

# Financial Intimate Partner Violence: When Assets and Transactions Become Weapons

Jo Carrillo

*Editor's Note: Jo Carrillo addresses how abusers frequently use family financial assets and transactions to further harm and control their partners. Her primary focus here is on the response and methodology of various legal systems to financial IPV. She finds that typical legal remedies for intimate partner-violence do not adequately address financial IPV. In analyzing systems which successfully prevent and address financial IPV, the author examines some of the better laws and practices in California, recommending them as models for other states in addressing financial IPV.*

**B**y the time Gloria found out that her husband Henry had forged her name to deeds and loan documents it was too late. The equity in the family home was gone. Worse yet, a dissolution-related trip through the legal system confirmed that Gloria was liable for her absconding ex-husband's debt.

Nowhere in the record does it suggest that Gloria's lawyer thought of her as the target of domestic violence. No protective order was mentioned in the record even though Gloria's case arose in a state with a comprehensive domestic violence prevention act. The lawyer's analysis seems to have gone only this far: no gun, no physical violence, no assault, so no domestic abuse.

This article addresses financial interpersonal violence, which occurs when an asset (like money) or a transaction (like a loan, a sale, or a bank withdrawal) is used by an intimate partner as a weapon against the other partner. "Weaponized assets" can be tangible or intangible. According to the law

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of property, if an intangible asset or debt merges with paper, that paper can be sold or traded. To inspire confidence in markets the law protects good faith buyers and creditors. Indeed third-party protections are what obligated Gloria to a lifetime of repaying the same debts to her ex-husband's creditors that he fraudulently contracted during marriage to harm her.

It is helpful to conceptualize the issue of unjustly benefiting from one's wrongdoing as follows: If a person buys a gun with an intimate partner's credit card, then uses that gun to injure the other partner, should the injured partner be liable to pay for the gun?

## STATE LAW REFORM

States can legislate the obvious answer to whether survivors of domestic violence should have to pay for weapons that harm them. Currently, states take different approaches. But when it comes to financial intimate partner violence, every state could better address the issue by enacting two general principles of equity as part of domestic violence prevention legislation: survivors should not have to fund their own harm, and perpetrators should not benefit from their wrongdoing. But even with such legislation, financial IPV may go undetected.

Fault-based divorce does not address the problem head on, but at the same time no-fault divorce creates a privacy screen that can obscure financial violence in a marriage. Plus there is a toxic popular view that greed, theft, and overreaching are just a normal part of any divorce or break-up. Sources that report pre-trial settlements often include nonmarital break-up cases; reports tell the tale of fraudulent title documents, debt, and conveyances.

The narrative arc of financial IPV survivors' stories is straightforward: the survivor is productive, the survivor becomes the target of financial IPV (fraud, theft, coercion), the survivor suffers devastating loss. But the details of individual stories can be legally complex, making individual cases too disparate for advocates and courts to effectively address using the doctrine of precedent alone.

It takes more specific legislative solutions than now exist in most states to effectively prevent financial IPV.

This paper examines the idea of economic interpersonal violence through the more specific idea of financial interpersonal violence. Using a comparative analysis, the minimalist statutory approach of Alaska is discussed first. The comprehensive statutory approach of California is discussed second. In these two states, marriage and dissolution protections are available to married persons only, whereas domestic violence protections apply regardless of marital status.

## THE MINIMALIST MODEL

The Alaska domestic violence model is deceptively straightforward on its face. In actuality, the phrase "domestic violence" in that state incorporates fault-based divorce as well as 12 chapters of criminal statutes.

Let's illustrate the application of the Alaska model with the following situation. At the start of Dorothy's second marriage, she owned a home in the high-income foothills of Los Angeles. Her husband Albert owned considerably less. They sold everything in California to move to Alaska for a fresh start. The marriage deteriorated. The couple moved back to California. To circumvent Dorothy's interest in their Alaska house, Albert secretly gave his friend Bob money to "buy" their house for half of its fair market value. The friend immediately conveyed the same property to Albert's adult son. When Dorothy realized the fraud, she sued for divorce.

