has a strong desire to legitimize, not illegitimize, children. While Michigan law allows for paternity challenges, Jason has not made one. Rather, his naked assertion that a child to be the legitimate issue of the marriage must be both conceived and born during the marriage cannot prevail.

In sum, Jason should prevail on his argument that the time period of cohabitation should not be allowed to extend the length of the marriage for purposes of determining the marital estate or as a factor in the award of alimony. Joni, not Jason, should prevail on the declaration of the \$2 million gift being Joni's separate property. And Joni should be awarded child support because the baby being born during the marriage makes the child the offspring of Jason and Joni, regardless of the date of conception.