

September 2020
MPT-2
Drafters' Point Sheet

Eastwood v. Eastwood

The MPT point sheet addresses the factual and legal points encompassed within this MPT. It presents the expected issues that might be addressed by an examinee in a thorough answer to the problem, but it should not be construed as a model answer.

Eastwood v. Eastwood
DRAFTERS' POINT SHEET

In this performance test, examinees are employed by the Franklin law firm representing Louisa Eastwood. Louisa has asked the firm to analyze the validity and enforceability of the premarital agreement she and William Eastwood signed before their marriage. In particular, Louisa is concerned about whether she has any right to the marital home or to receive spousal support. Examinees are asked to apply the provisions of the Franklin Premarital Agreement Act of 1987 and relevant Franklin cases to the facts and prepare an opinion letter to the client addressing the likelihood of successfully challenging the premarital agreement.

The File contains the instructional memorandum from the supervising partner, the firm's guidelines on opinion letters, a summary of the client interview, an email from William Eastwood, and excerpts from the Eastwoods' premarital agreement. The Library contains excerpts from the Franklin Premarital Agreement Act and three Franklin Court of Appeal cases.

The following discussion covers all the points the drafters intended to raise in the problem.

I. OVERVIEW

Examinees' task is to draft an opinion letter to Louisa analyzing the enforceability of the premarital agreement and the likelihood of successfully challenging it under Franklin law. The work product should conform to the firm's guidelines for opinion letters to clients, which include the following:

- Do not include a separate statement of facts.
- Address each legal question independently.
- Analyze the issues raised by each question and provide the client with your conclusion regarding each legal issue presented.
- Cite applicable legal authority.
- Explain how the relevant authorities combined with the facts lead to your conclusions.
- Use language that is understandable to a nonlawyer.

II. LEGAL AUTHORITY

Franklin Premarital Agreement Act (FPAA)

- Premarital agreements are effective upon marriage. FPAA § 101(1). They must be in writing, must be signed by both parties, and are enforceable without consideration. FPAA § 102.
- A wide range of topics can be covered in premarital agreements, including spousal support. FPAA § 104(1)(d).
- Franklin specifically carves out child support and says that premarital agreements may not adversely affect it. FPAA § 104(2).
- There are two grounds for finding premarital agreements unenforceable. Under § 105(1), a premarital agreement is not enforceable if the person against whom enforcement is sought proves either that (a) the person did not execute the agreement voluntarily or (b) the agreement was unconscionable when it was executed.
- Whether a premarital agreement is unconscionable is as a matter of law. FPAA § 105(2).
- In addition to the two grounds for finding entire agreements to be unenforceable, the court may refuse to enforce a provision regarding spousal support “if enforcement would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.” FPAA § 105(3).
- If a provision regarding spousal support is found to be unenforceable, “the provision shall be severed from the remainder of the agreement and shall not affect the provisions . . . of the agreement that can be given effect without the unenforceable provision.” FPAA § 105(3).

CASES

***Richards v. Richards* (Fr. Ct. App. 2010) (execution not voluntary)**

- The parties’ premarital agreement purported “to waive any present or future interest in the separate real and personal property of the other and any claim to spousal support.” The parties signed the agreement the day before they flew to Hawaii for their wedding.
- The premarital agreement waived any right to separate property of the other. It also waived spousal support (which was not at issue because the wife did not seek it).
- The trial court held, and the court of appeal affirmed, that the premarital agreement was unenforceable because it was not voluntary.
- Key facts: When Liam gave Stella the agreement two weeks before the wedding, she told him that she wanted her attorney to be at the signing. It is undisputed that her attorney was not

present when she arrived at Liam's lawyer's office to sign the agreement the day before they were to leave for their wedding. When Stella expressed doubts about signing the agreement without her attorney there, Liam responded, "Go ahead and sign it. My lawyer can take care of this for both of us." When she again mentioned calling her attorney, Liam told her, "The wedding's on. You've told everyone we're getting married. Our guests already have their plane tickets. We are leaving tomorrow morning. Go ahead and just sign it." Stella further testified that Liam reassured her that she "was his whole world, and that he would love me forever."

