

## ANSWER TO QUESTION NO. 12

1. MCL 557.28 states "[a] contract relating to property made between persons in contemplation of marriage shall remain in full force after marriage takes place." Michigan courts have held that prenuptial agreements are enforceable in the context of divorce. *Rinvelt v Rinvelt*, 190 Mich App 372 (1991). To be enforceable, prenuptial agreements must be "fair, equitable, and reasonable under the circumstances, and must be entered into voluntarily, with full disclosure, and with the rights of each party and the extent of the waiver of such rights understood." *Id.* at 378-379. The agreement "should be free from fraud, lack of consent, mental incapacity, or undue influence." *Id.* at 379. Because of the relationship of extreme mutual confidence between the parties, a prenuptial agreement creates a special duty of disclosure that is not present in an ordinary contract. *In re Estate of Benker*, 416 Mich 681, 689 (1982).

Prenuptial agreements may be voided if certain standards of "fairness" are not satisfied. *Reed v Reed*, 265 Mich App 131, 142-143 (2005). The *Reed* court stated that, "[a] prenuptial agreement may be voided (1) when obtained through fraud, duress, mistake, or misrepresentation or nondisclosure of material fact, (2) if it was unconscionable when executed, or (3) when the facts and circumstances are so changed since the agreement was executed that its enforcement would be unfair and unreasonable." *Id.* The party challenging the agreement bears the burden of proof and persuasion. *Rinvelt, supra* at 382.

Here, Ronaldo was not honest with Mia about the reason for the prenuptial agreement. He consciously chose not to inform Mia of the fact that his father wanted to limit her ability to claim an interest in the business, and the fact that there were plans for rapid expansion. Assuming that she discovers Ronaldo's prior knowledge, Mia will argue that the agreement was obtained through nondisclosure of a material fact. The issue will be whether the unrevealed motives were "material" facts, given that Mia has no desire to obtain an interest in the business anyway. However, she would argue that Ronaldo did not make a full and frank disclosure of his true interest in the family business, which, in the end, made his potential income substantially more than hers. *In re Estate of Benker*, 416 Mich 681, 692-693 (1982) (discussing presumption of non-disclosure). Note that the fact that Mia was not advised by an attorney works in her favor, as does the fact that the agreement made no provision for her after the divorce, and

she was potentially waiving far more than he was. *Id.*

Mia might also argue that the substantial growth in the business constituted a change in circumstances rendering the enforcement of the agreement unfair or unreasonable. To determine if a prenuptial agreement is unenforceable because of a change in circumstances, the focus is on whether the changed circumstances were reasonably foreseeable either before or during the signing of the prenuptial agreement. *Reed*, 265 Mich App at 144. However, if the clear language of a prenuptial agreement envisions that the parties will obtain separate assets during the marriage, the fact that one party's assets grew significantly more than the other party's assets is not unforeseeable, and thus not a change in circumstances requiring the court to void the agreement. *Reed*, 265 Mich App at 146-147. The expansion of a business is unlikely to be considered unforeseeable by a court.

There is no clear answer to the question of what the judge would do. The key here is the test-taker's ability to recognize the issues, articulate the standards, and apply the standards to the facts.

2. MCL 552.23(1) provides:

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage as are committed to the care and custody of either party, the court may further award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

The factors that a court examines to determine if spousal support is warranted are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (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. *Berger v Berger*, 277 Mich App 700, 726-727 (2008).

The applicant should not be expected to list every one of these factors, but should focus on those that are relevant to the facts presented in the question.

Specifically: (1) Ronaldo's conduct--engaging in sexually explicit e-mails and having affairs--obviously works against him because it is his "past conduct" and he is at fault for causing the divorce; (2) the length of the marriage (8 years) might tend to favor Ronaldo, as this was arguably more than a short-term marriage but it would not classify as a long-term marriage; (3) the fact that Mia will not receive an interest in Ronaldo's family's business suggests that she is giving up a potentially significant asset and taking little in the property settlement, and that Ronald will continue to earn substantially more than her, so the economic disparity favors Mia and Ronaldo certainly has an ability to pay; (4) Mia is also responsible for her son, which is a factor in her favor, but (5) she is earning enough to arguably make a comfortable living, even without help from Ronaldo, and there is nothing indicating that she could not continue to work and live comfortable.

General principles of equity might also tend to favor Mia, in that Ronaldo failed to reveal to Mia that by signing a prenuptial agreement she was giving up any interest in a rapidly expanding business. Under the circumstances, some amount of spousal support for a limited period of time might be expected.

Again, there is no clear answer to the question of what the judge would do, and the key is the test-taker's ability to apply the spousal support factors to the facts presented in the question.