

Monterey College of Law – Hybrid
Community Property – Section 1
Final Exam
Fall 2024
Prof. R. Lomeli

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: One (1) Hour per Question

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QUESTION 1

Holly and Wendy, residents of California, married in 2018. Wendy worked as an attorney. Holly was an avid art collector who hoped to turn her hobby into a profitable business. Prior to marriage, they entered into a written and signed prenuptial agreement providing that each spouse's wages would be their separate property and that any business created using separate property funds, including subsequent earnings and goodwill generated therefrom, would remain that spouse's separate property.

During the prenuptial agreement discussions, Holly was represented by counsel. To save money and streamline the process, Wendy decided that she did not need an attorney. After verbally telling Holly and her counsel that she did not need an attorney, Holly's counsel provided Wendy with a written explanation of the basic effects of the agreement. The agreement was provided to Wendy 3 days prior to the wedding day and Holly's counsel failed to disclose any of Holly's financial and economic assets. Wendy signed the agreement just prior to her wedding ceremony before a group of 1000 close friends and family.

On Wendy's birthday in 2020, during COVID, Holly gave Wendy a drawing by a famous artist. Holly paid for the drawing with \$15,000 that her parents had given her. Wendy hung the drawing in their bathroom.

In 2022, Holly opened "H Art Gallery", an art gallery specializing in rare artwork. She started and funded the business entirely with a \$100,000 inheritance that she received when her grandfather died. Holly worked at the gallery alone every day. Customers appreciated her enthusiasm about art collecting and her ability to obtain special art pieces at reasonable prices. Over time, Holly learned that she had acquired a number of highly valuable art pieces. There was also a renewed interest in art collecting due to the discovery of a Monet found inside the wall of a nearby home in the area.

Although Holly's services at the shop were worth \$50,000 per year, she took an annual salary of \$25,000. She also paid \$50,000 in household expenses from the business earnings each year.

In January 2023, Holly and Wendy separated, and Wendy filed for dissolution of marriage. At that time, H Art Gallery was worth \$500,000, and the drawing was worth \$30,000.

In 2024, before trial of the dissolution proceeding, Holly was disabled by a serious injury and had to be hospitalized. She closed H Art Gallery and the value of the business fell to \$100,000 by the time of trial.

In the dissolution proceeding, Holly claims that the prenuptial agreement is valid, and Wendy claims that it is not.

What are Holly's and Wendy's respective rights and liabilities in:

1. The drawing? Discuss.
2. H Art Gallery? Discuss.

Answer according to California law.

Question Two

Hank and Wilma married in 2011 when both were students at Harvard University in Massachusetts. Massachusetts is an equitable distribution state. Shortly after marriage, Hank graduated and obtained employment with a New York law firm. Soon after, Wilma gave birth to a child, and the couple agreed Wilma would quit her job and remain home to care for their child. Hank and Wilma bought a loft in New York using their savings for the down payment and obtained a loan secured by a 30-year mortgage for the balance of the purchase price. Mortgage payments were subsequently paid from Hank's earnings. Title to the New York loft was taken in Hank's name alone.

In 2015, Hank accepted a job offer from a California law firm. The couple moved to California with their child and rented out the New York loft.

In 2018, Wilma's uncle died and left her an autographed baseball bat with an appraised value of \$10,000 and a luxurious beach house located on the water in Manhattan Beach, California. Wilma took the autographed baseball bat to the beach house and placed it over the fireplace mantle.

In 2021, after speaking with a coworker at the law firm about ways in which to ensure Hank would gain an interest in the beach house, Hank persuaded Wilma to execute and record a deed conveying the beach house from Wilma as her sole and separate property to "Hank and Wilma, as community property with right of survivorship" under the auspice that the action was necessary to avoid probate. Wilma did so, believing Hank's explanation that the only effect of the conveyance would be to avoid probate.

In 2023, after three years of study paid for out of Hank's earnings, Wilma obtained a professional degree and opened an IT business. Her business has become quite successful because of her enthusiasm, skill, and willingness to work long hours. Hank continued to work for the law firm.

In 2024, Hank and Wilma separated and filed for dissolution of marriage. Wilma had the autographed baseball bat reappraised. The autograph was determined to belong to Babe Ruth and the baseball bat is now worth \$5,000,000.

Upon dissolution, what are Hank's and Wilma's respective rights in:

1. The beach house? Discuss.
2. The autographed baseball bat? Discuss.
3. The New York loft? Discuss.
4. Wilma's education? Discuss
5. Wilma's IT business? Discuss.

Answer according to California law.

QUESTION 3

Harry and Winnie married in 2007 in California. Neither of them brought any significant assets to the marriage, and they were both employed. Harry and Winnie agreed that Harry should go to law school after they had saved up some money. Harry put his earnings in a savings account in his name alone. Winnie deposited her earnings into a joint checking account in both of their names, which was used for their living expenses.

Harry began law school in 2008. Winnie continued to work to support the couple. Harry took out a student loan to pay his tuition. Harry graduated in 2011 and obtained his law degree. He passed the bar exam and got a position with a large law firm.

In 2014 Harry became a partner in the firm. Harry's partnership earnings were substantial. He paid off his student loan using these earnings. Although the actual value of Harry's share of the firm's goodwill was substantially greater, the partnership agreement provided that its value was \$3,000 for purposes of valuation as marital property in the event of a dissolution of a partner's marriage.

In 2016, Harry and Winnie filed for dissolution of marriage.

1. Is the community entitled to reimbursement for the payments on the student loan? Discuss.
2. Does the community have an interest in:
 - a. Harry's law degree? Discuss.
 - b. The goodwill in Harry's law firm and, if so, is the community bound by the firm's valuation? Discuss.

