Empire College of Law
Community Property
Fall 2025 Final Exam
Professor T. Wright

INSTRUCTIONS:

You will have three hours to complete the two questions for this examination. (1 ½ hours per question.)

Read the bullet pointed "issues" (call of the question) at the bottom of the page before reading anything else. Read the entire question before outlining or writing the answer. Please answer both questions according to current California Community Property Law.

Write the question's answer using the Issue, Rule, Analysis and Conclusion approach for each issue. Use as many RELEVANT facts from the question as possible when writing the issue, rule, analysis (arguing both sides of the issue) and in writing a conclusion. You will receive no credit for adding facts in your discussion that are not part of the question's facts. You will receive less credit for an IRAC answer and discussion if you have not FULLY integrated as many relevant facts as practical from the question into your written answer.

Good Luck. Tom Wright

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QUESTION 1:

In January 1995, Howdie (H), returned to Santa Rosa after graduating from Stanford and receiving his CA real estate broker's license. H had inherited his parents' entire 50-year real estate business including its land; their large, furnished home; and a $500K "investment portfolio". The business had 5 clients and a great reputation.
H named his new business "Gold Standard Realty." He hired clerical staff, connected with old classmates, joined community organizations, and by the end of 1995, as the only broker-agent in the business, he had two commissions totaling $500,000 from the old clients and he had 10 new clients. H's after-tax net income was $200,000 per year from "Gold Standard Realty." At the end of 1995, "Gold Standard Realty" appraised at a value of $2 million, NOT including the building and land. The inherited home appraised at $2 million.

In January 1996, H married Wendy (W), an attorney, who practiced in Santa Rosa. W convinced H to transfer the home into "Community Property with a right of survivorship" for estate tax purposes. H properly recorded a grant deed reflecting this ownership change. H and W borrowed $200,000 in a joint loan and used all of the funds to make major home improvements. They paid $1,000 principal payments per month towards the loan. (Community improvements = $1,000/month x 12 months x 6 years x 12 = $72,000).

H established a joint account in H and W's names in which H deposited ALL of his net monthly income ($200,000 per year) and W deposited $10,000 per month from her monthly income into the account. The money in that account was used to pay all predictable community expenses including the home loan. Deposits ALWAYS exceeded expenses and the excess regularly retained in the account was $5,000 per month. The balance of W's monthly $11,000 per month earnings were deposited into her separate account, in her name only. (W's after-tax earnings were approximately $252,000 per year). During the marriage, W managed the joint account, including payment of community bills, and managed her separate account balance. H managed his separate inherited account during the marriage. (Community account = $5,000 per month x 12 months x 6 years = $360,000) (W SP account = $11,000 per month x 12 months x 6 years = $792,000).

For the five years from January 1996 to January 2002, W earned $252,000 net per year. H continued to earn $200,000 net per year from "Gold Standard Realty". (Note that with respect to H's Gold Standard earnings for the period January 1995 through January 2002, $200,000 per year was "a reasonable salary for someone in a similar profession".) In January 1997, H used $250,000 from his inherited account to finance TWO satellite offices using the "Gold Standard Realty" name in site one: Corte Madera and site two: Napa. H set up EACH office with an independent real estate broker and staff. H financed 100% of it solely through funds from his inherited separate account. From January 1, 1997 to January 2002, he met with both brokers twice a week for a maximum of two hours each week to discuss marketing and strategy. After expenses, H % share of profits from both satellite businesses (excluding Gold Standard main office income) was an additional total net income of $200,000 net per year which H deposited into his separate inherited account. (1/1997 – 1/2002 = 5 years x 13 x $200,000 = $12 million).

In January 2002, W filed for dissolution. There is NO MONEY in the joint account. Both parties seek accurate joint account balances, reflecting the appropriate level of retained cash given the amounts deposited and the expenses paid. Gold Standard Realty at dissolution is valued at $15 million. The home is valued at $6 million. H and W paid $72,000 in principal toward the home loan during the six years. (See above for calculations of total account accumulations.)

Discuss the community property and separate property share issues, the rules, analysis/arguments and conclusions using IRAC method for:

- Gold Standard Realty business
- The Home, home improvement credit, and loan balance
- The Joint account
- H's inherited account and W's separate account
- Discuss the fiduciary duty issues

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QUESTION 2:

In January 2002, Hal (H) and Wanda (W) met in college in California. H was in his "first year" of a four-year night school law school program. W was a nursing student finishing her Nurse Practitioner's license/ clinical work at the University's hospital. They married and moved into student housing. W was hired by the hospital making $12,000 per month, which she deposited into a joint account from which she paid most of their joint expenses and $1000 towards H's existing and back tuition. H worked 20 hours a week as a law clerk and placed his earnings in the joint account. H paid only a small portion of community expenses. The current pattern continued for five years until January 2005 when H stopped working to prepare for and take the California Bar exam. W had paid $48,000 (5 years x 48 months x $1,000 per month) of H's tuition and loan fees and paid the vast majority of the living expenses during the period between the marriage on 1/2002 and 1/2007 when H passed the state bar.

In January 2005, W inherited a large home in Utah worth $1 million, debt-free, at a famous ski resort. She took title to the home in her name. She also inherited $100,000. She established a separate account with the $100,000, which she used to pay the taxes and expenses for the home, and in which she deposited the rent (she listed the home on VRBO). W netted $3,500 or more each month.

In January 2007, H passed the bar exam and accepted an associate position at a large law firm earning $12,000 per month with additional bonuses and other employment perks. H's salary increased each year. During the first four years at the firm, H tried ten personal injury cases with his mentor and ten cases on his own. In January 2011, his salary was increased to $400,000 and he received a $250,000 bonus. H deposited all of his earnings into the joint account.

In January 2011 W's salary continued to be $12,000 per month. W was then injured by a drunk driver. W broke both legs and one hand was seriously injured, potentially affecting her ability to do her job. The jury awarded her $5 million including medical, future and punitive damages, and it was all paid during marriage. It was unclear if W could ever return to work.

In late 2011, H & W purchased a home for $1.3 million. They used H's earnings to

make the down payment and title was recorded in H & W's names as "community property". H and W agreed in writing to make significant home improvements. W contributed $150,000 from her Utah account and H contributed $250,000 from his bonus. The funds were deposited into the joint account and the improvements were made.

In January 2012, H filed for dissolution. At dissolution, H & W's HOME was worth $3 million including improvements, the Utah VRBO home was valued at $3 million, and W's Utah account is $350,000 with interest.

Discuss the claims and defenses for both H and W (IRAC method) for the following issues:

- H's Law School Education/tuition/ expenses/reimbursement
- W's Utah VRBO and the separate account established by W
- The HOME and any improvements
- The Personal Injury Claim

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Monterey College of Law

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Exam Date:	Dec 9, 2025
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GRADE	_____

Total Number of Words in this Exam = 4945
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Total Number of Characters in this Exam (No Spaces, No Returns) = 24220

1)

1. Whether the community has an interest in the appreciation in the value of the business for the period of the marriage given that the business was inherited, but built up by Howdie (H).

