

### EXAMINERS' ANALYSIS OF QUESTION NO. 15

While a precise definition of "marital property" is not found in statutes, case law has set some Workable precepts. Courts have generally interpreted marital property to include property acquired during the marriage or acquired as a result of efforts during the marriage, excluding gifted property, inherited property, and passive appreciation of separate property. See Michigan Family Law, May 2014 update, ICLE, page 866.

"Separate property" most often includes property owned by one party before the marriage, property acquired during the marriage by one spouse through gift or inheritance, and passive appreciation on separate property.

Applying these principles to the items in question yields the following conclusions.

Item 1: The home and its appreciation are clearly marital assets. Both parties contributed equally to its purchase and maintenance, and it served as the marital residence. While it may be noted that the \$200,000 each spouse contributed was separate property, concluding that the house is separate property will warrant little consideration. The appreciation occurred during the marriage. Therefore, the home and the appreciation are classified as marital assets. It does not matter that some of the appreciation may have occurred after the parties separated. The term during the marriage encompasses the period from the date of the marriage to entry of the divorce judgment. See *Reeves v Reeves*, 226 Mich App 490 (1997) and *Byington v Byington*, 224 Mich App 103 (1997). Periods of cohabitation prior to marriage and the date of separation do not alter these principles.

Item 2: William's stock shares are his separate property. They were purchased prior to the marriage date with his funds. That they appreciated during cohabitation is of no significance as *Reeves* makes a distinction between cohabitation and marriage. Moreover, appreciation of the shares during the marriage was "passive." Passive appreciation occurs irrespective of the parties' efforts. Here, this publicly traded stock appreciated

without contribution of either party. Though some appreciation occurred during the marriage, it is not a marital asset. Accordingly, the stock shares and their appreciation are William's separate property.

Item 3: For similar reasons, Margaret's pre-marriage purchase of the Ferrari classifies it as her separate property. It remained titled in her name, was used solely by her, and maintained by her, and it was fully paid for before the marriage. That Margaret used marital money to maintain the car she drove might be noted, such an observation would not transform this clearly separate property into a marital asset.

Item 4: The \$100,000 check from William's Uncle Charlie is a marital asset, for a couple of reasons. First, assuming it was received after the wedding, it was therefore received "during the marriage." Second, a formulation of marital property includes property that came to either party by "reason of the marriage." •MCL 552.19. The check was a wedding gift and it is hard to imagine that a wedding gift does not come to the spouses by reason of the marriage. Moreover, the check, although from William's relative, was written in both names with a note indicative of a desire to have two recipients. Uncle Charlie's clear intent was to give the money to both spouses. The original \$100,000 was therefore marital. *Heike v Heike*, 198 Mich App 289 (1993). Appreciation on a marital asset is also a marital asset.

Item 5: The beach house is Margaret's separate asset. That the deed was received after separation is not determinative; rather, it is the circumstances of the conveyance that are important. Typically, inheritance, even during the marriage, is the separate property of the inheriting party. *Deyo v Deyo*, 474 Mich 952 (2005). This conclusion is buttressed by the clear intention of Aunt Nelly that the beach house was intended for just Margaret because Aunt Nelly did not specifically name William.