Answer according to California law.

Question One Outline

1. GENERAL CLASSIFICATION RULES

- a. *Each answer should define CP and SP: (i) all property acquired during the course of a marriage is presumed to be CP; (ii) all property acquired before marriage or after permanent separation is presumed to be SP; and (iii) property acquired by gift, devise, or bequest is presumed to be SP.*
 - i. *2 points for all three*
 - ii. *1 point for one or two.*
- b. *To determine the character of an asset, a court will trace back to the source of funds used to acquire it.*
 - i. *1 point*
- c. *At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise. (ii) A spouse's SP remains her SP at divorce.*
 - i. *1 point*
- d. *(i) During marriage, spouses may change the status of (i.e., transmute) their property. (ii) Such a transmutation must be made in writing and expressly declare that a change in ownership is being made. (iii) It must be consented to or accepted by the spouse whose interest is adversely affected.*
 - i. *3 points for all three*
 - ii. *2 points for two*
 - iii. *1 point for one*

2. HOLLY'S AND WENDY'S RESPECTIVE RIGHTS IN THE DRAWING

- a. *The writing requirement does not extend to gifts between the spouses of items of a personal nature that are used principally by the spouse to whom the gift is made and that are not substantial in value, taking into account the financial circumstances of the marriage.*
 - i. *1 point*
- b. *Factors to consider in determining whether the drawing was a gift from Holly to Wendy include: (i) the nature of the drawing and the fact that the drawing was hung for them both to enjoy indicate it was not a gift of a personal nature principally used by Wendy; and (ii) the gift was of substantial value taking into account the family's modest economic circumstances.*
 - i. *2 points for two*
 - ii. *1 point for one*
- c. *(i) Tracing shows that the \$15,000 Holly used to pay for the drawing was a gift from Holly's parents to Holly, and is thus Holly's SP; (ii) there is no written evidence that Holly intended to transmute the drawing; and (iii) neither community funds nor labor was used to enhance the value of the drawing.*
 - i. *2 points for three*
 - ii. *1 point for one or two*
- d. *Both the drawing and the drawing's increase in value are Holly's SP to which Wendy has no rights.*

3. HOLLY'S AND WENDY'S RESPECTIVE RIGHTS IN H ART GALLERY

4. PREMARITAL AGREEMENT

- a. *Parties may make a premarital agreement specifying that after marriage each party's earning will remain her SP.*

- i. 1 point
- b. *To be valid, a premarital agreement must: (i) be in writing, (ii) have been entered into voluntarily, and (iii) not be unconscionable.*
 - i. All are required for 1 point
- c. *An agreement is involuntary if the party against whom enforcement is sought was not represented by counsel, unless that party: (ii) was advised to consult an attorney and expressly waived that right, (iii) had seven days to examine the agreement, and (iv) was fully informed of the basic effects of the agreement and signed a separate writing.*
 - i. 2 points for three
 - ii. 1 point for one or two
- d. *Factors to consider in determining whether the premarital agreement was voluntary include: (i) Wendy was not represented by independent counsel and was not advised to seek independent counsel; (ii) Wendy did not expressly waive her right to an attorney in writing; (iii) Wendy did not have seven days to examine the agreement; and (iv) Wendy was not informed of the effects of the agreement in a signed and separate writing.*
 - i. 2 points for three or four
 - ii. 1 point for one or two
- e. *(i) An agreement is unconscionable if a judge finds that it is unfair and: (ii) the objecting party was not fully advised of the financial status of the other party, (iii) did not waive such disclosure, and (iv) could not reasonably have obtained the information on her own.*
 - i. 2 points for two or three
 - ii. 1 point for one
- f. *Factors to consider in determining whether the premarital agreement was unconscionable include: (i) that the agreement at the time did not appear unfair based on the assets that each possessed at the time of marriage; (ii) that Wendy was not fully advised of the financial status of the other party; and (iii) Wendy did not waive disclosure.*
 - i. 2 points for two or three
 - ii. 1 point for one
- g. *If premarital agreement is found to be invalid, the business must be apportioned between Holly's SP initial capital investment and her community labor.*
 - i. 1 point

5. TERMINATION OF MARITAL ECONOMIC COMMUNITY

- a. *The marital economic community begins at marriage and ends: (i) at one spouse's death, or (ii) when the spouses effect a permanent physical separation (an actual separation and an intent not to resume the marital relationship).*
 - i. 1 point
- b. *One spouse's unilateral intent not to resume the relationship is sufficient as long as it has been communicated to the other spouse.*
 - i. 1 point
- c. *(i) That Wendy separated from Holly in 2023 and file for dissolution of marriage evidences an intent not to return to the marriage. (ii) This constitutes permanent physical separation, terminating the marital economic community.*
 - i. 2 points for two
 - ii. 1 point for one

6. ACCOUNTING METHODS FOR VALUATION OF PROPERTY

- a. *The Van Camp and Pereira accounting methods can be used to apportion between the SP component of the business and the CP value added by the managing spouses labor during the marriage.*
 - i. 1 point

7. VAN CAMP ACCOUNTING

- a. *Describe the Van Camp accounting method (the managing spouse's services are valued at the going market salary for such services; family expenses that were paid from the business earnings are subtracted from the value of the manager's services; the remainder, if any, represents the CP portion of the business, and the rest of the business is the SP of the managing spouse.*

- i. 1 point

8. PEREIRA ACCOUNTING

- a. *Describe the Pereira accounting method (begins with the separate capital and imputes a fair rate of return, e.g., the current legal interest rate; the total SP interest is the principal plus the fair rate of return times the number of years the SP business was in operation and managed by the spouse during the marriage; the remainder is CP.*