GENERAL PRESUMPTION

CA is a community property state. All property that is acquired during a valid marriage by the labor of either spouse while domiciled in CA is presumed to be community property (CP). CP is any property acquired during a valid marriage by the labor of either spouse while domiciled in CA. Separate property (SP) is any property acquired before marriage, during marriage by gift or inheritance, after the date of separation, or the rent, profits, and issues of SP.

SP BUSINESS

A SP business is any *viable* business created before marriage. A SP business may increase in value during the period of the marriage, and the community has an interest in that appreciation. Courts have wide discretion to use any reasonable accounting in order to apportion the growth so long as it achieves substantial justice. However, there are two primary formulas the courts use: Pereria and Van Camp.

Under Pereria, if the growth of the SP business is due primarily to the labor, talent, and industry of either spouse, then the growth is considered community. The courts will give the separatizer the fair market value of the business at the time of marriage plus a reasonable rate of return on an investment well secured. This is usually around 7% but courts have discretion to change that rate. The remainder of the appreciation is given to the community.

Under Van Camp, if the growth of the SP business is due primarily to external factors, such as market conditions and independent contractors, then the growth is considered separate. The courts will give the community a reasonable salary based on the salary of a similarly situated professional in the same industry. The courts will subtract out family expenses. The remainder of the growth is given to the separatizer.

There is also a hybrid approach under Brandes. In that case, if the SP business starts out as a Pereria type business but morphs into a Van Camp type business, then the courts will identify the two periods and apply Pererie to the first and Van Camp to the second period.

Here, H has inherited a business, including the land, investment portfolio, and great reputation. This is a SP business because this business was started before marriage and given to H by inheritance. Furthermore, this is a viable business because it was already up and running by the parents who gave it H, and because the business owned property and had existing clients and a great reputation.

W could argue that the courts should apply the Pereria approach because this was a small mom and pop business with only 5 clients when H received it, and it was H's labor and industry that turned this into a great business. There was only a small clerical staff and H presumably spent all of his working hours in the office, developing the business. The facts further indicate that this a Pereria business by indicating that H was actively participating in networking through community organizations and meeting with old classmates, which show that H's was putting

significant time and effort into this business. While the facts are not exactly clear what efforts were made by H after the marriage, presumably H continued to work at the office and spent the same amount of time and energy that he poured into the business before marriage.

On the other hand, H could argue that the courts should apply the Van Camp approach because H opened two additional offices which he was not in charge of managing, which represented the labor of independent real estate brokers-- not H's labor. Furthermore, because H only met with the brokers for two hours per week, H has not spent nearly any time at all in the development of the business after 2002. He was only passively involved and reaping a huge reward in the form of double the income he was making before the additional offices opened.

Ultimately, the court will likely apply the Brandes approach because these represent two very distinct periods of time. While it is true that the business initially required significant supervision and labor on the part of H changed after 2002. At that time, the majority of the money was made by the independent brokers at the additional offices. Therefore, the court will likely apportion the years from 1996 to 1997 under the Pereria approach, and the 1997 to 20002 period under the Van Camp approach. H would get fair market value of the biz at marriage (2 M) plus a reasonable rate of return over the 1996-1997 period, and the community would receive the remaining appreciation for that period. Beginning in 1997, the community would only receive a reasonable salary ($200k/year) for the remaining years of the marriage (1997-2002) less family expenses. H would receive the remainder.

2. Whether the community has an interest in the home given that the home was acquired before marriage, but ownership was changed for tax purposes.

GENERAL PRESUMPTION (SUPRA)

MOORE MARSDEN

Under Moore Marsden, the community is entitled to a pro tanto ownership interest in the appreciation of a SP home for the period of the marriage. In order to calculate the CP pro tanto interest, courts divide the community's contributions towards the principal by the historic purchase price of the home. To determine the SP pro tanto interest, the court adds the SP down payment to the loan amount. From that number, the court subtracts out the community's contributions, then divides by the historic purchase price. Then the court apportions the marital appreciation according to the percentage of interest. The community also recieves reimbursement for contributions towards the principal, not maintenance taxes or insurance. The separatizer receives their SP down payment, reimbursement for the principal payments before marriage, pro tanto interest in marital appreciation, principal payments after date of separation, and the outstanding loan.

TRANSMUTATION

A transmutation is a change in the character of property. It requires a signed writing. The writing must include an express declaration made, joined in, or consented to by the adversely affected party and a statement clearly indicating the intent to change the character of the property. It is rebuttable by tracing or written agreement.

LENDER'S INTENT

Debt taken out during marriage is presumed to be CP. This may be rebutted using the lender's intent test. If the lender intended to rely solely on the SP of one spouse, then the debt may be SP.

Here, H inherited a home worth 2 million. This is a SP home, initially, because it was acquired before marriage and by inheritance. However, there are no facts to indicate whether there was any outstanding loan on the home. Because the facts are silent as to any payments made on the principal in the period preceeding the marriage, I will assume that there was no outstanding loan on the SP home. Therefore, Moore Marsden would not apply because there could be no way for the community to make or contribute to the principal payments. The loan payments only began after the home was transferred to both spouses.

However, this community would have an interest what had originally been an SP home through transmutation. The transfer, as evidenced by the grant deed, is a valid transmutation because the deed turned what had been an SP home into a CP asset by titling the asset in joint form. Under the joint title presumption, any property titled in joint form is presumed to be CP unless there is a clear indication on the face of deed that it is intended to remain SP or through written agreement of the parties. Furthermore, the grant deed is a writing since it is a document, and the document is signed by H because that is what is required for real estate documents to have binding effect. The face of the deed would clearly indicate H's intention to change the character of the SP home since it presumably contains language conveying the home to the couple jointly. H is the party adversely affected since he is losing his SP interest in the home.

H could argue that there was coercion and seek to set aside the transmutation based on the fact the W was "convincing" him to this transfer for tax reasons. However, in the absence of additional facts, the W's persuading H to transfer the Home for tax reasons in not a sufficient basis to allege coercion since many people title property for tax advantages and does not on its face indicate ill will.

Therefore, this is likely a valid transmutation.

Regarding the loan balance, the loan is likely CP because there are no facts to indicate that the lender relied solely on H's SP. While H could argue that the home itself was worth at least 2 million at that point and was a major asset that the lender likely relied on in extending credit to improve the home, the fact remains that this was a loan taken out during marriage. Both spouses work lucrative jobs that the lender likely also considered in extending the loan. Furthermore, the home had been re-titled as a CP asset at this point, so even if the lender had relied on it, it would have been relying on CP. Therefore, in the absence of additional facts indicating that the lender relied exclusively on H's SP, this was likely a community loan and the community is liable for the remainder.