**Fault-Based Divorce.** In Alaska, a spouse in Dorothy's position would have a choice to sue for divorce on no-fault or fault-based grounds. The Alaska equitable division statute strives to divide marital property in half; but it also gives a court allocative discretion to effect an unequal division depending on eight factors, one of which is conduct during marriage.<sup>1</sup>

Conduct means misconduct. Presumably it includes secretly conveying commingled property to a child through a series of transactions intended to defraud the other spouse. But maybe not. No doubt Albert argued that the "mere" loss of Dorothy's fair share of the house could not proximately cause an impairment to her health or otherwise endanger her life.

This brings us to why fault-based divorce does not address financial IPV. Even if a petitioner, such as Dorothy, alleges the fault-based statutory ground of "cruel and inhumane treatment calculated to impair health or endanger life,"<sup>2</sup> the judge must recognize financial IPV and its health-related consequences and also be willing to exercise allocative discretion in favor of the petitioner. Even if that happens, however, there must be enough property for an uneven split to constitute meaningful restitution for the ways in which the survivor was adversely affected by the wrongdoing. Keep in mind that an uneven split of zero is zero. Therefore, reimbursement might address a past monetary loss, but it cannot begin to redress the personal harm or the future monetary loss suffered by the injured spouse.

**Protective Orders During a Divorce Proceeding.** The need for a protective order (PO) often arises during the pendency of a divorce. For that reason, states enact statutes specific to the use of protective orders in that context.

Alaska law gives a spouse the right to petition for "necessary" protective orders from the time that a petitioner files a divorce petition until the time that a final divorce judgment is issued.<sup>3</sup> A "necessary" protective order (PO) in the divorce context can include an order for one spouse to vacate a residence, an order under the state domestic violence statute discussed below, or what (ambiguously) reads like a mutual order "providing for the freedom of each spouse from the control of the other spouse." Neither the term "freedom . . . from the control of the other spouse" nor the word "necessary" are defined in

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<sup>1</sup> Alaska Stat. § 25.24.050(5)(A) (2014).

<sup>2</sup> *Id.*

<sup>3</sup> Alaska Stat. § 25.24.140(b)(1)-(3) (2014).

the divorce PO statute. Even so, Alaska rules of statutory construction support the argument that the statute reasonably can be interpreted to authorize a judge to order whatever is necessary to prevent financial wrongdoing.<sup>4</sup> A useful argument. But how far does it really go? In Dorothy's case, can the statutory language that authorizes a court to grant a PO to restrain Albert from conveying the Alaska house to his friend also authorize the court to invest Dorothy with the exclusive right to manage the sale and conveyance of that house?

In other words, does a protective order to restrain one spouse necessarily grant authority to the survivor to act? Suppose, for example, that the asset is legitimately titled in the perpetrator's name alone? Is the Alaska statute powerful enough to authorize a court to divest a title holder of his or her basic right to manage and control his or her own property?

Even with a protective order, unless a survivor can obtain exclusive control of the transaction being used as a weapon by the respondent (the title conveyance, in Dorothy's case), the abusive respondent (Albert) is able to continue transacting with third persons during the pendency of the divorce. A bank account, a credit card account, home equity, real estate, emails, Facebook pages—these are all assets that can be used by a perpetrator to effect transactions that leave in their wake financial chaos and loss for the survivor.

Suppose Dorothy were to petition the court to restrain Albert from transferring the Alaska property to Bob. A court has discretion to prohibit one spouse from “disposing” of the property without the permission of the other spouse.<sup>5</sup> Yet, here again the law makes an important distinction: authority to restrain one spouse from transacting with an asset is not the same as authority to assign control of that asset to the other spouse.

**Domestic Violence Protective Orders.** The Alaska domestic violence prevention statute incorporates state criminal statutes through the phrase “domestic violence.”<sup>6</sup> The domestic violence prevention statute entitles a petitioner to seek a protective order (DVPO) against “a household member,” defined to include current and former married, non-married, and dating partners.<sup>7</sup> The DVPO process is fast and no-fee.<sup>8</sup> Once a DVPO petition is filed the court shall schedule a hearing and provide the respondent (the abusive partner) with “at least 10 days’ notice.”<sup>9</sup> The DVPO standard of proof is “preponderance of the evidence.”<sup>10</sup> DVPOs based on the commission of a crime involving domestic violence are effective until further order of the court; otherwise they are

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<sup>4</sup> *Id.*

<sup>5</sup> Alaska Stat. § 25.24.140 (b)(6) (2014).

