

**COMMUNITY PROPERTY
FINAL EXAM
SARAH CAVASSA KATHERINE STONER
December 7, 2022**

GENERAL EXAM INSTRUCTIONS

This is a three hour exam.

Part I is an objective test consisting of short answer and multiple choice and questions. Part I will count for one third (33.33%) of your grade on the exam.

In Part II there are two essay questions to be answered. Each essay question will count for one third (33.33%) of your grade on the exam.

Your grade on this final exam will count for 85% your grade for the course.

PART I - OBJECTIVE TEST - 100 Points *Assume all events took place in California unless otherwise noted. Answer according to California law.*

A. Short Answer - (15 points per question)

1. Diane and Glenda are California registered domestic partners. Glenda has filed and served a petition for dissolution of the partnership. Among their community property assets is a vacation home in Oregon.
How should the court in the dissolution action accomplish division of the vacation home?

2. Henry and Wendy married in 2003. They had one child, Diane. In June of 2020, Henry died intestate. He is survived by Wendy and Diane, and by Sean and Theresa, his two children from a prior marriage.
What rights, if any, do Wendy, Diane, Sean and Theresa have to a share of Henry's probate estate?

3. *Under what circumstances may the court in a proceeding for dissolution of marriage characterize military retired pay as community property?*

4. Howard and Wilma have been married since 1978. During their marriage, they agree to change Howard's separate property to community property.
Under what circumstances will this agreement between them be enforceable?

Questions 5 - 14: MBE Questions

Please answer the Multistate Bar Exam (MBE) in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer even though more than one answer may be "correct". Review your answers for accuracy before you finish.

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Instructions for Essay Questions

Your essay answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

PART II - ESSAY QUESTIONS

ESSAY QUESTION NO. 1

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

Leslie and Kelley met in 1995 in medical school and married in 1999 immediately after they both graduated. Neither of them had any significant assets or debts at the time of their marriage, but they both had plans for lucrative careers. Before their marriage Leslie and Kelley had numerous discussions about how they wanted to keep their finances separate. After their marriage all of Leslie's earnings were deposited to a bank account in Leslie's sole name and all of Kelley's earnings were deposited to a bank account in Kelley's sole name. Leslie and Kelley equally contributed from their separate bank accounts to their joint expenses.

In 2005, Leslie and Kelley purchased a home on Clark Street together taking title as "Leslie and Kelley, spouses". The purchase price was \$600,000. Each of the parties contributed \$100,000 to the down payment, and the remaining \$400,000 was paid with a mortgage. Each of them paid one-half of each monthly mortgage payment and each property tax payment from their separate bank accounts.

In 2010, Leslie's father passed away. Leslie inherited a vacation home in Lake Tahoe worth \$750,000 and subject to a \$200,000 loan, and \$100,000 in cash. The interest rate on the Clark Street loan was higher than the interest rate on the Lake Tahoe loan, so Leslie used the inherited \$100,000 to pay down the Clark Street mortgage.

The parties continued to each pay one-half of the monthly mortgage payments and property tax payments on Clark Street from their respective bank accounts and they began each paying one-half of the mortgage payments and property tax payments on Lake Tahoe from their respective bank accounts.

In 2022 the parties separated. Their assets include \$200,000 in Leslie's bank account, \$100,000 in Kelley's bank account, Clark Street worth \$1,000,000 and subject to a \$150,000 loan, and Lake Tahoe worth \$1,000,000 subject to a \$50,000 loan.

What are the parties' rights regarding each of the above listed assets?

* * * * *

ESSAY QUESTION NO. 2

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

Pat and Taylor married in the state of Columbia in 2012. At the time of marriage, Pat owned and operated Olio, an online marketing company which he had purchased for \$150,000 in 2011. When the parties married, Pat was operating Olio with the help of two part-time employees. Pat worked long hours and weekends, and rarely took time off for vacation. In 2015, Pat landed an exclusive contract to market on a growing social media platform, which boosted business significantly. Over time, the business expanded. By December 2020, Olio had 40 employees and a national clientele.

In January 2021, Pat sold Olio for \$1,500,000. He deposited the sales proceeds in an account in his name at Secure Bank. No other funds were ever deposited into that account.

In March 2021, Pat and Taylor moved to California. In June 2022, Pat and Taylor separated. Pat filed a petition for dissolution of marriage shortly thereafter in the California court.

In the California dissolution action, what are Taylor's rights, if any, in the proceeds of sale of Olio held in the Secure Bank account?