REIMBURSEMENT FOR IMPROVEMENTS

A spouse may seek reimbursement if the contributed SP towards the down payment, principal payments, or improvements.

Here, the facts are clear that the improvements were made using a home improvement loan which was a joint loan. Because the improvements were made by joint loan, there is no reimbursement for these improvements.

Therefore, while either W or H may try to claim reimbursement for these improvements, there are no facts to support this argument since no SP was expended in the improvements.

3. Whether the joint account and the funds contained therein should be considered CP or SP given that both spouses were contributing their salaries and using the account for family expenses.

GENERAL PRESUMPTION (SUPRA)

CAMPAL

Under California Multiple Party Account Law (codified in Probate Code 5303(a)), all deposits into the account of a married person are presumed to be CP. This rule applies even if the bank account is titled in one spouses name only. Under the family expense presumption, all community expenses are presumed to be paid using community property funds.

Here, both spouses are contributing to a joint account by adding all or some of their earnings into the account which bears both H and W's name. From this account, all community expenses are paid, including the payments for the home improvement loan. The accounts and any funds contained in the joint account are community property because the account was established after marriage, making this the account of married persons. Furthermore, the account and funds are CP because the spouses are adding their earnings, which are CP in nature since those funds were earned during marriage in exchange for work performed while living in CA. While H could try to argue that his salary stems from a SP business and therefore is SP, this argument will likely not succeed because he is being compensated for his labor and effort there, which is considered CP by definition.

Therefore, the account and accumulated earnings in the amount $5,000 per month over the period of the marriage are all CP.

4. Whether H's inherited account and W's separate account retain their separate character despite H and W's addition of their earnings into the accounts.

GENERAL PRESUMPTION (SUPRA)

CAMPAL (SUPRA)

Tracing

Property of one character produces rents, profits, and issues of the same character. Tracing is working backwards to determine whether an asset was SP or CP at acquistion. There are two methods: direct and exhaustion. Direct tracing requires that sufficient SP funds were in the account to make a purchase and the spouses intended for the purchase to be made with SP. There must be testimony of the spouses intention to keep SP, an expert to testify about the

accuracy of trace and records, See compliant records, and timely notice to other spouse. Exhaustion requires that community funds be exhausted. Community funds are exhausted if family expenses meet or exceed available funds. Any remaining funds may be presumed to be SP.

COMMINGLING

Commingling is the combining of SP and CP. Commingled funds are presumed to be CP unless they can be traced to SP. The burden is on the first person to commingle to establish the SP.

Here, H has an inherited account. This account would be SP since it was created before marriage and initially contained only SP funds. However, H has added $200,000 in income from his SP business into his inherited account. On one hand it could be argued that these sums were H's SP since it was income (i.e., rents, profits, issues) generated by a SP business. However, despite the fact that this comes from an SP business, this amount still represents the salary of H based on his labor contributions to the business, which is CP since H's labor belongs to the community. Therefore, the $200K added to the account is CP.

Once H added the $200K, the account was commingled. There are no facts to indicate that H kept contemporaneous records when he made those deposits so it's unlikely that he would be able to establish any funds as SP through direct tracing. The facts also indicate that community expenses were paid from *another* account, but there was always a remainder. Therefore, H would be unlikely to established that community funds were exhausted. Thus, ~~H likely could~~ **not** trace his SP from the inheritance account by exhaustion. Therefore, the entire sum will likely be CP.

W also contributed money from her earnings into a separate account. The facts are silent as to when this account was created. Assuming that it was created after marriage, the fact that the account was in her name only will not stop CAMPAL from applying. From this fact, it can be assumed that any sum deposited into this account is CP. However, if the account predated the marriage and is W's SP, then she has commingled the accounts by adding her earnings to the SP funds from before marriage. For the same reasons discussed above, W will likely not be able to successfully trace the SP funds in that account. Therefore, any sums in W's separate account are likely CP, despite the account being in her name only.

5. Whether H or W breached their fiduciary duty when the $5,000/month accumulations were determined to be missing from the account.

GENERAL PRESUMPTION (SUPRA)

FIDUCIARY DUTY

Spouses owe one another a heightened duty of good faith and fair dealing in financial transaction, which continues until marriage is terminated.

EQUAL MANAGEMENT AND CONTROL

Spouses have an equal right to manage and control CP. They also have a duty to refrain from

mismanagement of those funds. Under Margulis, if funds are determined to be missing, the non-managing spouse must establish that (1) funds are missing and (2) that the other spouse was responsible for management of those funds. At that point, the burden shifts to the other spouse to explain where the missing funds went.

Here, H and W had been depositing their earnings into a joint account, which accumulated a total of $5,000/month for the period of the marriage. The marriage lasted from 1996 to 2002 which is approximately 8 years. At the termination of the marriage, there was hundreds of thousands that the spouses could have expected to find in the joint account at dissolution, but none was there. At this point, under Margulis, H could argue that W was the managing spouse in charge on her separate account and the joint account. He could also easily establish that money was missing since there was NO MONEY in the joint account at the time of dissolution. At that point, the burden would shift to W to explain where the funds went.

W could argue that H was her equal and had the ability to check the account. H was a sophisticated business man who ran his own business, and he should have known to check the account periodically. However, given the heightened duty to treat the other spouse fairly, which is taken very seriously by the courts, W would likely not succeed with the argument. The sum was significant and her failure to account for it would likely represent a breach of fiduciary duty.

Therefore, W would likely be found to have breached her fiduciary duty.

2)

1. Whether the community may seek reimbursement for contributions made to Hal's (H) tuition and the couple's living expenses.

GENERAL PRESUMPTION

CA is a community property state. All property that is acquired during a valid marriage by the labor of either spouse while domiciled in CA is presumed to be community property (CP). CP is any property acquired during a valid marriage by the labor of either spouse while domiciled in CA. Separate property (SP) is any property acquired before marriage, during marriage by gift or inheritance, after the date of separation, or the rent, profits, and issues of SP.

EDUCATION

Education is an exception to the general presumption. Education and the educational debts are considered the separate property of the student spouses because education is viewed as mere expectancy. However, the community may seek reimbursement for costs directly related to education (such as books, tuition and similar expenses). In order to seek reimbursement, it must be shown that that community contributed money to expenses directly related to education, less than 10 years have elapsed since the spouse graduated, and the educational degree substantially enhanced the student spouse's ACTUAL earnings. Under the 10 year rule, the community is presumed to have been compensated if more than 10 years has passed between the time the student graduated and the time of divorce.