<sup>6</sup> Alaska Stat. § 18.66.990(3) (2014) includes within its definition crimes against the person and crimes against property; *McGraw v. Cox*, 285 P.3d 276 (Alaska 2012), upheld the issuance of a PO based on sufficient evidence of respondent's attempt to commit criminal coercion against the petitioner as defined by Alaska Stat. § 11.41.530.

<sup>7</sup> Alaska Stat. § 18.66.990(5) (2014).

<sup>8</sup> Alaska Stat. § 18.66.100(b) (2014).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

effective for up to one year after issuance.<sup>11</sup> Temporary DVPOs are also available for up to 20 days if (i) there is at least one past act of domestic violence, (ii) the DVPO is necessary to protect the petitioner from the respondent, and (iii) petitioner certifies what notice, if any, was provided to the respondent.<sup>12</sup>

The Alaska domestic violence model leaves it to the petitioner to allege one or more of 64 enumerated crimes against a household member. Examples include: extortion;<sup>13</sup> coercion;<sup>14</sup> and mischief of property.<sup>15</sup>

These are multiple bases for naming financial wrongdoing, and yet criminal law versus civil law variations can make a meaningful difference to outcomes. Variations create evidentiary gaps.<sup>16</sup> For example, criminal coercion requires evidence of intent while civil coercion may only require proof that the respondent gained a benefit at the expense of the petitioner.<sup>17</sup> Variations also create outcome gaps. Criminal coercion is remedied by arrest; civil coercion, on the other hand, may allow for avoiding a third-party transaction that otherwise would have been valid. Variations create theoretical gaps. Some crimes may not be chargeable against property a person owns or has the statutory right to control.<sup>18</sup> Can a person steal their own property? Destroy it? Sell it? Criminal statutes are not equipped to answer such questions for purposes of domestic violence prevention thus leaving open the possibility that, in any given case, financial wrongdoing will continue unrestrained.

**Emergency Protective Orders.** Can Dorothy petition for the remedy of an emergency protective order (EPO) to prevent Albert from transferring the house to his friend? In Alaska, as in other states, financial wrongdoing is not covered by emergency protective order provisions unless the assets involved are first deemed essential to personal safety.

To sum up, a minimalist domestic violence system can be vague on a number of key issues, the most critical of which involves property management and control rights. Is stopping a financial domestic violence crime involving marital property the same as recognizing the survivor's need to control the asset or transaction with which the crime is being perpetrated? Under the minimalist model this becomes a necessary question for the state legislature.

## THE COMPREHENSIVE MODEL

The California Domestic Violence Prevention Act (DVPA) offers a contrast to the minimalist approach of Alaska. The DVPA is a comprehensive act within an even more comprehensive state Family Code. As part of the DVPA,

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<sup>11</sup> *Id.* at § 100(c)(1)-(2).

<sup>12</sup> Alaska Stat. § 18.66.110 (2014).

<sup>13</sup> Alaska Stat. § 11.41.520 (2014).

<sup>14</sup> Alaska Stat. § 11.41.530 (2014).

<sup>15</sup> Alaska Stat. § 11.46.475 (2014).

<sup>16</sup> Compare *McGraw v. Cox*, 285 P.3d 276 (Alaska 2012) with *In re Marriage of Baltins*, 260 Cal. Rptr. 403 (Ct. App. 1989).

<sup>17</sup> Fed. R. Evid. 404(b)(2).

<sup>18</sup> Alaska Stat. § 25.15.020 (2014).

California has also adopted an enhanced version of the Uniform Interstate Enforcement of Domestic Violence Prevention Orders Act.<sup>19</sup> The uniform act makes California DVPA restraining orders substantively enforceable in 11 other adopting states, on military bases, and on tribal lands that authorize the use of protective orders.

In California, there are multiple statutory strategies for preventing economic wrongdoing. Preventions span the period from before marriage to well after dissolution.