- Franklin case law discussing "voluntariness" in premarital agreements focuses on the conditions and circumstances of the formation of the agreement. Voluntariness is highly fact-dependent, but courts generally consider these factors:
 - (1) whether circumstances in signing the agreement, such as the shortness of time between execution and the marriage, indicate coercion or lack of knowledge
 - (2) whether there was any surprise or malfeasance in presentation of the agreement
 - (3) the presence or absence of an opportunity to consult independent counsel
 - (4) whether there was full disclosure of assets and obligations
 - (5) the parties' understanding of the rights being waived under the agreement
- *Richards* compares cases that decide both ways regarding voluntariness under FPAA.
 - *Kosik* (premarital agreement invalid because wife did not have a reasonable opportunity to be informed of the consequences of the agreement)
 - *Brandt* (premarital agreement valid because wife had the obligation and opportunity to protect her own interests before signing the agreement)
- The *Richards* court concluded that the circumstances created a sufficiently coercive environment to render Stella's agreement involuntary—she received the agreement just two weeks before the wedding, was unable to review it with her attorney before signing, and was pressured by Liam's statement that guests already had bought plane tickets. The evidence also showed that Stella had limited knowledge of Liam's finances.

***In re Marriage of Federman* (Fr. Ct. App. 2011) (agreement unconscionable)**

- A pregnant 19-year-old woman signed a premarital agreement prepared by her 38-year-old future husband's attorney. The agreement was silent regarding the nature and value of the

husband's assets but provided that on divorce, each party kept the assets brought to the marriage.

- Standard principles regarding contract formation and interpretation apply to premarital agreements. Generally, “a contract is unconscionable if there was a gross disparity in bargaining power, which led the party with the lesser bargaining power to sign a contract unwillingly or unaware of its terms, and the contract is one that no sensible person would accept.” *Rider v. Rider* (Fr. Ct. App. 2000).
- The legislative history of FPAA § 105(1)(b) states that “unconscionability includes protection against one-sidedness that rises to the level of oppression. . . .”
- Here, the husband received all the benefits of the agreement; the wife bore all the burdens, resulting in a grossly unjust outcome.
- Given the circumstances of the agreement's execution and its one-sided nature in favor of the dominant party (the husband), the agreement was unconscionable at the time of its execution as a matter of law and thus unenforceable.

***Hughes v. Hughes* (Fr. Ct. App. 2017) (substantial hardship)**

- This case involves enforcement of a spousal support waiver provision in a premarital agreement. Parties to a premarital agreement may contract with respect to the “modification or elimination of spousal support.” FPAA § 104(1)(d).
- The wife argued that because there had been no finding that the premarital agreement was involuntary, unconscionable, or entered into without a reasonable opportunity to consult with counsel under FPAA § 105, the premarital agreement was valid, and the spousal support waiver provision should be upheld.
- Under FPAA § 105(3), a court may refuse to enforce a spousal support provision in a premarital agreement where enforcement would result in “substantial hardship” to a party due to a “material change in circumstances” that arose after the premarital agreement was executed, notwithstanding the fact that the agreement might otherwise be enforceable under § 105. In such instances, the unenforceable spousal support provision is severed, and the remainder of the agreement may be enforced.

- Here the spousal support waiver provision created a substantial hardship due to the change in circumstances, which included the husband's losing his job and benefits and becoming paralyzed in a car accident.

III. ANALYSIS

Examinees' work product should incorporate a discussion of the facts, although it should not contain a separate statement of facts. There are three major issues of enforceability:

1. Was the premarital agreement entered into voluntarily?
2. Is the premarital agreement unenforceable because it was unconscionable at the time it was executed?
3. Is the spousal support waiver provision unenforceable, and therefore severable, because it would result in a substantial hardship due to a material change in circumstances arising after the agreement was signed?