Here, Wanda (W) makes $12,000/month working as a Nurse Practitioner. That salary is considered community property because it is compensating W for her labor, which belongs to

the community. While H is able to financially contribute through his work as a law clerk, W supports the family while H attends law school. The community pays the majority of the living expenses as well as H's tuition from a joint account. At the end of law school, the community has paid $48K in tuition and living expenses. The community would be entitled to reimbursement for $48K spent in tuition because tuition is directly related to education. Furthermore, less than 10 years have passed. H graduated from law school in 2007, and the parties filed for dissolution in 2012. This is not 10 years. Because less than 10 years have elapsed, there is no presumption that the community has already been compensated. Finally, the law degree substantially enhanced H's earnings because he is now eligible to work at a major law firm where he makes the same salary as W each month ($12,000), plus other employment perks and the opportunity for raises and bonuses. This is an actual enhancement because he was not able to contribute even half of living expenses as a law clerk during law school.

While H could argue that $12,000 is not substantial given that this is what W makes, the court will likely disagree with H because his earnings were vastly increased from his salary as a law clerk before the degree.

Regarding the living expenses, living expenses are not directly related to the education of the student spouse since the couple would need to feed, clothe, and house themselves regardless of whether or not one spouse is in school. This is further supported by the duty of mutual obligations held by both spouses. Therefore, while W may seek reimbursement for these costs, she will likely not succeed.

Therefore, the community would likely be entitled to a reimbursement for the contributions towards H's tuition, but not the living expenses paid during the period that H was in law school.

2. Whether W may claim the Utah home, separate account, and VRBO rent as her separate property.

GENERAL PRESUMPTION (SUPRA)

QUASI COMMUNITY PROPERTY (Quasi CP)

Quasi CP is property, wherever situated, that would have been community property if the parties had been domiciled in CA when it was acquired. The purpose of quasi CP is to streamline dissolution proceedings by allowing CA to enter one final judgment for ALL properties, and other states giving CA full faith and credit.

Here, the Utah house was inherited by W debt free. Despite the fact that this house was acquired during the period of the marriage, this house is the wife's SP because it was acquired by inheritance. Furthermore, while this property may be located outside of CA, this would not be considered quasi CP because the parties were living in CA when W inherited this property. Additionally, the property would not have been CP since it was acquired by inheritance, making it SP.

Therefore, the Utah house is W's SP.

CAMPAL

Under California Multiple Party Account Law (codified in Probate Code 5303(a)), all deposits into the account of a married person are presumed to be CP. This rule applies even if the bank account is titled in one spouses name only. This may be rebutted by tracing or by written agreement between the spouses. Under the family expense presumption, all community expenses are presumed to be paid using community property funds.

COMMINGLING

Commingling is the combining of SP and CP. Commingled funds are presumed to be CP unless they can be traced to SP. The burden is on the first person to commingle to establish the SP.

TRACING

Property of one character produces rents, profits, and issues of the same character. Tracing is working backwards to determine whether an asset was SP or CP at acquistion. There are two methods: direct and exhaustion. Direct tracing requires that sufficient SP funds were in the account to make a purchase and the spouses intended for the purchase to be made with SP. There must be testimony of the spouses intention to keep SP, an expert to testify about the accuracy of trace and records, See compliant records, and timely notice to other spouse. Exhaustion requires that community funds be exhausted. Community funds are exhausted if family expenses meet or exceed available funds. Any remaining funds may be presumed to be SP.

Here, W established a separate account after the parties were married in her name alone. Into that account, she deposited $100K in inheritance money. She subsequently deposited the rent produced by the Utah VRBO. Under CAMPAL, all sums deposited into this "separate" account are considered CP since W is married, despite the fact that only she is named on the account. There are no facts to indicate that H and W had an agreement that the funds would remain her SP. Therefore, W would need to trace all sums deposited into this account back to a SP source-- her inheritance.

Despite the lack of express agreement, the fact that W diligently kept only SP funds in the account, it can be assumed that wife intended to keep these funds as her SP. Furthermore, H was presumably aware of W's major inheritance and her plans for earning income through the house as a VRBO. Thus, while the facts are not exactly clear W would likely be able to establish through her testimony that she intended to keep the house and associated funds as her SP, and that she timely notified her husband of this fact. W would also be able easily bring in a forensic accountant expert to testify concerning the amount deposited into the account, and to trace those sums to her inheritance. H may argue that there were no contemporaneous records that were character and date specific, as required for See compliant records, however, W would likely be able to overcome this burden due to the fact that there was no CP funds in the account. Therefore, each deposit was character and date specific. As a result, W could likely successfully directly trace these funds to her SP inheritance.

There are not sufficient facts to determine whether tracing by exhaustion would be a viable option, but since tracing by exhaustion is an easier burden to meet, W would likely be able to meet this burden.

Therefore, the UT home, account, and rent would likely be characterized as W's SP.

3. Whether the home is CP if H used his earnings as down payment. Also, whether W is entitled to reimbursement for improvements.

GENERAL PRESUMPTION (SUPRA)

JOINT TITLE PRESUMPTION

Property acquired during the marriage in joint form (joint tenancy, CP, tenants in common, etc.) is presumed to be CP. This presumption is rebuttable by a clear statement in the deed or other documentary evidence of title indicating that the property is intended to be SP, or by written agreement between the spouses.

LENDER'S INTENT

Debt taken out during marriage is presumed to be CP. This may be rebutted using the lender's intent test. If the lender intended to rely solely on the SP of one spouse, then the debt may be SP.

REIMBURSEMENT FOR SP CONTRIBUTIONS

A spouse may be entitled to reimbursement for SP contributions to the down payment, principal payments, or improvements to the home.

Here, H used his earnings to make a down payment on a home during the marriage. The house was taken in the form of community property. Under the joint title presumption, this house is CP because it was acquired during marriage in joint form, since CP is one of the joint forms of title. Furthermore, there are no facts to indicate that the deed or any other agreement or title document indicated that the house was to be SP of one spouse.

Therefore, the home purchased during marriage using H's earnings as a down payment and taken in joint form is CP.

While W may try to argue that she put SP into the home for improvements, this contribution is likely not sufficient to transmute what would otherwise be considered a CP into a SP home. However, W may be entitled to reimbursement for those contributions. While it is not required that there be a written agreement in order to obtain reimbursement for expenditure of SP funds for improvements, the fact that H and W specifically contemplated that W would use her SP funds indicates that both parties are in agreement that these funds belonged exclusively to W. The facts are not clear what the improvements were, but regardless of what improvements were made, the fact that W contributed SP toward those improvements entitles her to a reimbursement.

H may try to argue that these funds were a gift to the community, or that he should be compensated for using his earnings and bonus on the home. However, there is a statutory right to reimbursement for SP contributions for improvements so this would not be considered a gift to the community. Furthermore, H would have no claim for reimbursement related to the down payment or improvements made on the house because he used his earnings. Because earnings compensate H for his labor, which belongs the community, the earnings are

considered CP. There is no right to reimbursement for CP contributions towards the down payment, principal payments, or improvements.