More to the point, when the statutory strategies are read as a whole two specific interpretations emerge. The first is that financial interpersonal violence is functionally recognized by the California Legislature as a category of domestic abuse. The second is clear but implicit political and legal recognition, again by the California Legislature, that financial interpersonal violence is a pervasive social problem to be addressed and prevented.

**Prevention During Marriage.** California is a community property state. Default Family Code provisions can be modified by contract by people who plan to marry or who are married. Under the Family Code, spouses have equal management rights; at the same time, they owe partnership fiduciary duties to each other, including the duty to disclose financial information as a matter of course. A corollary of the equal management right is that a spouse has an ever-present option to avoid certain transactions made by the other spouse without prior written consent.<sup>20</sup> Additionally, again at the option of one spouse, a transaction between the spouses (which includes transactions between a spouse and a third party) can be avoided with proof that the transaction was unfair to the adversely affected spouse.<sup>21</sup> Remember Gloria and Dorothy.

Historically, California has led the way in permitting interspousal lawsuits. Spouses own vested rights in community property. The Family Code creates interspousal claims that provide remedies, attorneys' fees, costs, monetary sanctions, and other support for a spouse who must sue the other spouse to prevent the impairment of a community property interest. And so on. Yet statutes enacted to protect community property from impairment do not necessarily prevent domestic violence.

For example, when Aldis married Deanna, Aldis was a third-year medical student with no income.<sup>22</sup> By the time they divorced, Aldis and Deanna owned a medical practice that grossed \$1,149,050 dollars per year (time adjusted). By law, Deanna owned a vested one-half community property interest both in that medical practice and in all of the many other assets that were acquired during her marriage to Aldis. When Deanna tried several times to retain an attorney to represent her in the property dissolution, Aldis obstructed her at every turn. The record shows that Aldis even threatened Deanna's prospective

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<sup>19</sup> Cal. Fam. Code §§ 6400 through 6409 (2004).

<sup>20</sup> Cal. Fam. Code § 1100 (2004).

<sup>21</sup> Cal. Fam. Code § 721(b) (West. Supp. 2016).

<sup>22</sup> *In Re Marriage of Baltins*, 260 Cal. Rptr. 403 (Ct. App. 1989).

attorneys with lawsuits for implying that he had physically abused Deanna. Ultimately, Deanna fended for herself in the dissolution.

Throughout the dissolution process Aldis belittled Deanna. He told her that the medical practice was his alone because he was the doctor. He told her that her bookkeeping and child care contributions were irrelevant to the property division. He told her that she was worthless. He threatened to declare bankruptcy to avoid paying Deanna or their creditors.

In the end, Deanna left the marriage psychologically battered, depressed, and shamed. She had no income, no education, and no meaningful financial support for herself or her minor child. Aldis bought Deanna out of her one-half community property interest with ten cents on the dollar, much of which came in the form of a depreciating luxury car. Aldis, on the other hand, exited the marriage with a medical practice, an education, an income stream of over \$50,000 per month (time adjusted), a 30-acre ranch with a vineyard, bank accounts, insurance policies, and other valuable appreciating assets. Deanna was clearly financially harmed by an egregiously unfair division of property in a state where community property is vested at acquisition. And, she also suffered personal and emotional injury.

Outcomes like Deanna's led to the passage of legislation to codify court holdings that psychological coercion during marriage is a form of constructive fraud, which, in turn, is a precursor to conversion (interference if not theft) of a community property interest. Upon proof that one spouse has taken "any unfair advantage of the other," the adversely affected spouse acquires (at least) two causes of action against the spouse who gained any benefit from the transaction: the right to avoid the transaction;<sup>23</sup> and the right to sue for impairment of a community property interest.<sup>24</sup>

The protections that California offers during marriage are important. Period. Yet a property right, even if vested, is easily lost or stolen. For that reason, the Family Code recognizes that impairment can occur in a single transaction, a series of transactions, or a pattern of transactions; and it can relate to past, present, or future community property rights. Damages, court costs, attorneys' fees, and money sanctions are mandated for impairments caused by a breach of the partnership fiduciary duty.<sup>25</sup> This brings us to divorce-related protections against financial IPV.