Summary Answer:

Although it is possible to make plausible arguments reaching contrary results supported by the materials in the File and Library, the drafters intended that under the best analysis examinees should conclude the following:

1. On balance, it is likely that a court would find that the premarital agreement was entered into by Louisa voluntarily and therefore it is not unenforceable under FPAA § 105(1)(a).
2. It is more likely than not that a court would not find the agreement to be unconscionable at the time it was executed. Therefore, the court would not find it unenforceable under FPAA § 105(1)(b) on that basis.
3. Even if a court were to find the premarital agreement to be voluntary and not unconscionable, there is a substantial likelihood that it would refuse to enforce the spousal support waiver provision because the provision creates a substantial hardship given the change in circumstances (i.e., Louisa's total financial dependence upon William and her diagnosis with a serious chronic condition) since the signing of the agreement.

A. Whether Louisa entered into the premarital agreement voluntarily

- A premarital agreement is not enforceable if the person against whom enforcement is sought proves that the person did not execute the agreement voluntarily. FPAA § 105(1)(a).
- Voluntariness in Franklin case law focuses on the conditions and circumstances of the formation of the premarital agreement. Courts have usually considered five factors:
 - (1) whether circumstances in signing the agreement, such as the shortness of time between execution and the marriage, indicate coercion or lack of knowledge
 - (2) whether there was any surprise or malfeasance in presentation of the agreement
 - (3) the presence or absence of an opportunity to consult independent counsel
 - (4) whether there was full disclosure of assets and obligations
 - (5) the parties' understanding of the rights being waived under the agreement

Richards.

- Under *Richards* and the cases cited therein, the circumstances surrounding the signing of the Eastwoods' premarital agreement most likely point to it being voluntarily entered into:
 - Louisa was given the agreement three months before the parties married, and she was given time to review it; there are not sufficient facts to indicate coercion.
 - William had discussed his desire to have a premarital agreement before he presented her with a draft; he did not object when she said that she needed time to review it carefully. Indeed, he suggested that she could either meet with his lawyer, who would explain the agreement, or that he would pay for Louisa to hire her own lawyer.
 - There is no evidence that William attempted to wait until the last moment to present Louisa with the agreement. In fact, she signed it and had a copy in her possession for three months before they were married.
 - The parties exchanged substantially complete asset and debt statements four months before the wedding; there is no indication that William was hiding assets.
- Certain facts could support an argument that Louisa did not sign the agreement voluntarily. The agreement was drawn up by William's longtime lawyer, and William told Louisa that signing the agreement would be proof of her love for him, not his money, and that he wanted to protect her from his business creditors. These statements were, at best, misleading and manipulative. Louisa was unsophisticated in financial matters and indicated several times that she did not fully understand the consequences of entering into the agreement. Under *Richards*, a party's understanding of the rights being waived is a relevant factor. Also, William offered

to pay for an independent lawyer but only if Louisa “really felt that was necessary”—in other words, it was a reluctant offer.

- On the other hand, Louisa is well educated (a PhD) and could have insisted on seeing her own lawyer. She had ample time before the wedding to seek independent legal advice rather than signing the agreement a few days after receiving it. Significantly, in the cases in which Franklin courts have found premarital agreements to be involuntary, the agreements were presented shortly (e.g., days or a few weeks) before the wedding.
- In sum, while the most likely conclusion is that a court would find that the premarital agreement was entered into voluntarily, it is conceivable that a court could be persuaded under these facts that the premarital agreement was not voluntarily entered into.
- Under the best analysis, FPAA § 105(1)(a), involuntariness, cannot be the basis for striking down the Eastwoods’ premarital agreement.

