



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Serving all of California

## Ron's Corner

In this conclusion of our four-part series addressing the issue of financial fault and no-fault divorce, I discuss the case of *In re Marriage of Mehren and Dargan*. This case encompassed financial acts occurring prior to separation and an attempt by a party to claim penalties based on the other party's wrong doing.

In the three previous editions of *Forensic Accounting Today*, I covered the issues of fiduciary fault based on Family Codes §1100 and §1101, disentitlement, and bad behavior post petition and Family Code §271.

I hope you have had a few moments to review our three previous newsletter editions and have found them helpful. Please feel free to contact me concerning financial fault and no-fault divorce, or to post your comments or questions on our blog (blog.anfusocpa.com).

Ron

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## I Thought California is a No-Fault State

### Part 4

Presented by Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

Yes, California is a no-fault state. However, *no fault* relates only to grounds for the termination of a marriage. Financial fault, on the other hand, has no limits. It can lie in the past, present or future. In fact, it seems that as time passes and cases grow, in law, the theories for asserting financial fault have increased. You might say that financial fault is trending.

In this issue, I focus on the Superior Court of Orange County appeals case of *Mehren v. Dargan*.

### Mehren v. Dargan

Christopher Dargan (Husband) suffered periodic addiction to cocaine for many years. After numerous incidents of his substance abuse, Christopher and Monica Mehren (Wife) agreed to separate.

Several months after their separation, the parties' mutually agreed on Husband returning to the family home. The couple then entered into an "Agreement re Transfer of Property." This agreement stated that Monica consented to the resumption of their marriage on the condition that Christopher abstain from the deliberate and intentional use of any mind-altering chemical or substance other than prescriptions from medical doctors. Furthermore, the agreement declared that if Husband violated this stipulation, he would forfeit all of his rights, title and interest in the property described in the agreement. Both parties' signed this agreement in front of a notary public.

Soon thereafter, Christopher failed to keep his promise. Monica then filed for divorce and asked for the property described in the agreement to be awarded to her as separate property. The trial court had concluded their agreement did adhere to public policy and awarded the property to Wife. After the trial court upheld the validity of the post-marital agreement, Husband appealed the order.

Although many divorce cases have dealt with contracts such as pre-marital agreements, the Appeals Court and the parties agreed this was a novel case. In *In re marriage of Bonds (2000) 24 Cal.4th 1*, our

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## The biggest mistake a forensic accountant expert witness can make... **NOT BEING PREPARED**

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Supreme Court noted the difference between commercial contracts and those regulating marital relationships. Marital contracts are generally entered into with the expectation they will never be invoked. *"Furthermore, marriage itself is a highly regulated institution of undisputed social value, and there are many limitations on the ability of persons to contract with respect to it or to vary its statutory terms that have nothing to do with maximizing the satisfaction of the parties or carrying out their intent."* (*Id.at p.25.*)

The Bonds opinion rejected a freedom-from-contract analysis of marital contracts and provided several examples of agreements that are not to be enforced as violating public policy. In addition, Bonds also provided a distinction between pre- and post-marital contracts when it noted that in a fiduciary relationship between parties, no such relationship exists prior to the marriage. However, a relationship does exist following marriage and thus affects the spouses' ability to enter into contracts between themselves. (*Id.at p.27.*) The Superior Court concurred that because the conduct of one spouse would affect the division of community property, the agreement frustrated the statutory policy favoring no-fault divorce.

The Superior Court affirmed that the most comparable case was *Diosdado v. Diosdado*, which we featured in our previous newsletter. This case found that *"Recovery in a no-fault dissolution proceeding is basically limited to half the community property and appropriate support and attorney fees — no hefty premiums for emotional angst."* As such, the contract of Christopher and Monica had an unlawful object and was invalid under *Civil Code Section 1667*. The Superior Court affirmed there was little difference between the angst experienced by the Wife in *Diosdado* and that suffered by Wife in this case.

Monica made the mistake of assuming the agreement was valid after her divorce filing. Wife should have invoked her rights under the agreement and acquired the community property assets prior to obtaining a divorce. By her seeking transfer of these property interests during the divorce proceeding, establishing her entitlement to the property would have required a judicial determination concerning Husband's drug use, a factual adjudication of fault that the no-fault statute seeks to avoid.

### Disposition

In addition, Wife argued that their agreement was actually a gift subject to a conditional precedent. However, the Superior Court ruled this was merely an unexecuted gift and an unenforceable promise to make a future gift. Subsequently, the Superior Court ordered the trial to vacate the order regarding judgment after the bifurcated trial and to enter a new order providing that the post-marital agreement between the parties was unenforceable. The Court further ruled that the appellant was to recover his costs of appeal and that the trial court was to determine whether the appellant should be awarded attorney fees on appeal, and, if so, the amount thereof.

\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

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