9. APPLICATION OF ACCOUNTING METHODS

- a. *Because the Pereira accounting method assigns an ordinary rate of return to the business capital, it should generally be used when management by the spouse was the primary course of the growth or productivity of the business.*
 - i. 1 point
- b. *Because the Van Camp accounting method assumes that the managing spouse's services were ordinary when it imputes a market salary for those services, it should generally be used when the character of the separate business is largely responsible for its growth or productivity (i.e., when the appreciation is mostly passive).*
 - i. 1 point
- c. *The business must be valued as close as possible to the time of trial because the purpose of community property distribution is the fair allocation of existing assets at the time of trial.*
- d. *(i) If the court finds that the prenuptial agreement was either invalid or does not cover Holly's business, Wendy will argue that the Pereira accounting method should be used because the primary cause of H Art Gallery's growth was Holly's management. (ii) The examinee should address the effects of applying the Pereira accounting method (e.g., Holly is entitled to a fair rate of return on her initial investment; after deducting this sum from H Art Gallery's value at the time of trial, the remainder is CP to be divided between Wendy and Holly).*
 - i. 2 points for two
 - ii. 1 point for one
- e. *Holly will argue that the Van Camp accounting method should be used because the character of H Art Gallery was largely responsible for its growth. (ii) Should address the effects of applying the Van Camp accounting method (e.g., when the expenses are subtracted from the additional value of Holly's services, the remainder is the CP portion of HArt Gallery to be divided between Wendy and Holly; since H Art Gallery is worth \$100,000 at divorce, Holly's SP would be \$100,000).*
 - i. 2 points for two
 - ii. 1 point for one

Question Two Outline

General Characterization Rules

1. Define CP, SP and QCP.
 - a. All property acquired during the course of a marriage is presumed to be CP;
 - b. All property acquired before marriage or after separation is presumed to be SP;
 - c. Property acquired by gift, devise, or bequest is presumed to be SP; and
 - d. QCP is property acquired by either spouse that would have been CP if the spouse had been domiciled in California at the time of acquisition.
2. Define Division at Divorce
 - a. At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise;
 - b. A spouses SP remains their SP at divorce; and
 - c. QCP is treated as CP at divorce.

Beach house

1. Issue
 - a. What is the characterization of a home acquired by inheritance when conveyed by the inheriting spouse to the community as CP with right of survivorship.
2. Transmutation
 - a. During marriage, spouses may change the status of their property.
 - i. Must be made in writing;
 - ii. Must expressly declare that a change in ownership is being made; and
 - iii. Must be consented to or accepted by the spouse whose interest is adversely affected.
 1. Beach house was initially SP because acquired through inheritance;
 2. W's conveyance ineffective because no change of ownership declared.
 3. If written title to purchased property is taken in a form that is inconsistent with character of funds used to purchase, an intent to change the character of the property to the form evidence by the written title is inferred.
 4. If a court extends this reasoning to SP conveyed by one spouse into a CP, W's conveyance would presumably transmute the beach house from SP to CP.
3. GCPP
 - a. The presumption that property is CP at divorce can be overcome only by a written agreement or statement within title that the property is SP.
 - i. If there is no writing to the contrary, at divorce any SP contributions to the acquisition of CP are reimbursed to the SP contributor.
 1. If W's conveyance is valid, upon dispo, JT presumed to be CP since now writing that property is SP.
 2. W to be reimbursed for her SP contributions;
 3. Any appreciation to be divided equally between H and W.
4. Fiduciary Duty
 - a. Spouses owe each other fiduciary duties with respect to management of CP;
 - b. Rebuttable presumption of undue influence when one spouse gains an advantage over the other in a property transaction;
 - c. Spouse who obtained the advantage bears burden of rebuttal
 - i. W can contest transfer as violative of fiduciary duty;
 - ii. Rebuttable presumption of undue influence;

- iii. *H will fail to rebut presumption due to his intent and intentionally misleading statements to W about the purpose of the transfer.*
- iv. *Beach house will be W's SP.*

New York Loft

- 1. *Issue*
 - a. *Proper distribution of non-CP state property.*
- 2. *QCP*
 - a. *New York loft is QCP;*
 - b. *It was purchased with what would have been CP if spouses had been domiciled in CA at time of acquisition.*
- 3. *Transmutation (rule above)*
 - a. *Title in H's name alone does not change character of property*
 - b. *No evidence that W intended the community down payment or mortgage payments to be a gift, or that the home would be H's SP.*
 - c. *No written evidence to transmute property.*
 - d. *H and W have a one-half interest in value of the home.*

W's Education

- 1. *Is the community entitled to reimbursement?*
- 2. *Reimbursement*
 - a. *At divorce, community has a right to reimbursement when CP funds are:*
 - i. *Used to pay for education or loans incurred or training of a spouse; and*
 - ii. *The education substantially enhances the earning capacity of the educated party.*
 - 1. *W's education was paid for out of H's earnings, which are CP;*
 - 2. *W's earning capacity substantially increased;*
 - 3. *The community is entitled to reimbursement with interest, with a possibility of reduction or medication.*
- 3. *Reimbursement Reduction*
 - a. *The education or training is offset by community funded education of other spouse;*
 - b. *Education or training enables recipient to engage in gainful employment substantially reducing the need for SS;*
 - c. *The community has already benefited from education or training.*
 - d. *Rebuttable presumption community benefited (10 year presumption)*
 - i. *H did not receive community funded education;*
 - ii. *Fewer than 10 years have elapsed;*
 - iii. *W's education enabled her to reduce need for SS*

IT Business

- 1. *Issue*
 - a. *What is proper distribution of business?*
- 2. *GCPP*
 - a. *Business is a community asset*
 - b. *Pereira and VC do not apply*
- 3. *Valuation of business*