Therefore, W would likely receive a reimbursement for the $150,000 SP contributions.

4. Whether H has an interest in the $5 million personal injury settlement at dissolution.

Personal injury settlement funds received during marriage for a cause of action arising during marriage are considered *special* community property. However, at dissolution, any remaining personal injury funds will be assigned to the injured spouse as their separate property due to the extremely personal nature of the injury. That said, courts have discretion to award up to 50% to the non-injured spouse if the interests of justice require it. But at least 50% must be assigned to the injured spouse.

Here, W was seriously injured by a drunk driver in 2011. Because the parties had been married since 2002, this cause of action arose during the marriage. The facts are clear that the funds were received during the marriage. Therefore, during the period of the marriage, these funds would be considered special community property. However, at dissolution, the court would assign any remaining funds from the $5 million settlement to W because of the personal nature of the injury. She broke both legs and one hand was damaged to the extent that it is unclear whether she will be able to continue her work as a Nurse Practitioner. Because her occupation is threatened, W would be able to establish a compelling need for all the funds as a means of supporting herself after dissolution. Thus, unless H can show a compelling reason for why he should receive any of the remaining funds, he will likely receive none. While H may try to argue that he supported W financially during the injury and up until she received the $5 million settlement, this alone is likely not sufficient to justify awarding him any amount. Furthermore, H is a successful attorney that is fully able to support himself after dissolution.

Therefore, W would likely receive the entire remaining sum of the personal injury settlement.

END OF EXAM

Monterey College of Law

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Exam Name:	ComPrpty-ECL-F25-Wright-os
Exam Date:	Dec 9, 2025
File Name:	_ComPrpty-ECL-F25-Wright-os_20251209_final.xmdx
Exam Length:	180 minutes (Started @Dec 9, 2025, 6:30 PM; Ended @Dec 9, 2025, 9:30 PM)
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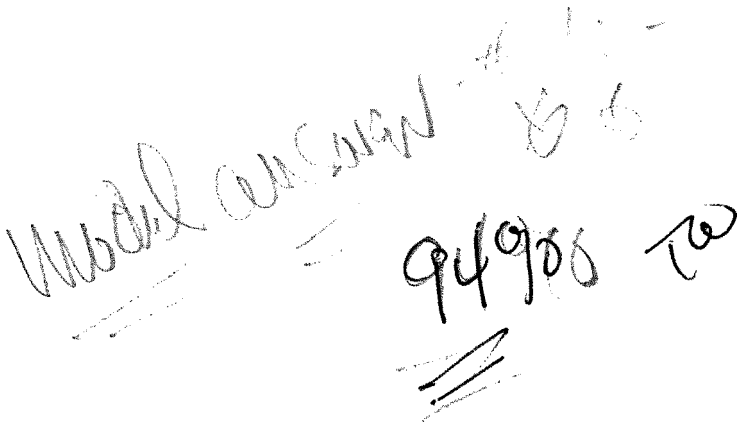

1)

1. Gold Standard Realty Business

Is the Community entitled to an equitable reimbursement for the labor and efforts of H with respect to the operation and growth of Gold Standard Realty (GSR) during the marriage? If so, what is the reasonable accounting method to calculate such reimbursement to the community?

The marital economic community (MEC) comes into being when a valid marriage occurs, and ends upon the date of separation or dissolution, whichever occurs first. The MEC defines when community can be acquired by the spouses. According to the General Presumption (FC 760), all property acquired during a valid marriage, by effort, and while the spouse is domiciled in CA is presumed to be community property. A business interest, is form of expectancy and is a property right that is subject to community property law in CA. The date of acquisition triggers the presumption, but the presumption may be overcome by showing a separate property source of property by preponderance of the evidence. Under Fam. Code 770, Separate property is property acquired before marriage, or is acquired by inheritance (no effort of spouse), or there is an express agreement altering the character of such property into Separate property (transmutations discussed later).

A separate property business must be viable at the time of marriage, otherwise there is a presumption it came into viability during the marriage and is thus a community property business. Once established that a separate property business is viable at Date of Marriage, if the business grows in value by the effort of a spouse in some form, the community gains an interest in the SP business, but the character of the business is not changed into Community Property (CP). The court must use any reasonably means of accounting to equitably divide the respective SP interest and the CP interest in the business. There are two primary accounting methods to accomplish this. The first is Pereira Method, which uses the initial value of the SP business at the date of marriage and credits a reasonable rate of return (of a well secured investment) times the number of years of the marriage. This method is used when the growth of the business is directly attributable to the efforts and skills of the spouse, since there is a more hands on approach, a greater amount of the growth is due to community labor. The remainder of the growth in the value of the business is attributable to the community and is CP asset divisible at dissolution. Alternatively, when the growth of the business is largely due to external factors, such as outside investors, market forces, or independent teams of people working on the business the van camp method is found to be the more reasonable accounting method. Using this method, the court orders the SP business owner spouse to reimburse the community for the value of their salary as a reasonable worker (also described as the cost to hire a similarly situation professional) times the number of years of marriage, from this value any family expenses are subtracted. That amount is credited to the community as a community assets (still divided between spouses) and the remainder of the business growth from date of marriage to date of dissolution is retained as the owner spouses SP. Finally, the court has discretion to address changing circumstances throughout the marriage which would warrant an application of either accounting methods, or a shift from one accounting method to another, if the circumstances require it to provide both the separatizer and community with a fair and equitable accounting (IRMO Brandes)

Howdie (H) inherits a real estate business from his parents in 1995, which includes a 50 year

business, and its land. H doesn't marry Wendy (W) until january of 1996. Thus H can meet by preponderance that GSR is an established and viable business prior to the date of marriage and the court will treat it as his separate property. W may attempt to argue that because H changes the name of the business that is should be considered a new business and thus within the general presumption as community property, entitling her to a share in half the business. She would also point to facts like H having to hired new staff and join organizations. However, H will argue that despite the change in name, the business itself was established and only a experienced a change in name as opposed to forming new relationship. H can point to established clients to show that it is essentially the same established business just under new name, and new staff. He is the only real estate broker and thus is heavily involved in the growth of the business beginning in 1996. The court is more likely to use a pereira approach here, due to the involvement of H is the growth. he is using his own skill and his creativity and connections to land new clients and manage the business with his small team that he chose. A reasonable account here would use the initial value of 2million times a reasonable rate of return (in pereira it was 7% but it just needs to be a reutrn on a well secured investment) times 1 year (reasons discussed below) That value is the SP interest that remains H, and the remainder goes to the community (value at dissolution is 15 million). W will argue for this account method should continue beyond 1997 for reasons discussed below.

