

ANSWER TO QUESTION NO. 9

1. Land: The first question here is whether the property is separate or marital. A court would almost certainly find it was separate because: (1) it was given as a gift to Gary before the parties' marriage, and Michigan law does not recognize the acquisition of "marital" rights with respect to a couple living together but not married, *Korth v Korth*, 256 Mich App 286 (2003); *Reeves v Reeves*, 226 Mich App 490 (1997); and (2) the property was given as a gift to Gary, and gifts are generally considered to be separate property. *Dart v Dart*, 460 Mich 573 (1999). Note that putting a spouse's name on property does not render it marital property as opposed to separate property, although it can weigh in favor of such a finding. *Reeves, supra*; *Korth, supra*. Gertrude might have had an argument that she ought to receive a share of any appreciation in the value of the land, but there was no increase in the land value. Even if the property is deemed to be separate, it can be divided if (1) the claimant spouse contributed to the acquisition, improvement or accumulation of the property, MCL 552.401; or (2) the award to the claimant spouse out of the parties' marital assets is insufficient for the suitable support and maintenance of the claimant, MCL 552.23. See *Reeves, supra*. It is very unlikely that the court would invade separate property in this short-term childless marriage where the spouses' incomes are similar.

2. Spousal Support: This was a short-term childless marriage and the parties have the same income. The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished, and the factors that the trial court would consider would be: (1) the past relations and conduct of the parties, (2) the length of the marriage (note that the parties' 10-year cohabitation does not count towards this factor--Korth, supra), (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. *Olson v Olson*, 256 Mich App 619, 631 (2003). Note, however, that this is a comprehensive list that applicants

should not be expected to replicate, and many cases contain other, shorter lists of factors. See, for instance, *Magee v Magee*, 218 Mich App 158, 162 (1996), stating that the trial court should consider, "the length of the marriage, the parties' ability to pay, their past relations and conduct, their ages, needs, ability to work, health and fault, if any, and all other circumstances of the case."

In this case, Gertrude's attorney might argue that Gary's affair, i.e., his fault in causing the divorce, his ability to move in with his dad, and Gertrude's injury and potential inability to work in the future, justifies some sort of spousal support. However, because of the parties' income parity, the short-term nature of the marriage, and the fact that Gertrude will receive the settlement money and a share of the joint account, a spousal support award of any significance would be unlikely.

3. Settlement Check: The award for pain and suffering is separate property and the check can be cashed before the divorce is final without consequence. Although causes of action are generally marital property, *Heilman v Heilman*, 95 Mich App 728 (1980), and assets acquired right up until the divorce judgment is entered are considered to be acquired "during the marriage", *Byington v Byington*, 224 Mich App 103 (1997), awards for pain and suffering are personal to the injured party. *Bywater v Bywater*, 128 Mich App 396 (1983). Note that the check should not be deposited into the joint account because Gary could argue that it was a contribution to the marital estate. In addition, it would be all right for Gertrude to take the money for the attorney fees from the joint account, although it would be counted against her in the final property settlement.