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PART I – SHORT ANSWER & MULTIPLE CHOICE ANSWER KEY

1. Diane and Glenda are California registered domestic partners. Glenda has filed and served a petition for dissolution of the partnership. Among their community property assets is a vacation home in Oregon. *How should the court in the dissolution action accomplish division of the vacation home?*

Key issue(s): Rights of RDPs; division of out of state real property in dissolution

California registered domestic partners (RDPs) have the same rights and responsibilities as married persons. This includes community property (CP) rights. Since Diane (D) and Glenda (G) are RDPs, their CP will be treated like any other CP in the dissolution action.

In a dissolution, the CP estate, which consists of all CP assets and debts, must be divided. D and G may agree to divide their CP estate by entering into a written agreement or an oral stipulation in open court. If they do not agree, the court must divide the CP estate, including any out of state real property, equally.

If possible, the court should divide community property real estate situated in another state so that a change of title is not required. If this is not possible, the court may order the parties to execute deeds or take other actions necessary to change title, and/or order payment to the party who would benefit from a change of title the value of that party's interest in the property.

The vacation home is in Oregon, which is out of state. Under the rule above, if title to the home is in one partner's name the court could award it to that partner, with an offsetting award of other property to the other partner. Or if the property is in both names the court could order one partner to sign it over to the other for an offset or equalizing payment.

2. Henry and Wendy married in 2003. They had one child, Diane. In June of 2015, Henry died intestate. He is survived by Wendy and Diane, and by Sean and Theresa, his two children from a prior marriage. *What rights, if any, do Wendy, Diane, Sean and Theresa have to a share of Henry's probate estate?*

H died intestate, so claims are per rules of intestate succession

Surviving spouse gets decedent's half of CP & QCP

Decedent's SP is shared between surviving spouse and children – $\frac{1}{2}$ and $\frac{1}{2}$ if one child, $\frac{1}{3}$ to SS, $\frac{2}{3}$ equally to children if 2 or more

Apply:

W gets all of H's CP/QCP plus $\frac{1}{3}$ of H's SP

D, S&D share equally in $\frac{2}{3}$ of H's SP

3. Under what circumstances may the court in a proceeding for dissolution of marriage characterize military retired pay as community property?

Despite Federal preemption under the supremacy clause, federal legislation provides that the court may characterize military retired pay as community property if the benefits would be community property under California law (earned during the marriage) and if the court has jurisdiction over the service member by reason of : 1) residence in California other than because of military assignment; 2) domicile in California; or 3) consent to jurisdiction. The benefits subject to characterization as community property are the “disposable retired pay” as defined in the federal statute. Federal law does not permit benefits earned after the date of the order to be included in apportioning the community

4. Howard and Wilma have been married since 1978. During their marriage, they agree to change Howard's separate property to community property. Under what circumstances will this agreement between them be enforceable?

Spouses like Howard (H) and Wilma (W) may enter into contracts with each other regarding their property rights just as unmarried persons may do. In addition to all the ordinary requirements for any valid contract between individuals, contracts between spouses are subject to some limitations unique to marital contracts. First, the terms must not violate public policy by promoting divorce. Absent other facts, an agreement that H's separate property (SP) be changed to community property (CP) does not seem to promote divorce, so it would not violate public policy on that ground.

Second, spouses have a fiduciary duty to each other arising out of their confidential relationship. Therefore if one spouse obtains an unfair advantage as a result of a transaction between them, this raises a presumption of undue influence. Here, if H gets nothing as part of the agreement to convert his SP into CP, it might raise the presumption, W would then have the burden of rebutting the presumption (by a preponderance of the evidence, by showing: 1) H entered into the agreement voluntarily; 2) H had full knowledge of the relevant facts; 3) H understood the effect of the agreement.

Finally, if the agreement was entered into before 1985, it could be oral, but if it was made on or after January 1, 1985, it would have to be in writing, be signed or joined in by the spouse affected, and contain express language indicating the intent to change the character of H's SP to CP. There is an exception to the writing requirement for interspousal gifts having a value that is not substantial and used exclusively by one spouse, but that would normally apply to an agreement transmuting CP or the donor spouse's SP into the SP of the other spouse. Since H & W were married for 5 years prior to 1985, it is important to know the date of the contract and whether it was oral or in writing, signed, and containing express language of transmutation in order to determine whether it is enforceable.

