

GETTING MARRIED? TEN ISSUES TO CONSIDER BEFORE YOU GET MARRIED

RITZEL S. NGO, ESQ.

#1) PRE-MARITAL GIFTS

- WHAT TYPE OF GIFTS
- PREMARITAL GIFT YOURS OR MINE
- FAMILY HEIRLOOMS
- DOWRY

#1) PREMARITAL GIFTS

CIVIL CODE SECTION 1590 STATES:

"WHERE EITHER PARTY TO A CONTEMPLATED MARRIAGE IN THIS STATE MAKES A GIFT OF MONEY OR PROPERTY TO THE OTHER ON THE BASIS OR ASSUMPTION THAT THE MARRIAGE WILL TAKE PLACE, IN THE EVENT THAT THE DONEE REFUSES TO ENTER INTO THE MARRIAGE AS CONTEMPLATED OR THAT IT IS GIVEN UP BY MUTUAL CONSENT, THE DONOR MAY RECOVER SUCH GIFT OR SUCH PART OF ITS VALUE AS MAY, UNDER ALL OF THE CIRCUMSTANCES OF THE CASE, BE FOUND BY A COURT OR JURY TO BE JUST."

WHO GETS THE ENGAGEMENT RING? IT DEPENDS…

CASE LAW: **IF ONE PERSON CALLS OFF THE WEDDING, THE RING MUST BE RETURNED TO THE PERSON WHO PROPOSED WITH THE RING. AND IF BOTH PEOPLE CALL OFF THE WEDDING, THE RING MUST ALSO BE RETURNED TO THE PERSON WHO PURCHASED THE RING. EXCEPTION: LEGAL AUTHORITY EXISTS SUGGESTING THAT WHEN THE PERSON WHO PROPOSED WITH THE RING CALLS OFF THE WEDDING, THEN THE DONEE (PERSON PROPOSED TO) GETS TO KEEP THE RING. (*SEE SIMONIAN V. DONOIAN* (1950) 96 CAL.APP.2D 259.) (CASE WHERE MAN AND WOMAN WERE ENGAGEMENT, MOTHER-IN-LAW TO BE GAVE A DIAMOND BRACELET TO WIFE TO BE AND HUSBAND TO BE GAVE DIAMOND ENGAGEMENT RING; APPELLATE COURT UPHELD TRIAL COURT DECISION AWARDING BOTH GIFTS TO WIFE-TO-BE WHEN HUSBAND-TO-BE CANCELLED WEDDING**

#1) PREMARITAL GIFTS

SHAW V. SHAW (1964) 227 CAL.APP.2D 159, A COUPLE LIVED TOGETHER FOR FOUR YEARS. THE MAN PLACED HIS GIRLFRIEND'S NAME ON REAL PROPERTY BECAUSE HE RELIED ON HER PROMISE THAT SHE WOULD MARRY HIM WHEN HER DIVORCE WAS FINAL. THE COUPLE SEPARATED BEFORE MARRYING AND THE WOMAN EVENTUALLY MARRIED ANOTHER. THE COURT AWARDED ALL PROPERTY BACK TO THE MAN BECAUSE SHE FAILED TO MARRY HIM.

- EXPENSIVE ENGAGEMENT RING(S), DEBT INCURRED WHILE SEPARATE PROPERTY, IF LATER DIVORCED, THAT DEBT REMAINS SEPARATE PROPERTY DEBT AND NOT MARITAL PROPERTY DEBT UNLESS OTHERWISE CLASSIFIED

#2) PREMARITAL CONTRACT

- DISCUSS THE FINE DETAILS OF THE PREMARITAL CONTRACT WELL IN ADVANCE OF THE PROPOSAL OF MARRIAGE.
- VOLUNTARY.
- INDEPENDENT COUNSEL (WAIVER).
- OTHER ISSUES THAT COULD COMPLICATE, INVALIDATE, BRING INTO PLAY DURESS, ADHESION CONTRACT, FUTURE LITIGATION.
- BE CAREFUL, SELECT AN ATTORNEY THAT HANDLES PREMARITAL CONTRACTS THAT UNDERSTANDS RATHER THAN CREATES LITIGATION.

#2) PREMARITAL CONTRACT

- PREMARITAL AGREEMENTS MUST BE IN WRITING AND SIGNED;
- NO CONSIDERATION IS NECESSARY. FAM C §1611.
- HAD THE OPPORTUNITY TO REVIEW THE DOCUMENT FOR AT LEAST 7 CALENDAR DAYS BEFORE IT WAS SIGNED;
- PARTIES TO A PREMARITAL AGREEMENT HAVE BROAD DISCRETION TO CONTRACT REGARDING PROPERTY, LIFE INSURANCE, TERMS OF WILLS AND TRUSTS, AND OTHER MATTERS. FAM C §1612.
- CANNOT LIMIT CHILD SUPPORT BY AGREEMENT. FAM C §1612(B).
- AGREEMENTS REGARDING SPOUSAL SUPPORT ARE NOT ENFORCEABLE IF THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT WAS NOT REPRESENTED BY INDEPENDENT COUNSEL AT THE TIME THE AGREEMENT WAS SIGNED, OR IF THE SPOUSAL SUPPORT PROVISION IS UNCONSCIONABLE AT THE TIME OF ENFORCEMENT. FAM C §1612(C). PROVISIONS BARRING THE ENFORCEABILITY OF PREMARITAL AGREEMENTS ARE FOUND IN FAM C §1615.
- IT BECOMES EFFECTIVE ON MARRIAGE AND THEREAFTER MAY BE AMENDED OR REVOKED ONLY BY A WRITTEN AGREEMENT SIGNED BY THE PARTIES. FAM C §§1613–1614.