The facts state that between 1997 and 2002, H made changes to structure of how the business operates. We are told that he split the operation into two sites, one in corte madera and once in napa, each site has an independent teams of real estate brokers and supporting staff. Over the period of 1997 to 2002 he only meets with these team for a max of 2hr per week. H will argue that from 1997 to 2002 a van camp accounting is more equitable, because primary factor in growth was due to the independent work of the teams he selected and their operation. W will counter with this argument that he used his own skill/judgement to select the team and that there was not external investment since he financed the move 100%, thus the van camp is inequitable and peirara account should be used throughout. We are told that H used money from his inherited SP money from his parents (general presumption holds this is SP). This is not the same as true external investment, but it was also not community effort which made this investment. The investment was external to the community and thus could be said that it was growth due to factors external to the community and its efforts. Further, W will argue that even though its only 2 hours per week, it is sufficient to maintain control and strategic decision making in the business. If the court finds that W's argument is more convincing they will use Van camp and calculate the reasonable salary of 200k per year times 6 six years and that amount will go to the community as a reimbursed (minus family expenses) and the remainder of the growth (10+million) would go to H as SP. Finally, we must consider the impact of a more than minimal salary. this idea is that when the community benefits by the reasonable salary in van vamp account that the community has already benefits and cannot make additional claim to the SP excess profits, when the spouse only contribute the minimal salary, the community has not benefited from the "more than minimal salary" and can seek a claim beyond that minimal salary. here the 200k was deposited into account and used to pay expenses but there was not facts to suggest H went beyond those expenses to benefit the community (in Beam v bank of american the sp business owning spouse went beyond the reasonable salary to purchase assets for Wife and family of wife).

The court is likely to find that H retains some level of strategic control, lack of true outside investors, continued involvement with setting up the locations and meeting with them that. Peirara accounting will be used throughout the marriage because it represents a more equitable accounting of the CP and SP interests throughout the marriage.

2. Home, Improvement, and Loan

What are the respective separate and community property interests in the HOME, as well as the value of improvements, and the remaining loan balance of the home that H inherited but potentially transmuted to the community?

General Presumption Supra. Spouses may enter contracts that alter their respective property rights relative to another. Once form of postnuptial agreement is a transmutation agreement, wherein spouses agree to alter the character of a particular piece of property. Consideration is not needed and the character change is effective upon agreement. A valid transmutation agreement must be in writing, signed by the adversely affected party, and expressly declare an intent to alter the character of the property. Once a property is held in Joint Title, special presumption apply. Under Fam Code 2581 a valid transmutation is valid as the final characterization of an asset upon dissolution, tracing cannot rebut the presumption that these are community property, unless there is a express agreement to the contrary.

Here H inherited a home from his parents before marriage, under FC 760 this is SP. W convinces H to transfer the Home into Joint title with right of survivorship. In effect this is a transmutation because it would alter the character from SP into CP. Only a valid transmutation can accomplish this. however, we are told that H properly recorded a grant deed reflecting the ownership change. To record a grant deed, the one filing the record must sign the document. If the terms of the grant deed expressly declare the intention to hold in joint title (which they usually do) it will be sufficient as a valid transmutation. H may later seek to set aside the transmutation if he can show duress or a breach of a fiduciary duty (discussed later). Assuming its valid the Home is now CP and is divisible. However, if the transmutation is set aside, they a special community property rule will apply, since there are community payments made on the SP home.

Under Fam Code 2581 and Fam Code 2640, when community funds are used to either pay down principle, a down payment, or improvement on a SP HOME, the community is entitled to a quasi-community ownership, also called a pro tanto owernship, in the marital appreciation in the SP home, as well as a dollar for dollar reimbursement for those costs. Here we are told The community makes principle payments in the amount of 72k total. The payments for this came from a joint account in which their yearly salaries were deposited into. General presumption hold that property, including wages, during marriage are presumed CP and thus those payments are CP. Thus, the community made payment on the SP home for 72k, which would be divided by the historic purchase price (here it was inherited at 2million) = that percent would be applied to the marital appreciation of 4 million (6m-2m) and the community is entitled to that amount (H and W would split that amount). Finally, the community would get the 72k back in reimbursement and split between H and W.

Ultimately, if H can show that there was undue influence the transmutation can be set aside, but if he cannot then the character of the home has become CP its entire value is divisible.

3. Joint Account

Does the community have an interest in the joint account, which present has a balance of zero but should be the collection of both spouses community property earnings?

A joint account is a contract of deposit between two or more persona and a financial institution. FC 2581 presumption applies because its jointly titled property but Probate code 5305a will also apply and allow a separatizer to trace funds on deposit to separate source. If the trace cannot be made then the commingled (admixture of SP and CP in one account) will be considered CP and divisible. There are two accepted method to trace. The first is direct tracing, which requires a showing of intent to create a SP interest. This is accomplished through detailed records established by See v See and IRMO Mix. They are detailed accounting of specific transaction relating to deposits of SP money, including withdraws that showing a running balance of available SP funds on deposit. Also, there is a requirement of notice to the other spouse of the intent to create a SP interest by depositing the funds and when it comes time to demonstrate to the court, testimony of the actual intent to create a SP interest and testimony of a forensic expert using the detailed records to provide a foundational basis for the trace. Alternatively, an exhaustion trace requires only that the separatizer show that community expenses was greater than community deposits. This tracing method relies on the family presumption, which holds that Community funds are first used to satisfy community expenses. thus, when community expenses are greater, they exhaust all community funds on the deposit and the remainder must be separate funds. This tracing also requires detailed requires, but not the same intent requirement of direct tracing.

Here, the facts state that H established a joint account in both H and W's names, so the joint title presumption and accompanying exceptions will apply (FC 2581 and PC 5305a). The account is presumed community property and commingled, unless either H or W can trace SP source of deposits. We are told that W deposits 10k of monthly income into the account, which is presumed CP due to the general presumption supra. H deposits all of his net monthly income. This is wages for effort, even though it is associated with an (allegedly) SP business, so it also presumed CP. We are also told that deposits always exceed expenses, so a separatizer cannot use exhaustion trace to trace an SP deposit. There are also no facts to support that there was any deposit of SP funds into this account, nor a claim that there are funds on deposit that are SP. This account will likley be split between the parties as community property. However the value of this account is now zero, and there will be a claim of misappropriation of these funds, the consequences of which will be discussed later in this essay. IF a breach is found the breaching party may need to account for the other spouses half share of this account out of their own share of other CP or some offset will be awarded.

4. Inherited Account and Separate Account

Does the Community have an interest in either the separate accounts of H or W?

General Presumption Supra.