MULTIPLE CHOICE

- a 5. Subject to certain exceptions, in a proceeding for dissolution of marriage, the court must value the community property assets:
- As near as practicable to the date of trial.
 - As near as practicable to the date of separation.
 - Based on replacement value.
 - By auctioning between the spouses.
 - None of the above.
- b 6. Harry was injured in an accident caused by Tom while Harry was married to Wilomena. During the marriage, Harry received a settlement of \$100,000, which he deposited IN joint account he held in joint names with Wilomena. Harry=s earnings were also deposited into the joint account and family expenses were paid from the joint account. In a proceeding for dissolution of marriage, how is the \$50,000 balance remaining in the account likely to be distributed:
- All to Harry because he is the injured party.
 - At least 50% to Harry, if he can trace the balance in the account to his settlement.
 - At least 75% to Harry, if he can trace the balance in the account to his settlement.
 - Equally to Harry and Wilomena as part of the division of the community estate.
 - None of the above.
- c 7. In a dissolution of marriage or legal separation proceeding, the community estate may be divided unequally if:
- One spouse cannot be located.
 - The community debts exceed the community and quasi-community assets by more than \$10,000.00.
 - The parties agree in writing to an unequal division.
 - a, b and c.
 - b and c only.

__ b __

8. Hal, a married man, died intestate. Prior to his death, unbeknownst to his wife, Winnie, he gave a painting worth \$10,000 to his cousin, Claudia. Hal had purchased the painting with earnings acquired during marriage. Winnie has the following rights:

- a. She is entitled to recover from Claudia one hundred percent of the value of the painting.
- b. She is entitled to recover from Claudia one-half of the value of the painting.
- c. She is entitled to return of the painting from Claudia.
- d. b or c but not a
- e. None of the above.

__ e __

9. A judgment of dissolution may be set aside:

- a. on grounds of extrinsic fraud but not intrinsic fraud.
- b. on grounds of failure to comply with the disclosure requirements of the Family Code.
- c. on grounds of mental incapacity, if the action or motion is brought within two years after the date of entry of judgment.
- d. a and b but not c.
- e. b and c but not a.

__ d __

10. Prospective spouses may legally contract with each other concerning the following:

- a. the division of property upon dissolution of marriage.
- b. rights of management and control of any community property.
- c. spousal support rights upon dissolution of marriage.
- d. all of the above.
- e. a and b only.

__ a __

11. During her marriage to Howard, Winnie buys a clothing boutique store, which Winnie operates. Howard has a full time job and does not participate in the running of the store business. Winnie may do the following without notice to Howard:

- a. sell inventory items to customers.
- b. order supplies and incur business debts.
- c. hire and fire employees.
- d. all of the above.
- e. none of the above.

__e__

12. A married person is not personally liable for the other spouse's post-separation debt unless:

- a. The debt is incurred for the benefit of the community.
- b. The court assigns the debt to the married person in the judgment of dissolution.
- c. The debt is for a necessary of life.
- d. All of the above.
- e. b and c but not a.

__c__

13. In a dissolution or legal separation proceeding, the court must first find the following before ordering a deferred sale of the family home:

- a. The noncustodial parent has no income;
- b. The home is in good condition at the time of the order;
- c. It is economically feasible to make all required payments and maintain the home in its current condition until it is sold;
- d. All of the above;
- e. b and c only.

__b__

14. The time rule may be used:

- a. To rebut a presumption;
- b. To apportion installment acquisitions;
- c. To calculate pro rata shares of a separate property business operated by a spouse during marriage;
- d. All of the above;
- e. a and b only.

ESSAY QUESTION NO. 1 SAMPLE OUTLINE

1. Agreement to keep finances separate
 - a. Oral premarital agreements are not binding
2. Funds in Bank accounts

- a. Subject to FC 760 acquired during marriage so presumed CP. No rebuttal facts presented
 - b. Must be divided as part of the equal division of the community estate pursuant to FC 2550 unless parties agree in writing otherwise
 - i. Each party is entitled to \$150,000 from combined bank account balances or offset for other property
3. Clark Street
- a. Subject to FC 2581
 - b. Leslie's \$100,000 contribution is subject to reimbursement under FC 2640
 - i. Dollar for dollar reimbursement, no appreciation (contrary to *M/M*, below)
 - ii. Leslie receives \$100,000 "off the top"
 - iii. Remaining \$750,000 in equity divided equally, \$375,000 to each party
4. Lake Tahoe
- a. Leslie's separate property under FC 770
 - b. Community developed a *Moore/Marsden* interest by mortgage principal reduction
 - i. Step One – Dollar for Dollar reimbursement
 - 1. Mortgage paid down from \$200,000 to \$50,000, community receives dollar for dollar reimbursement for \$150,000 contribution.
 - ii. Step Two – Percentage of appreciation
 - 1. \$150,000 contribution/\$750,000 "purchase" price = 20 %
 - 2. Property increased in value from \$750,000 to \$1,000,000, appreciation of \$250,000 * 20% = \$50,000
 - iii. Total community interest = Step One plus Step Two, \$200,000.
 - c. \$200,000 community interest divided equally between the parties, the remaining \$750,000 (\$1,000,000 value - \$50,000 mortgage - \$200,000 community interest) is confirmed to Leslie as Leslie's separate property
 - d. No community interest developed from mortgage interest or property tax payments