B. Whether the agreement is unenforceable because it was unconscionable when executed

- A premarital agreement is not enforceable if the person against whom enforcement is sought proves that the agreement was unconscionable when it was executed. FPAA § 105(1)(b).
- The issue of unconscionability is a matter of law under FPAA § 105(2).
- Generally, a contract is unconscionable if there was a gross disparity in bargaining power. *See Federman*. The legislative history of FPAA § 105(1)(b) explains that “unconscionability includes protection against one-sidedness that rises to the level of oppression. . . .” *See id.*
- On its face the agreement treats both parties equally, but the effect of the agreement at the time of execution appears to benefit William and disadvantage Louisa. William is a sophisticated businessman, who had previously been divorced. He knew that the 50-50 presumption in the Franklin equitable distribution statute would apply if there were no premarital agreement. William knew that, without the premarital agreement, his wife would be entitled to a presumption of 50% of the value of property acquired during the marriage. William’s actions of insisting on the agreement and then placing the title to the family home in his name alone could be considered questionable.
- Nevertheless, the terms of the agreement clearly stated that this is how the parties wanted their finances to be treated. And they were both employed, self-supporting professionals when they signed the agreement. Therefore, while one could dislike the outcome, it is not clear that the

facts render the Eastwoods' agreement unconscionable, and it is more likely than not that a court would find it unenforceable on that ground. Note that Louisa bears the burden of proof on this issue.

- Although a closer call than the voluntariness issue, it is possible that a court would find that the premarital agreement is unconscionable and therefore unenforceable under § 105(1)(b) and Franklin case law, namely *Federman*. The one-sidedness in *Federman*, however, was more extreme than in Louisa's case, so it is far from certain that a court would conclude that a gross disparity in bargaining power existed when Louisa and William entered into their premarital agreement.

C. Whether enforcing the spousal support waiver provision would result in a substantial hardship because of a material change in circumstances arising after the premarital agreement was signed

- When Louisa and William signed the premarital agreement in 2006, Louisa had full-time employment as a professor at Franklin State University. After they married, Louisa continued teaching. During that time, she used her income to contribute to household expenses, although William paid a greater share due to his greater income.
- Two years after the marriage, Louisa gave birth to their first child, Max. She took three months of parental leave before returning to work. After Hazel's birth two years later, William urged Louisa to stop working and stay home with the children. He told her that she would never need to worry about money because he had plenty to support the family. She took what she intended to be a one-year leave of absence but then never went back to work. She was very reluctant to give up her teaching position, because the computer science field changes very quickly. Plus, she gave up opportunities for promotion at the university. But again, William told her not to worry—he would always take care of her and their children.
- There has been a material change in circumstances in Louisa's financial independence, in large part prompted by William's conduct. Louisa had a stable, well-paying job that she gave up to raise their children. This was done at William's urging.
- Recently, Louisa was diagnosed with rheumatoid arthritis (RA), an autoimmune disorder. For Louisa, the condition has affected her ability to walk, read, lift, and move without pain. This will contribute to difficulties in finding employment. Unless Louisa receives spousal support, she faces what can fairly be characterized as a "substantial hardship."

- Under Franklin law, if a provision regarding spousal support would create a substantial hardship, a court may refuse to enforce this provision and may sever it from the agreement. Even if the court did not find the agreement to be involuntary or unconscionable, the court could nevertheless sever the spousal support waiver provision. FPAA § 105(3).
- It seems highly probable that the court will not enforce the spousal support waiver provision and will sever it from the remainder of the Eastwoods' premarital agreement. *See Hughes*.

IV. CONCLUSION

- There are three major issues to analyze in advising Louisa about the enforceability of the premarital agreement:
 - The agreement is likely to be found to have been voluntarily entered into by Louisa.
 - It is more likely than not that a court would refuse to find that the entire agreement is unenforceable on the ground that it was unconscionable when entered into. However, there are facts that could support an argument that the Eastwoods' agreement was unconscionable, and partial or even full credit should be given to a cogent analysis that correctly applies the legal standard to the relevant facts but reaches such a result.
 - Louisa's strongest argument concerns spousal support. Even if the premarital agreement is found to be voluntary and not unconscionable, there is a strong argument that the spousal support waiver provision should not be enforced because it creates a substantial hardship based on a material change in circumstances. Louisa has been out of the work force for 10 years at William's urging and now suffers from a serious chronic medical condition. It is likely that the court would refuse to enforce this specific provision and instead would find that Louisa is entitled to an award of spousal support.