H inherits an account "Investment Portfolio" from his parents prior to marriage. Separate property is any property acquired prior to marriage, or if its acuqired inheritance devise, bequest, during marriage, or if it is the rents, issues, profits of SP. Finally, it can become SP by a valid transmutation. Here H gets the inherited account prior to marriage so there is a presumption that it is his SP. the only transaction in ths fact pattern regarding this account is the use of 250k to finance busines growth, which does not alter the character of the funds. This account will be considered H's SP.

Likewise, W has an account in which she is only on the title. However, simply having an account or property titled in one spouse's name is not enough to defeat the general presumption. W must show that the funds on deposit were SP funds. Unlike H, who can trace

the source of the funds on deposit (and the account itself) to a SP source, W must rebut the presumption by preponderance. We are only told that W deposits the remainder of her earnings into this account, we don't know when it was set up. However, because wages during marriage are by effort, there is a presumption the 11k that she deposits each month are from her eamings as an attorney and are community property. W will not be able to rebut the general presumption, because the source of the funds is CP. Despite being called her separate account, it is community property under the presumption title presumptions (titled in one spouses name alone). the balance of the account is subject to division upon dissolution.

5. Fiduciary Duties

Did W breach a fiduciary duty convincing H to transmute the Home into CP and did she breach her fiduciary in the management and control of the Joint Account which has a present value of zero dollars despite it having excess deposits compared to withdraws for Community expenses?

Married spouses owe each other fiduciary duties, by nature of a valid marriage, and these duties cannot be waived. The duties include the duty to disclose, acting with good faith and fair dealing, and excercise care in the management and control of community asssets. Failure to observe theses duties can result in various court actions. The dutiies begin at date of marriage and extended until the date of final judgment (separation does not sever the duties). FC 1101 allows a claim when a breach of theses duties impacts a spouses vested 1/2 interest in property, and allows the court to take action compensate for damage by adjusting division or awarding offests, including awarded undisclosed assets 1/2 highest value to the spouse. under Civil Code 3294, if the court finds oppression, intentional fraud, or malice, the court can award 100% of the asset which was undisclosed. Finally, in the dissolution process, the parties must disclose all assets and a gross failure to do so may result in sanctions, costs and fees (under FC2107 its mandatory and provides a deterrent effect, damage to other party doesn't have to be showing and its assigned according to ability to pay - IRMO Feldmen).

Here, there two key issues. The first is a potential breach of duty by transmuting the home to the community. W is a lawyer and potentially knows the implications of such a transfer. H is a real estate broker and likely has no idea. We are only told that "W convinced H" to made the transfer. A valid transmutation can be set aside after the fact if there is a showing of undue influence or duress. When a transaction adversely impacts a party and benefits another there is a presumption of undue influence. Here, if H invokes protections against that transmutation by claiming that W breached a duty, W would have to rebut the presumption of undue influence. She could point to evidence, by a preponderance standard that she fully informed H of the implications and potential benenfits of the transfer. IF w can produce such evidence, then she may rebut. W could also argue that it was not adverse to H, but the court will likely find that transmuting a 2M asset from SP to CP within 1 year of a new marriage to be circumstances that should make W rebut the presumption of undue influence. Ultimately, we simply don't have any facts that show W can rebut this, and that there was no duress. There is a good chance that H can get the transmutation set aside.

The second major fiduciary duty breach issue is the present value of the joint account. We are told that expenses do NOT outweigh deposits of CP funds and that the account showing be growing each month. But in 2002 there is no money in the account. Although both parties have access to the account, we are told that W is the manager of the joint account, while H manages his separate account, W also presumably manages her "separate" account. Under Margulis, H must meet a burden to show that W was the manager of the account that is missing money.

Once H meets that, the burden will shift to W to account for the lost funds, if she cannot account the court may order a share of her CP award be offset to make H whole for his share of the CP funds. The court would likely order an accounting to determine what that amount should be. these remedies are acceptable under FC 1101.

2)

1. H's Law School Expenses

Is the Community entitled to a reimbursement for the costs associated with H's Law school education, including tuition and other direct related expenses?

The marital economic community (MEC) comes into being when a valid marriage occurs, and ends upon the date of separation or dissolution, whichever occurs first. The MEC defines when community can be acquired by the spouses. According to the General Presumption (FC 760), all property acquired during a valid marriage, by effort, and while the spouse is domiciled in CA is presumed to be community property. The date of acquisition triggers the presumption, but the presumption may be overcome by showing a separate property source of property by preponderance of the evidence. Under Fam. Code 770, Separate property is property acquired before marriage, or is acquired by inheritance (no effort of spouse), or there is an express agreement altering the character of such property into Separate property (transmutations discussed later).

A professional education is an exception to the general presumption. Because there is no inherent value in a degree, it is considered the Separate property (SP) the holder. However, when community funds are used to obtain the degree, there is a reimbursement right under Fam Code 2641 for direct expenses relating to the education. For this exception to apply, the community must have not already benefited from the degree holder, by substantially increasing the earning capacity of the community. To find this courts apply the 10 year rule, which is a presumption that when the degree is earned less than 10 years from dissolution, the community has yet to benefit from the increase in earning capacity and thus the costs associated with obtaining the education are reimbursable if they are born by the community. IF beyond 10 years, its presumed the community has benefits. The court must make an actual finding that the earning capacity has increased and cannot speculate, and they must also not include any ordinary family expenses in the reimbursement for education, as these are presumed gifts to community or arise out of a general duty to provide for each other. Spouses using SP may also get reimbursed for education expenses for the other spouse.

The facts state that W is a nursing student who is hired by the hospital and makes 12k per month in compensation. Under the general presumption, all property acquired during marriage by effort is community property. this is payment for effort during marriage, since we are also told the couple marries in January 2002 and the payments are made through the year of 2022. The money is deposited into a joint account. A joint account is presumed to be commingled community property according to FC 2581/PC 5305 as jointly titled property. We are told that during the period of 2002 from marriage until H passed the bar in 2007, W paid a total for 48k for H's tuition. H is hired in 2007 and begins to earn more in salary over successive years. H files for dissolution in 2012, five years later. The relative time period here is 5 years between obtaining an education and dissolution. Thus, there is a presumption that the community has yet to earn a benefits from an increase in earning capacity. However, H may attempt to rebut the presumption by demonstrating a large salary increase and bonuses. We are told that in 2011 he earned 400k salary and received a 250k bonus. In 2011 H and W also bought a home

using H's earnings as a downpayment. H will have a good argument to show the court that the community has already substantially benefit by the education and that W is not entitled to 48k reimbursement direct tuition expenses. W will argue that it was only one year of substantial earning increase before H filed for dissolution (2011 to 2012). If H cannot demonstrate the substantial earning capacity has already benefits the community, the community will be entitled to the 48k reimbursement.

Ultimately its more likely for the court to find a substantial increase in earning capacity and find that the community has indeed already benefit since the sought after reimbursement amount is only 48k compared to the 400k salary and 250k bonus the community received already.