- a. *Value of business including goodwill.*
 - i. *Market valuation;*
 - ii. *Capitalization of excess earnings*
 - 1. *H and W have a right to one-half of the value of the business;*
 - 2. *If court awards business to W, she will need to provide compensation/buyout.*

Question Three Outline

10. GENERAL CLASSIFICATION RULES

- a. *Each answer should define CP and SP: (i) all property acquired during the course of a marriage is presumed to be CP; (ii) all property acquired before marriage or after permanent separation is presumed to be SP; and (iii) property acquired by gift, devise, or bequest is presumed to be SP.*
 - i. *2 points for all three*
 - ii. *1 point for one or two.*
- b. *At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise. (ii) A spouse's SP remains her SP at divorce.*
 - i. *2 points*

11. STUDENT LOAN PAYMENTS

- a. *Whether the education for which the student loans were paid substantially enhanced Husband's earning capacity*
 - i. *1 point*
- b. *At divorce, unless the parties sign an agreement to the contrary, there is an equitable right of reimbursement with interest to the community when community funds are: (i) used either to pay for education or training or are used to repay a loan incurred for education or training, and (ii) the education or training substantially enhances the earning capacity of the educated party.*
 - i. *1 point for each*
- c. *Reimbursement may be reduced or modified by any of the following circumstances: (i) the education or training is offset by community-funded education received by the other spouse; (ii) the education or training enables its recipient to engage in gainful employment that substantially reduces the need the recipient would otherwise have for spousal support; or (iii) the community has already substantially benefited from the education or training.*
 - i. *1 point for each*
- d. *There is a rebuttable presumption that if fewer than 10 years have elapsed between the contributions and the initiation of the divorce, the community has not substantially benefited, but if more than 10 years have passed, the community has substantially benefited.*
 - i. *1 point*
- e. *Law school substantially enhanced H's earning capacity because three years after graduating, he became a partner and his earning were substantial.*
 - i. *1 point*
- f. *H paid off his student loan with the earnings he made as partner, which are CP*
 - i. *1 point*
- g. *(i) Only two years elapsed between the time of the contributions and the initiation of the divorce; (ii) H's education was not offset by W's community funded education; (iii) no indication that H needed law school to engage in gainful employment that substantially reduced the need he would otherwise have for spousal support since he was employed prior to law school*
 - i. *1 point for each*

h. The community is entitled to reimbursement for CP payments made on the student loan.

i. 1 point

12. COMMUNITY INTEREST IN H'S LAW DEGREE

a. Whether a professional degree is CP

i. 1 point

b. A professional degree earned during the marriage is not divisible at divorce, and the community does not have an interest in it

i. 1 point

c. The community does not have an interest in H's law degree because it is a professional degree earned during marriage.

i. 1 point

13. COMMUNITY'S INTEREST IN GOODWILL OF H'S LAW FIRM

a. Whether the goodwill of H's law firm is CP

i. 1 point

b. Goodwill is essentially the difference between the total value of a business or professional practice and the value of its assembled physical assets (e.g., the reputation and habitual clientele of a business or practice.)

i. 1 point

c. California courts generally use one of two valuation techniques: market sales valuation (the price the goodwill would command in a sale of the business or profession) or capitalization of past excess earnings (the present value of the future stream of income that the goodwill developed during marriage will generate in the business or professional practice)

i. 1 point

d. Although a court may consider the terms of a partnership agreement (H's firm specified that the value of a partner's share in the firm's goodwill was \$3,000), the terms are not conclusive (the community is not bound by the firm's valuation)

i. 1 point

e. The community has an interest in the goodwill to the extent that it was earned during the marriage.

i. 1 point

1)

1. The Drawing

Community Property

California is a community property state. This means that, there is a rebuttable presumption that all property acquired during marriage will be deemed community property. This presumption can be overcome by the Separatizer if they can show, by a preponderance of the evidence that the property is separate property. Each spouse will have a present, existing, and equal interest in community property. Upon dissolution, the community property will be distributed equally, in kind, to each spouse unless they have agreed otherwise or a special exception applies. Good

Separate Property

Separate property is anything acquired prior to marriage, after marriage, or by gift, devise, or bequest even if during marriage. Additionally, any rents, profits, and issue will be considered separate property as long as they are derived from a separate property source. At dissolution, each party will retain their separate property. Good

Here, Holly is giving Wendy a painting of a famous artist that she obtained by purchasing it with \$15,000 that her parents had given her. It seems that Holly received the \$15,000 as a gift. If this is true, then the painting would have initially been SP, as long as Holly can rebut the presumption of CP by tracing the painting back to this gift. So, if the \$15,000 from her parents is a gift, and she can rebut the presumption of CP using direct tracing, then the painting would have started as her SP. Good

Then, in 2020 during COVID, on Wendy's birthday, Holly gives to Wendy this painting as a gift. Whether this painting will transition its character from either CP or Holly's SP to

Wendy's SP, will be discussed in the Transmutation and Interspousal Gift sections below. 9000
Before the gift to Wendy, it is either Holly's SP or CP.

Quasi-Community Property

Quasi-Community Property is any property that would be considered separate property had the acquiring spouse been domiciled in the state of California at the time they obtained the property. At dissolution QCP will be considered CP and will distributed equally, as mentioned above. ✓

Date of Separation

The marital economic community will be deemed to have ended and the parties will be deemed separate and apart if one of the spouses communicates to the other, or the other becomes aware of, the spouses intent to separate or dissolve the marriage and the separating spouse takes some subsequent act that is in accordance with that intent. This can be done unilaterally and separation does not require the consent or agreement of both parties. ✓

Here, the date of separation will occur in January 2023 which is when Holly and Wendy physically separated and then took the action of filing for dissolution of marriage.