#2) PREMARITAL CONTRACT

DEFENSES TO VALIDITY OF PREMARITAL CONTRACT

- LACK OF CAPACITY
- INVOLUNTARY EXECUTION
- UNCONSCIONABILITY, LACHES, AND ESTOPPEL. FAM C §§1615, 1617.
- UNDUE INFLUENCE
- NO EXHIBITS, NO DISCLOSURE OF ACCURATE ASSETS

#3) COHABITATION AGREEMENT

- WHAT IS IT
- WHAT SHOULD IT SAY
- MARVIN, *557* P.2D 106, DECIDED BY THE CALIFORNIA SUPREME COURT IN 1976.
- CALIFORNIA - PALIMONY SUIT

#2) COHABITATION AGREEMENT

- A COHABITATION AGREEMENT IS A CONTRACT GOVERNED BY CALIFORNIA CONTRACT LAW, OUTLINING EACH PARTNER'S FINANCIAL OBLIGATIONS TO THE OTHER, BOTH DURING AND AFTER COHABITATION. IT ALSO SPECIFIES WHAT PROPERTY BELONGS TO EACH PARTY IN THE EVENT THE PARTIES END THEIR RELATIONSHIP.
- A COHABITATION AGREEMENT IS A GOOD IDEA IF ONE OR BOTH PARTIES:
- BRINGS SUBSTANTIALLY MORE MONEY OR PROPERTY TO THE RELATIONSHIP
- HAS LEFT OR PLANS TO LEAVE THE WORKFORCE TO BE A FULL-TIME PARENT OR HOMEMAKER
- HAS A BUSINESS, OTHER ASSETS, OR DEBTS THAT HE OR SHE WANTS TO KEEP SEPARATE
- IS MAKING PAYMENTS TOWARDS A HOME OR OTHER PROPERTY OWNED BY THE OTHER PARTY
- WOULD LIKE TO SPECIFY WHETHER A PROMISE OF FINANCIAL SUPPORT EXISTS

#2) COHABITATION AGREEMENT

ELEMENTS TO COHABITATION AGREEMENT

- PARTIES CIRCUMSTANCE (MARITAL STATUS, INCOME, ASSETS, NET WORTH)
- DISCLOSURE OF ASSETS
- NO CHANGE IN PROPERTY STATUS
- SEPARATE AND JOINT ACCOUNTS/ACQUISITIONS
- UNSECURED DEBT
- HOUSEHOLD ACCOUNT
- NO FIDUCIARY DUTIES

#4) SEPARATE PROPERTY OR #5) MARITAL PROPERTY

- PURPOSE: IDENTIFY RIGHTS AT DEATH OR DIVORCE
- IDENTIFICATION OF SEPARATE PROPERTY
- SEPARATE PROPERTY BUSINESSES
- SEPARATE PROPERTY INCOME DURING MARRIAGE
- SEPARATE PROPERTY

#4) SEPARATE PROPERTY OR #5) MARITAL PROPERTY

- SEPARATE PROPERTY BANK ACCOUNTS
- SEPARATE PROPERTY LIFE INSURANCE
- MARITAL PROPERTY ACCOUNTS
- TRANSMUTATIONS
- LOANS FROM SEPARATE PROPERTY TO MARITAL PROPERTY/DEBTS
- LOANS FROM MARITAL PROPERTY TO SEPARATE PROPERTY
- IDENTIFY IN WRITING

#4) SEPARATE PROPERTY OR #5) MARITAL PROPERTY

- ASSETS PURCHASED WITH COMMINGLED FUNDS ARE PRESUMPTIVELY MARITAL PROPERTY
- SEPARATE PROPERTY LIABILITIES SHOULD BE SATISFIED THROUGH SEPARATE PROPERTY BANK ACCOUNTS
- GOOD RECORD KEEPING
- GENERAL LEDGER (ACCOUNT NUMBER, DESCRIPTION, SEPARATE PROPERTY TO MARITAL PROPERTY LOAN)

#6) CHILDREN FROM A PRIOR MARRIAGE(S)

- PROVIDE FOR CHILD SUPPORT
- PROVIDE FOR LIFE INSURANCE
- PROVISIONS FOR PRIVATE SCHOOL, COLLEGE, PROFESSIONAL SCHOOL
- REFERENCE TO ESTATE PAN

#7) ADULT CHILDREN

- PROVISION FOR ADULT CHILDREN
- PROVISION FOR CHILDREN UNABLE TO CARE FOR THEMSELVES

#8) ELDERLY PARENTS

ELDERLY PARENT CARE

LIVE IN ARRANGEMENTS

#9) TEMPORARY INCAPACITY OR INCAPACITY

POWER OF ATTORNEY – SPRINGING

SPOUSE, PARENT, FRIEND, OR OTHER THIRD PARTY

#10) ESTATE PLAN – PLANNING FOR DEATH

ESTATE PLAN – JOINT OR SEPARATE TRUST, WILL, POWER OF ATTORNEY, ADVANCED HEALTH CARE DIRECTIVE

QUESTIONS?

RITZEL NGO: RITZEL@GMAIL.COM