2. W's Utah VRBO

Does the community have an interest in either the UTAH home or the separate account which was inherited by W?

General Presumption Supra. Under Fam. Code 770, Separate property is property acquired before marriage, or is acquired by inheritance (no effort of spouse), or there is an express agreement altering the character of such property into Separate property. Quasi Community Property (QCP) is property acquired by a spouse during a valid marriage which is not domiciled in CA at the time of acquisition, but if it were acquired while the spouse was domiciled in CA it would be subject to the CA community property laws. QCP is a statutory creation which allows spouses to adjudicate all claims in the same action and is in the interests of CA courts and the parties. QCP is not the same as out of state community property or out of state separate property

In January 2007, W inherits a home in utah. H may try to argue that the property is QCP, and this at dissolution or death is treated like community but his argument will likely fail. It is unlikely for the W to be domiciled outside of CA since the couple lives and works in CA, and there are not explicit statements that W is domiciled elsewhere. Under FC 770, inheritances are presumed separate property, even though they are acquired during marriage. The home is W's separate property under these statutes. Similarly the Rents, Issues, and Profits from a SP assets are also considered SP under FC 770. W also inherits 100k and both the RIPs of the SP home and the 100k amount are deposited into an account. Although these are acquired during marriage, they fit the FC 770 definition of SP and thus the community has not interest in them unless there is a valid agreement to the contrary, such as a valid transmutation which alters the characterization of property when there is a writing signed by adversely affected party which expressly declares the change in characterization.

Here, there was no facts to indicate any community involvement with the operation of the VRBO and so court is likely to consider that the community has not gained an interest. The Home in UTah is SP and the Rents Issues and Profits that W's nets from the rental operation are SP derivative of the original SP asset, also the 100k amount in that SP account is also separate. The community holds no claim to these assets.

3. HOME and Improvements

Are H and W entitled to respective reimbursements for their SP contributions to the CP Home which they purchased and placed in joint title?

General Presumption supra. Under Fam Code 2581 and Fam Code 2640, When SP funds are

used to pay down principle, a downpayment, or fund an improvement of a CP home, the SP holder is entitled to a dollar for dollar reimbursement for those costs.

In late 2011, the couple purchases a 1.3M home. We are told they used H's earnings for the downpayment. According to the general presumption, earnings during marriage are presumptively CP and here will be treated as community property. Title is recorded in both spouses name and thus special presumptions regarding jointly title property will apply. However the presumption is largely moot since there is an intent to hold the property in community property evidence by title being record as "community property". The home is community property. However, the couple agrees to make improvements. W uses 150k from her SP account, discussed above as W's separate property, towards the improvements. H also contributes 250k from his bonus, but the bonus is likely to be considered remuneration for services, even though it is beyond the typical salary. H's bonus will probably be considered CP and thus not eligible for the reimbursement. H may try to argue that it was unrelated to services rendered during marriage but the argument is likely to fail because the bonus is tied to his performance of winning multiple cases and getting good outcomes. Because of this, only the W's amount will be considered SP for the remainder of the question. W deposits 150k into a joint account and then the improvements were made. A joint account is presumptively commingled CP by statute (supra.) In order for either party to claim a SP fund in a commingled account, they must trace, or point to an express agreement. Here, the parties created an express written agreement. This agreement, combine with detailed records on the deposit and withdrawal of the funds are likely sufficient for W to direct trace the 150k and separate it from CP. She will need to do this for her to get her reimbursement since only SP funds when used on a CP home are eligible for the reimbursement.

Ultimately, the written agreement will be evidence of the parties intent to use the SP funds, and H is put on notice of using the SP to improve the property. H may argue that intention was to improve an community asset and that it was not explicitly creating a separate property interest. This is a valid argument, and will require W to comply with a full see compliant trace to the source of the funds. W will have to do a direct trace, which requires a showing of intent to create a SP interest. This is accomplished through detailed records established by See v See and IRMO Mix. They are detailed accounting of specific transaction relating to deposits of SP money, including withdraws that showing a running balance of available SP funds on deposit. Also, there is a requirement of notice to the other spouse of the intent to create a SP interest by depositing the funds and when it comes time to demonstrate to the court, testimony of the actual intent to create a SP interest and testimony of a forensic expert using the detailed records to provide a foundational basis for the trace.

If W can meet the burden to keep the character of the funds as SP, then she can get the reimbursement under FC2640. However, if she cannot trace, since the money went into a commingled account which is presumed community property, then it would be community property which funded the improvements and no reimbursement is available.

The home, as a community property asset from the beginning and not changing character, is divisible at dissolution between the parties.

4. Personal Injury Claim

Does the Community, and by extension H, have a valid claim to the Personal Injury Settlement Funds arising from W's injury?

Under FC 780 personal injury (PI) settlement proceeds are a special form of community property and are an exception to the general presumption. During marriage they are considered community property, but upon death or dissolution they are considered the injured party's SP, due to extremely personal nature of a personal injury. Under FC 781, when non-injured spouses expenses or funds to care for the injured spouse or make improvements to the home necessary for the care of the injured spouse they are reimbursable by the community. Finally, under FC 2603, the court has discretion in awarded the funds upon dissolution/death given all circumstances in equity to award a share of the funds to the non-injured spouse, but the injured spouse MUST get at least half of the funds.

Here, W is injured in January of 2011 by a drunk driver and broke both legs and injured one hand. Given the field of work of W, these are significant injuries which impact her ability to work and earn a living post separation. She is awarded 5million for this injury. These funds are paid during the marriage as community property, but upon dissolution in 2012 they will be considered W's SP. The court must consider, under fc 2603 if the circumstances justify awarding a share of these funds to H. We know that H is an attorney is has already has a upward career trajectory. within 5 years he has already started to be paid a salary of 400k which is significant. The facts do not state that H has taken any actions or made any sacrifices to his career that would impair his own future earning potential. Further, we are explicitly told that its not certain that W will be able to work again in her training, and would likely require a career shifting and retraining if she is able to work at all (which isn't guaranteed she can work at all). These are factors which would work against H if he asked to court for a share in the PI funds. H's better arguments for obtaining some of the PI funds are that W has interest in a valuable home (3M at dissolution) a SP home valued at 3M , and an SP account with 350k. H can argue that as a member of the marital economic community, he has also lost on the value that W brings to the marriage through her career and earnings. He may ask for a percent that is less that half. W would argue that she needs all of the PI funds because of the uncertainty of her ability to work.

Ultimately, the court will likely award the majority of the funds to W as her SP. This is because moving forward, H has a significant earning capacity which doesn't seem to be impaired by the injury to W, and W's future earning capacity is uncertain, despite her SP assets. The court is less likely to award the funds to the community (and by extension to be split by H and W)

END OF EXAM