Equal Distribution

At dissolution, the CP will be distributed equally, in kind, to each of the spouses unless some special rule applies or the parties have agreed otherwise. ✓

Premarital Agreement

A premarital agreement is made by two spouses in contemplation of marriage that seeks to govern the character of property, their distribution at dissolution, among other duties,

responsibilities, and obligations that the spouses may owe to one another. Generally, the parties will be able to contract freely so long as the PMA does not promote divorce, is not illegal or against public policy, and does not attempt to contract over the payment of child support. In order for a PMA to be valid it must (1) be in writing, (2) be entered into voluntarily by both parties, and (3) not be unconscionable. GOOD

Here, there are no facts to suggest that the PMA promotes divorce, is illegal, or is generally against public policy. The terms of the agreement, that each spouse's wages would remain their own SP, and the same for businesses, does not seem to go against public policy and will not be deemed illegal. Additionally, the agreement was in a writing, which will satisfy the first element above. The other two voluntariness and unconscionability are discussed below. GOOD

Voluntarily

When assessing whether a PMA was entered into voluntarily, courts will weigh heavily on legal representation for the adversely affected spouse. It will also consider (1) whether the adversely affected spouse expressly waived the right to independent counsel, (2) whether they were informed of the basic effects and terms of the agreement, (3) whether they had seven (7) days to review the agreement before execution, among other things like (4) whether the agreement was drafted in a language they are proficient in. GOOD

Here, although Wendy has verbally waived her right to independent counsel, this is unlikely to be sufficient and an express writing will likely be required for a formal waiver to take effect. Additionally, Wendy only has 3 days to execute the agreement, well below the 7 day minimum. So, although Wendy orally waived her right to counsel, and although the agreement seems to be drafted in a language she is proficient in, and although she was informed of the basic effects of the terms of the agreement, the PMA will likely be invalidated or voided because a written waiver will be required and because Wendy did

not have the required 7 days to review the agreement. The fact that Wendy is an attorney GOOD will likely not be given heavy consideration given the other factors.

Unconscionable

An agreement is unconscionable if it is so unfair that it shocks the conscious. When assessing whether a PMA is unconscionable, courts will look at (1) whether the financial position of both spouses was disclosed to the other, (2) the general disparity between the financial position of the spouses, (3) whether the adversely affected spouse waived their right to this disclosure, and (4) whether the adversely affected spouse could have otherwise obtained this information. GOOD

Here, Holly's counsel failed to disclose any of Holly's financial and economic assets. There are no facts to suggest that Wendy would have been able to obtain this information otherwise or that she waived the right to this disclosure. The court will give heavy consideration to the fact that Holly's financial and economic assets were not divulged to Wendy and may find this sufficient to determine the PMA unconscionable. On the other hand, Holly does not seem to have many assets to disclose prior to the marriage. The couple marries in 2018, and Holly does not start her business until 2022. But, given the amounts she has received through inheritance and gifts from her parents, those could be assets that needed to be disclosed. GOOD

Conclusion

The court will likely find that the PMA is invalid because it was not entered into with adequate independent counsel and because Holly's finances and assets were not properly disclosed. Under the **right of choice rule**, however, Wendy will have the option to treat the PMA as either valid or invalid. GOOD

Transmutation

A transmutation is an agreement entered into between the spouses during marriage, that seeks to alter or change the character of property from CP to SP or vice versa. Due to historical issues with perjury, oral transmutations are no longer allowed and a valid transmutation (made after 1984) is now required to be in a writing. In addition, (1) the instrument must contain an express declaration acknowledging the change in character, (2) the adversely affected spouse must consent and agree to the change in character of the property, and (3) the agreement must be entered into voluntarily by both parties. CRAT

Here, because there is no writing, a valid transmutation will not have occurred, unless the interspousal gift exception applies.

Interspousal Gift

There is an exception to the writing requirement for transmutations when the property is intended to be given by one spouse to the other as a gift and the asset's value is inconsequential to the financial standing of the community. CRAT

Wendy will argue that this was an interspousal gift, which Holly gave to her on her birthday. She will point to the fact that it was given to her on her birthday as Wendy's intent for it to be a gift. So although there is not a writing, the painting may have transitioned from Holly's SP, or CP, to Wendy's SP. This will depend on the financial standing on the parties and the community income in relation to the painting. The painting is \$15,000, which makes it a high valued time. Especially in comparison to Holly's annual salary of \$50,000. Again, its difficult to understand the entirety of Holly's financial standing as she did not disclose this to Wendy. GOOD

If the court finds the painting's value inconsequential to the wealth of the MEC or Holly's income, then it will likely qualify as an interspousal gift and will be deemed Wendy's SP. If it is not an inconsequential amount, then it will either be retained as Holly's SP or CP. CRAT

Conclusion

If Holly's act of giving the painting to Wendy on her birthday is seen as an interspousal gift, then it will be considered Wendy's sole SP. If not, then it may be considered CP.

↓
H's SP - SP FUNDS

2. H Art Gallery

Community Property

Supra. The couple were married in 2018 and the H Art Gallery is a business that was started in 2022. But, because Holly used her \$100,000 inheritance, her own SP, to start the business, it will be considered her own SP. This is true unless Holly cannot effectively trace the funds back to the inheritance, at which point the business would be CP, unless the PMA is valid. ✓

Separate Property

Supra. Holly starts the H Art Gallery using \$100,000 she received as inheritance from her grandfather. Because she received the \$100,000 as inheritance, it will qualify as a bequest or devise and will be her SP. Then, the SP funds were used to start the H Art Gallery, which will constitute it as SP too as long as Holly can trace the start of the business directly back to these specific funds. ✓

Quasi-Community Property

Supra.