***Ex parte* Restraining Orders During a Dissolution Proceeding.** From the time a petition is filed to the time that a final judgment issues, a California court has authority to grant an *ex parte* restraining order (RO) on property and transaction-specific matters.<sup>26</sup> The list of financial behaviors that can be addressed by an *ex parte* RO issued during the pendency of a dissolution proceeding is broad. A court can restrain one spouse from "transferring, encumbering,

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<sup>23</sup> Cal. Fam. Code § 721 (West. Supp. 2016).

<sup>24</sup> Cal. Fam. Code § 1101 (West. Supp. 2016).

<sup>25</sup> *Id.*

<sup>26</sup> Cal. Fam. Code § 2045 (2004).

hypothecating, concealing, or in any way disposing of any property, real or personal, whether community or quasi-community, or separate . . .”<sup>27</sup>

A dissolution RO protects at-risk spouses as well as third parties by how it gives a court the power to invest and restrain. The protected spouse is invested with exclusive legal control of inventoried assets for a specific time. The respondent-spouse is temporarily divested of the same. Regrettably, a dissolution RO under the above statute is available only to married partners. Nevertheless, as discussed below, the above statute can be used as a template under the DVPA, which allows a court to restrain like transactions under the doctrine of necessity.

**Forfeiture Provisions.** California is a no-fault state with only two grounds for dissolution: irreconcilable differences and permanent legal incapacity to make decisions.<sup>28</sup> Community property is defined as any property acquired by a married person while domiciled in the state.<sup>29</sup> Because community property vests at acquisition, fault-based divisions (such as those allowed in Alaska) are reversible on appeal absent a forfeiture statute.

The Family Code invokes forfeiture by various methods, including discretion, presumption, option, mandate, and general set-aside orders.

Forfeiture statutes put into operation the policy that a person should not benefit from his or her wrongdoing. In California, unlike in Alaska, the state demonstrates its compelling interest in preventing domestic violence by how it modifies, limits, or divests a perpetrator of property and important family protections such as spousal support, pension benefits, or even insurance coverage.

Here is an example of a *discretionary* forfeiture statute. A court has discretion to determine spousal support based on 14 factors, one of which is documented evidence of domestic violence.<sup>30</sup>

Here is an example of a *presumptive* forfeiture statute. A rebuttable presumption is raised against awarding spousal support to a spouse who is convicted of domestic violence.<sup>31</sup>

Here is an example of an *optional* forfeiture statute. A survivor has the option to move to divest a spouse who is convicted of the specific crime of “attempted murder or soliciting the murder of a spouse.” If the option is exercised and the motion is granted, the convicted spouse is divested of spousal support and medical, life, or other insurance benefits or payments that the survivor otherwise would have been obligated to pay.<sup>32</sup>

Here is an example of a *mandatory* forfeiture statute. By operation of law, a spouse who is convicted of a violent sexual felony against the other

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<sup>27</sup> *Id.*

<sup>28</sup> Cal. Fam. Code § 2310 (West Supp. 2016).

<sup>29</sup> Cal. Fam. Code § 760 (2004).

<sup>30</sup> Cal. Fam. Code § 4320 (West Supp. 2016).

<sup>31</sup> Cal. Fam. Code § 4325 (2004).

<sup>32</sup> Cal. Fam. Code § 4324 (West Supp. 2016).

spouse forfeits spousal support and any community property interest in the survivor's retirement and pension benefits.<sup>33</sup>

Here is an example of a *general* forfeiture statute enacted to codify judicial rulings in cases like Deanna's. A court is authorized to set-aside a final dissolution judgment if it effects an inequitable division of property due to one party's nondisclosure or misconduct.<sup>34</sup> Misconduct includes fraud, perjury, duress, mistake of law or fact, taking advantage of a mentally incapacitated partner, and failure to comply with a court order to disclose information.

Family Code forfeiture provisions are important protections, but their use is limited to married persons. Here again, however, in some cases Family Code forfeiture statutes can be used as a template for nonmarital partners.

