

### ***The Moss & Barnett Antenuptial and Postnuptial Agreements Quiz***

- | <b>True</b>              | <b>False</b>             |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. You started a business several years before you got married. The business has grown substantially in value since you married. Your spouse did not participate in the business. If you divorce, your spouse is entitled to a share of the company.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Your family has owned a business for three generations. You want to perpetuate the family ownership by gifting the ownership to your two children, who work in the business. You transfer stock to your children and they both marry several years later. In the event a child divorces, his or her spouse may be entitled to a share of the value of the business. |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Shortly before you marry, you build a house. The title for the house is in your name only. In the event of a divorce, your spouse could receive a portion or even complete ownership of your home.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Two days after your wedding, before you make a will, you and your spouse are enjoying an exotic honeymoon when you are killed in a freak accident. Your spouse will automatically inherit a portion of your estate.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. You work to support yourself and your spouse while your spouse attends medical school. If you divorce, you are entitled to a share of the future earning power of that medical degree.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. You get married, and your spouse signs a premarital agreement waiving all rights to any of your income, your present and future assets, and the right to receive alimony. If you divorce, your spouse receives nothing because of the agreement.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. You receive an inheritance or gifts from your relatives while you are married. In the event of a divorce, your spouse may be awarded part of your inheritance or gifts.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. You intend to pass your wealth on to your two adult, married children by gifts and inheritances. Neither child has accumulated any substantial assets other than what they have inherited from you. Upon a divorce, your child's spouse may have a claim to your child's gifts and inheritance.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. You form a business partnership with three other people. One of your partners later marries, then divorces. The divorce will not affect the business.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. You divorce and remarry. Your will specifies that all your assets are to go to the children from your previous marriage. If you die, your will prevents your new spouse from claiming any of your assets.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. You own stock before the wedding. The dividends are reinvested. If divorced, you receive the entire value of the stock.  |

## ANSWERS

1. **TRUE.** Spouses may be entitled to a substantial share of a business in a divorce even if the business was owned before the marriage. The business owner's services may create marital value in a nonmarital business. Courts may find that a spouse materially contributed to the success and growth of a spouse's business merely by being a partner in the marriage, even without active participation in the business. The owner has the burden of proof to show the business is nonmarital property. A premarital agreement can specify that such a business interest will be kept out of the marital property to be divided.
2. **TRUE.** Same reason as #1 applies to business acquired by gift.
3. **TRUE.** Your spouse could receive the house under several legal theories. The court may award the house on the basis of "unfair hardship." Even though you purchased the house before the marriage, improvements and mortgage payments may create a marital interest. Also, there may be minor children in the home which could justify your spouse and children occupying and deferring the sale or payment to you.
4. **TRUE.** Depending on the applicable state law, your surviving spouse may inherit part of your estate. The spouse may have legal rights even if your will does not provide or seeks to limit them.
5. **FALSE.** Under Minnesota law there may be reimbursement for actual tuition and support paid, but degrees are not separately valued as assets. A premarital agreement can assure that a person who helps their spouse through college or beyond receives either repayment, a portion of the income attributable to that degree, or, as spouses often promise, financial support from the person who helped support the spouse for her/his education or training.
6. **FALSE.** Courts may hold a premarital agreement is unenforceable if it is not "substantively fair" at execution and enforcement. For example, waivers of property rights and alimony which are unconscionable may be set aside.
7. **TRUE.** Ordinarily, if one spouse receives gifts from another person or an inheritance during the marriage, the property is considered nonmarital property and is not subject to division in the event of a divorce. The court does, however, have the power to award the other spouse up to 50% of the nonmarital property or its value if it finds there would be an unfair hardship not to do so. A premarital agreement can preclude the court from making such an award.
8. **TRUE.** Same reason as #7. Further, nonmarital property must be kept separate and free of marital effort, which may create marital property.
9. **FALSE.** In the event of a divorce, a spouse may be awarded some or all of their spouse's share or value in a business. In addition, efforts during divorce proceedings to quantify the value of the company may result in access to confidential company records and other intrusive proceedings.
10. **FALSE.** In the absence of a premarital agreement, one cannot completely disinherit a spouse. A spouse can "take against the will," in which case the desires of the deceased may not be carried out. An enforceable premarital agreement, however, may prevent this result.
11. **FALSE.** Income generated by assets may create a marital value in an otherwise nonmarital asset, although active or passive management may change the result. Passive appreciation is usually nonmarital.

Edward L. Winer, Esq.

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