Date of Separation

Supra.

Equal Distribution

Supra.

Premarital Agreement

See discussion above.

Here, if the PMA is valid, the H Art Gallery will remain Holly's own SP. If the PMA is not valid and unenforceable, there is an argument that the business is CP.

Market Capitalization & Goodwill

Under the market capitalization method, each spouse will own a 1/2 interest in the business, as with all other CP, and the business' value will be based on its market capital or the value that someone is willing to pay for it. Under this method, whichever spouse wants to keep the business will need to buy the other out of their CP interest. ✓✓

Additionally, goodwill is the expectation that arises in certain practices, like law, dentistry, accounting, that there will be continued patronage and business. Goodwill cannot be speculative and cannot be too personal in nature.

If Holly is able to successfully trace the start of H Art Gallery back to her inheritance, or if the PMA is valid, then the H Art Gallery will be deemed to be her SP and the market capitalization and goodwill valuation will not be necessary as the business is her SP and her goodwill is to be retained through the PMA. ✓✓

If Holly cannot successfully trace the funds back to her inheritance and the business becomes CP, then 1/2 of the current fair market value of the business will be apportioned between the two spouses and Holly would need to buy Wendy out of her share to keep sole ownership of the business. ✓✓

Pereira

Whenever a spouse starts a business using their own SP sources or starts a business before marriage, and the community has contributed to the business during the marriage, the community will be entitled to a portion of the business using one of two valuation and apportionment methods, which the court has the discretion to use. The Pereira method will apply when the increase in the value of the business is driven largely by the skill, labor, time, efforts, and other personal traits of the owning spouse. Typically, this method will benefit the community and lead to a larger reimbursement. In that event, the court will take the fair market value of the business at dissolution and will subtract from that the sum of the SP contributions and a fair rate of return (typically 7-10%) during the course of the marriage, to determine the community property interest. This is illustrated in the formula below.

$$CP = FMV \text{ at dissolution} - (SP \text{ Contributions} + \text{Fair Rate of Return})$$

Here, Wendy is likely to argue that the Pereira method should apply because the business grew due to Holly's enthusiasm that seems to have been appreciated by the customers and potentially grew her base. She can also point to Holly's knowledge and obtaining valuable paintings and art pieces by using her expertise. Additionally, Holly spent everyday working the art gallery, pouring a substantial amount of her time into the business. Lastly, Wendy will point to the drop in value of the business from \$500,000 to \$100,000 after Holly's injury and accident.

If the court, in its discretion, uses the Pereria method, then it will take the \$100,000 fair market value of the business at the time of dissolution, and will subtract the difference between Holly's initial SP contribution of \$100,000 and the fair rate of return, being \$50,000 x 1 year. Or:

$$\$100,000 - (\$100,000 + \$50,000) = \$50,000 \text{ or } 50\% \text{ of the business} = \text{CP.}$$

Van Camp

Entire bus = SP

The Van Camp method of valuation and apportionment will apply when the growth in the value of the business was due to external factors and not to the personal contributions of the owning spouse. The Van Camp approach favors the spouse who owns the business. To determine the SP portion of the business, the court will subtract the difference of the community labor and family expenses from the fair market value of the business at dissolution. This is illustrated in the formula below.

$$\text{SP} = \text{FMV at dissolution} - (\text{Community Labor} - \text{Family Expenses})$$

Here, Holly may argue that the nature of the paintings themselves, and the value driven by the Monet painting are what attributed to the growth in the value of the business. She will say that, despite all of her hard work and toiling at the art gallery, it was a labor of love and if the paintings had not increased in value as they did naturally due to the market, then the business would not have grown like it did. If the court uses the Van Camp method, the business will be apportioned as follows:

\$100K = \$0 = CP

$$\$100,000 - (\$50,000 - \$50,000) \text{ or } \$100,000 \text{ or } \text{SP} = \$100,000.$$

Conclusion

If the PMA is valid, which is unlikely, then the H Art Gallery will remain Holly's own SP. If the PMA is not valid, then the business will be subject to the Pereira or Van Camp methods of allocation distribution, and the Community may take in a part of the value, depending on which formula is used.

END OF EXAM

2)

Hank: H, Wilma: W

Community Property presumption (CP): Any property acquired during marriage while spouses were domiciled in CA is presumed to be community property. However, any property acquired before marriage or after the date of separation or by devise or gift is presumed separate property. In order to overcome the CP presumption, the separater may rebut by the source of asset, the action of parties that changed the character, or by statutory presumption. Upon divorce each spouse is entitled to half of the CP. ✓

Separate Property (SP): any property acquired before marriage or after the date of separation or by devise or gift is presumed separate property. ✓

Marital economic community: CP economic period begin at the date of marriage and end by one of spouse's death or on the date of separation (DOS). DOS is the day that a spouse expresses intention to either spouse to end the marriage and his action is in conformity with his intention to end the marriage. Here, the parties separated in 2024 and filed for dissolution which shows their intentions and consistent actions that want to end their marriage. ✓

Quasi community property (QCP): any property (real or personal) that is purchased anywhere when the spouses are domiciled elsewhere that would have been CP if the acquiring spouse was domiciled in CA, would be QCP. QCP follows is divided the same as CP between spouses upon divorce. ✓

Transmutation: Occurs when a spouse changes the character of a property during marriage from SP to CP or vice versa. It has 3 requirements: 1. writing and 2. express declaration of intent to change the character of property, 3. consent or approval of the other spouse. good

party that is adversely effected. the excption to the writing requirement: tangible inter-personal gifts that are affordable in value considering the finances of spouses.

1. The beach house (House)

CP and SP presumption: Supra

Here, W received the house as inheritance from her uncle which would make it her SP in the absence of any contrary agreement.