ESSAY QUESTION NO. 2 SAMPLE OUTLINE

1. Proceeds of sale in Secure Bank acquired when parties domiciled outside California. Law of domicile controls – Therefore, not community property.
2. Secure Bank funds may QCP
 - a. Property that would have been community property but for the fact that the parties were not domiciled in California may be classified as QCP.
 - b. In disso, court has jurisdiction to characterize and divide QCP if both parties reside in the state at the time the dissolution action is filed. Both now live in CA so QCP can apply.
 - c. QCP is characterized and divided like CP
3. Parties were married at the time the sales proceeds were acquired.

- a. Acquisition during marriage raises the general presumption of community property.
 - b. General CP presumption can be rebutted by tracing to a separate property source.
 - c. Property owned before marriage is SP. Olio was owned by Pat before marriage. Olio is P's SP.
4. Olio grew in value during the marriage, so the community acquired an interest in Olio due to community efforts increasing the value of Olio.
5. Where a SP business operated by spouse(s) generates profits or increase in value of the business during marriage, the court must apportion the profits/increase between SP and a CP interest due to spousal efforts.
 - a. The court has discretion to apportion profits or increase between CP and SP using a method that achieves substantial justice between parties
 - b. **Pereira Approach** - Often used where spousal efforts are chief factors contributing to increase
 - i. Allocate to SP a reasonable annual rate of return to SP value at date of marriage.
 - ii. Reasonable rate based on evidence of appropriate market rate return for that business – if no evidence court may use judgment rate of interest;
 - iii. Return is simple rate, not compounded.
 - c. Allocate any excess (of increase/profits) to CP
 - d. **Van Camp Approach** - Often used when extrinsic factors such as the nature of the capital and market conditions are chief factors contributing to increase.
 - i. Determine reasonable compensation for spousal services to business,
 - ii. Deduct amounts already received by community (including any family expenses paid out of business)
 - iii. The excess compensation, if any, is CP portion of the profits/increase The remaining increase/profit is SP.
6. Analyze and conclude.

The Van Camp method will be utilized if the increase in value of the business is directly related to the uniqueness of the business asset or special external circumstances, not the managing spouse's labor. In this case, the community interest will be determined by the salary from the spouse's labor multiplied by the number of years the spouse's were married subtracting any salary that was already received. The remaining interest will be the SP of the managing spouse.

Under these facts, it is likely that the court will utilize the Van Camp method to determine the community and SP interest because the increase in the value of the business did not directly correlate to Pat's labor. It was directly correlated to the special external circumstance of Pat landing the exclusive marketing contract. The facts even state that after he landed that contract, that the marketing initiative on the social media platform, "boosted business significantly." There are no facts to indicate that Pat's long hours had any correlation on the increase in the value of the business. Unfortunately, the facts do not give any indication of Pat's salary so the Van Camp calculation can only be seen as CP interest = Pat's Salary X 10 years of marriage - Pat's Salary already received, and Pat's SP interest will be the remaining difference between the CP interest and the \$1.5mill.

Thus, Pat will then be entitled to his SP interest and 1/2 of the CP interest. Taylor will only be entitled to 1/2 of the CP interest in Olio.

LEGAL SEPARATION:

N/A

The marital economic community begins at marriage and ends at death or legal separation. Legal separation is an actual, physical separation of the parties with no intent to continue the marital relationship.

The facts tell you when they separated.

Here, the facts indicate that the marital economic community began in 2012 when Pat and Taylor married in the state of Columbia. Because they are filing for dissolution of

marriage in CA, it is important to know when the marital relationship ends in order to establish the value that will be associated with any assets at the time of dissolution. Under these facts, it states that in June of 2022, Pat and Taylor separated. They also indicate that Pat filed for dissolution of marriage shortly after their separation. This implies that both criteria for legal separation are met because there was a separation (no facts are given to refute an actual and physical separation) and filing for dissolution of marriage implies the intent not to continue the marital relationship.

Thus, it will likely be found that legal separation and the end of the marital economic community occurred in June of 2022 and any valuation of assets should be determined at that date.

CONCLUSION:

Thus, it is likely that under the QCP the CA courts will utilize the Van Camp method to distribute Taylor's 1/2 of the CP interest in Olio, and the value of that interest should be determined at the legal separation date of June 2022.

No, it would be as of the time of sale of Olio

END OF EXAM