**The California Domestic Violence Prevention Act.** The California DVPA brings civil harassment provisions into the Family Code, where they are fast and no-fee. The DVPA process also allows for restitution, reimbursement, attorneys' fees, monetary sanctions, and costs.

The size and diversity of California's population makes a significant difference to the development of its Family Code. By official estimates California trial courts hear double the number of DVPA petitions as compared to dissolution petitions.

The volume of DVPA restraining order (DVRO) petitions makes the DVRO appeals process valuable from a systemic point of view because appeals flag statutory gaps and ambiguities for the legislature. In a recent DVRO stalking case the issue was whether "abuse" is limited to physical injury or assault; the court held it was not. Soon thereafter, the California Legislature amended the DVPA definition of "domestic violence" to read: "abuse is not limited to the actual infliction of physical injury or assault."<sup>35</sup>

The broad definition of abuse is matched with a statute that gives a court power to enjoin any behavior necessary to effectuate its order(s).<sup>36</sup> Necessity authorizes the court to assign legal control of an asset to one party over the other, even if the restrained party's name alone is on title.

Another statute enumerates abusive behaviors in detail. Specific to financial IPV are: credibly impersonating; falsely personating; destroying personal property (a category that includes money owned or borrowed); and "disturbing the peace of the other party," a phrase that is regularly litigated.<sup>37</sup>

Recently, a DVRO stalking case clarified the meaning of the phrase "disturbing the peace of the other party." The court held that the phrase means to engage in conduct that destroys the mental or emotional calm of the other party.<sup>38</sup> The court rejected the idea that the Family Code definition of disturbing

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<sup>33</sup> Cal. Fam. Code § 4324.5 (West Supp. 2016).

<sup>34</sup> Cal. Fam. Code § 2122 (West Supp. 2016).

<sup>35</sup> Cal. Fam. Code § 6203 (b) (West Supp. 2016).

<sup>36</sup> Cal. Fam. Code § 6322 (2004).

<sup>37</sup> Cal. Fam. Code § 6322 (West Supp. 2016).

<sup>38</sup> *Burquet v. Brumbaugh*, 167 Cal. Rptr.3d 664 (Ct. App. 2014).

the peace requires proof of incitement to violence, as it would under the Penal Code. Therefore, until the California Legislature provides otherwise, the rationale against stalking stands as authority for the issuance of DVROs that cover electronic IPV, which includes accessing, reading, or threatening to disclose private emails; accessing password protected accounts; and so on.<sup>39</sup> Financial transactions are increasingly electronic. Therefore, a Family Code-centric definition of disturbing the peace of the other party is a significant step forward in preventing financial IPV via electronic means.

Yet another DVPA provision gives a court authority to effect control of leases and dwellings notwithstanding legal and equitable title issues.<sup>40</sup>

Finally, a recent provision authorizes a court to restrain behaviors specific to financial IPV perpetrated by insurance contract or coverage.<sup>41</sup>

To conclude, whether it gets acknowledged by legislators or not, financial resources are important to surviving domestic violence. Intimate partners entrust specific property and personal financial information to each other on a daily basis. With the click of a mouse or the change of a lock a financial abuse perpetrator can ruin an intimate partner's life. The forging of a name, the concealment of money, falsely personating an intimate partner online to obtain a loan or a credit card are all acts intended to deceive and to break trust, which is exactly what they do.

As it stands, legal remedies for economic, financial, and financially motivated IPV are inadequate if they do not specifically address financial IPV as part of a general domestic violence prevention program. California has made strides toward using its experience, diversity, and legislative resolve to enact a comprehensive Family Code and, within that, a comprehensive DVPA that is broad enough to cover financial and financially motivated IPV in intimate relationships. There is still much distance to cover. Even so, more states should consider adopting protections like those found in the California Family Code.

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<sup>39</sup> E.g., *In Re Marriage of Nadkarni*, 93 Cal. Rptr.3d 723 (Ct. App. 2009); *In re Marriage of Evilsizor and Sweeney*, 189 Cal. Rptr.3d 1 (Ct. App. 2015).

<sup>40</sup> Cal. Fam. Code § 6321 (2004).

<sup>41</sup> Cal. Fam. Code § 6325.5 (2004).



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