Transmutation: Supra

Here, W conveyed the house from her SP to CP when she coneveyed the house from W to H and W as community property with the right of survivorship. This shows W's express intention to change the character. The joint title was made in writing and recorded as a deed. Therefore, all the elements of transmutation is met. However, W could argue the undie influence presumption or breach of fiduciary duties to invalidate the transmutation. (please see below) 9000

-Presumption of undue influence and fiduciary duties: Spouses have fiduciary duties toward each other in transactions. These duties include duty of care, duty of loyalty, duty of good faith and not to mismanage and duty of disclosure. The presumption of undue influence arises when a spouse gets an advantage over another spouse is a transaction. Undue influence must be proved by clear and convincing evidence. It is defined as spouse's excessive pursuation to do or refrain from doing something that overcame the other spouse's free will. CREAT

Here, W could argue that H gained an advantage by lying to her that changing the character of the house was the only way to avoid probate in the event of her death. W relied on H since he was an attorney and H persuaded W with bad intentions of wanting

to get a share of W's inheritance knowing that it was her SP. H breached his duty of loyalty by putting his interest ahead of W's interest and tricking her into changing the character of the house. Due to the undue influence of H into tricking W, the transmutation is not valid. H could be held liable for undue influence and breach of fiduciary duties. Therefore, The beach house is W's SP. 9000

2. Authograph baseball

CP and SP presumption: supra. W would argue that she received the bat as her inheritance which makes it her SP in the absence of any contrary agreement.

Transmutation: Supra; The exception to the writing requirement: tangible inter-personal gifts that are affordable in value considering the finances of spouses. Here, H would argue that W's action of placing the bat in their beach house on their mantle constitute transmutation and since it was a tangible gift, no writing was required and it should be presumed as CP. However, W would argue that she received the bat as her inheritance which makes it her SP. W did not express any intention to change the character of the bat or gift it to H. She simply placed it on the fireplace to enjoy it. Considering the cost of it in 2018 which was 10k and 5M in 2024, it was definitely not an affordable gift for W to give to H either. Therefore Bat is still SP of W without transmutation. ✓ + 9000

3. NY loft:

QCP: Supra: Even though the loft was purchased during marriage, when parties were living in NY, it would have been CP if the acquiring spouse was domiciled in CA, would still be QCP. QCP follows is divided the same as CP between spouses upon divorce. Therefore, CP presumption applies to the NY loft. ✓ +

SP and CP preusmption: Supra. Any income driven from SP is presumed to be SP. Here, NY loft was bought by H's earning during marriage and the down payment was by their saving which would be asusmed community funds. CA is not a title theory and regardless of the name of the spouse on the title, both spouse have Community interest in a property that was acquired during marriage. H might argue that he paid the mortgage out of his earning and the saving was made up of his SP from before marriage. H could use direct tracing to show that the money was taken out of his SP and transferred for the purchase of NY loft (bu using See-Complaint Record). He may indirectly trace by showing that the CP funds were exhausted due to community expenses and only his SP could be used for the down payment. Without prove of tracing that SP was used to purchase the NY loft, this loft is CP of both spouse along with the rental value recieved from it and will be equally devided upon dicorce. good

4. W's Education

CP Presumption: Supra

Here, education is not presumed a CP and can not be shared between spouses upon divorce.

Education: Community does not have any interest in the education of spouse. However, Comuunity can be reimbursed for the education cost or tuition fees if the educated spouse's earning capacity increased. (Can be reimbursed as long as it was not for the necessities of life including food, housing, health.) Sevrал ways to rebut this presumption: good
1. Community paid for both spouse's education, 2. Community has been substantially benefitted from education if graduated more than 10 years before date of dissolution, 3. the educated spouse's need for Social security has decreased. ✓

Here, W's education was paid for from H's earning which was both of their CP and the education increased her earning capacity. W graduated in 2023 which is a year before dissolution therefore there is presumption that community has been substantially benefitted from education. W has to reimburse the community for her education cost including tuition with 10% interest without offset. W may argue that Community paid for both of their education since they got married when they were both in college and there is a chance she would want to be a stay at home mom again without any earning in future. However, court would conclude she would still have to reimburse community for the school cost because her earning capacity has increased and her need for SS has been decreased. 9000

5. W's IT business

Cp Presumption: Supra

Here, W started a business during marriage and there is no fact stating that she used her inheritance or SP to start the business. Therefore, there is a presumption that her IT business is CP. and Van Camp and Pereira would not be applicable since the business began during marriage and was not W's SP. Half of her IT business belongs to H. Depending on the value of the business, if equal to the NY loft, court may allow H to take the loft and W take the business to not cripple each party.

Goodwill: capitalization of past excess earning. Calculated as fair market value of business minus the tangible asset. Here, the goodwill of the IT business would be appraised at the date of separation and be distributed to each party in half as their share of CP. ✓+

END OF EXAM

3)

1. Student Loan Reimbursement

Community Property

California is a community property state. This means that, there is a rebuttable presumption that all property acquired during marriage will be deemed community property. This presumption can be overcome by the Separatizer if they can show, by a preponderance of the evidence that the property is separate property. Each spouse will have a present, existing, and equal interest in community property. Upon dissolution, the community property will be distributed equally, in kind, to each spouse unless they have agreed otherwise or a special exception applies. ✓

Here, Harry takes out a loan to pay for his tuition. During this time, Winnie supports the couple and expends her time and resources into the couple's common necessities. Later, Harry obtains a partnership with substantial earnings and pays off the loan with these earnings. Because Harry's earning (income) is CP under California community property law, and because he used these CP funds to pay for the tuition, the community will be entitled to reimbursement, discussed below. ✓

Separate Property

Separate property is anything acquired prior to marriage, after marriage, or by gift, devise, or bequest even if during marriage. Additionally, any rents, profits, and issue will be considered separate property as long as they are derived from a separate property source. At dissolution, each party will retain their separate property. ✓

There are no facts to suggest that Harry's tuition was paid with Separate Property.

Date of Separation

The marital economic community will be deemed to have ended and the parties will be deemed separate and apart if one of the spouses communicates to the other, or the other becomes aware of, the spouses intent to separate or dissolve the marriage and the separating spouse takes some subsequent act that is in accordance with that intent. This can be done unilaterally and separation does not require the consent or agreement of both parties. ✓

The date of separation here is 2016 when Harry and Winnie decide to separate and then take the action of filing for dissolution of marriage.

Equal Distribution

At dissolution, the CP will be distributed equally, in kind, to each of the spouses unless some special rule applies or the parties have agreed otherwise. ✓

Education (Degrees)

Under California Community Property law, the education itself, or the degree, has no value to the community. A degree is not divisible and therefore cannot be apportioned in value at dissolution. Quo

Here, neither Harry's degree from law school, or his license to practice law will have any community value as it cannot be distributed to each spouse. The degree itself will have no value, but the community may be entitled to reimbursement for his tuition and other expenses, discussed below.

Education Reimbursement

California Community Property law does allow the community to seek reimbursement for costs directly associated with the training or education of a spouse as long as the earning capacity of the spouse has greatly increased due to the training or education. This is true unless, at the time of dissolution, the community has already taken in the benefit of the education or training. There is a rebuttable presumption that, within the first ten (10) 9000 years after graduation or completion of training, that the community has not benefitted.

Here, Harry started law school after the parties were married in 2007. Harry graduated in 2011, and the parties filed for dissolution in 2016. Because there is only a 5 year period between Harry's graduation and the divorce, there will be a presumption that the community has not benefited from Harry's education.

The other question is whether the community will be entitled for education expenses. The answer appears to be yes because Harry used CP funds (his income) to pay off the student loans and because the facts state that Harry's earnings as a partner in the firm were 9000 substantial. As Harry did not have a job prior to the firm, or during law school, as Winnie was supporting the family, we can clearly see that Harry's earning capacity increased substantially as a result of earning his J.D. and passing the bar.

Conclusion

The community will be entitled to any costs directly associated with Harry's law school because CP funds (Harry's income) was used to pay for the education. 9000

2a. Interest In Harry's Law Degree

Education (Degrees)

Under California Community Property law, the education itself, or the degree, has no value to the community. A degree is not divisible and therefore cannot be apportioned in value at dissolution.

Here, neither Harry's degree from law school, or his license to practice law will have any community value as it cannot be distributed to each spouse. The degree itself will have no value, but the community may be entitled to reimbursement for his tuition and other expenses, discussed above.

2b. The Goodwill of the Firm?

Community Property

Supra.

Market Capitalization & Goodwill

Under the market capitalization method, each spouse will own a 1/2 interest in the business, as with all other CP, and the business' value will be based on its market capital or the value that someone is willing to pay for it. Under this method, whichever spouse wants to keep the business will need to buy the other out of their CP interest.

Additionally, goodwill is the expectation that arises in certain practices, like law, dentistry, accounting, that there will be continued patronage and business. Goodwill cannot be speculative and cannot be too personal in nature.

Here, Harry has joined a big law firm and has achieved the status of Partner. A Partner will take in not only their direct billing, but that of the associate and senior level attorneys, through profit sharing with the partnership. It is very likely that a court would find that

sufficient goodwill exists with Harry and the law firm and that Winnie will be entitled to receive some proportionate share of that goodwill.

Now, Harry's partnership agreement with the firm states that the value will be \$3,000 for the purpose of valuation of marital property in the event of a dissolution of a partner's marriage. But, Harry and Winnie have no separate agreement that is consistent with this. That is to say, despite the fact that Harry has an agreement with his firm, that does not bind Winnie as her and Harry have no agreement, like a PMA or otherwise, stipulating how much Harry's goodwill is worth. ✓ +

The value of the goodwill is going to be determined by the court in its discretion based on the evidence presented, and not solely on a stipulation between Harry and his firm regarding the value of his goodwill. 9000

Pereira

Whenever a spouse starts a business using their own SP sources or starts a business before marriage, and the community has contributed to the business during the marriage, the community will be entitled to a portion of the business using one of two valuation and apportionment methods, which the court has the discretion to use. The Pereira method will apply when the increase in the value of the business is driven largely by the skill, labor, time, efforts, and other personal traits of the owning spouse. Typically, this method will benefit the community and lead to a larger reimbursement. In that event, the court will take the fair market value of the business at dissolution and will subtract from that the sum of the SP contributions and a fair rate of return (typically 7-10%) during the course of the marriage, to determine the community property interest. This is illustrated in the formula below.

$$CP = FMV \text{ at dissolution} - (SP \text{ Contributions} + \text{Fair Rate of Return})$$

Here, because Harry does not own the firm, and because he became partner during the marriage, the Pereira methodology for valuation will not apply.

Van Camp

The Van Camp method of valuation and apportionment will apply when the growth in the value of the business was due to external factors and not to the personal contributions of the owning spouse. The Van Camp approach favors the spouse who owns the business. To determine the SP portion of the business, the court will subtract the difference of the community labor and family expenses from the fair market value of the business at dissolution. This is illustrated in the formula below.

$$SP = FMV \text{ at dissolution} - (\text{Community Labor} - \text{Family Expenses})$$

Here, because Harry does not own the firm, and because he became partner during the marriage, the Van Camp methodology for valuation will not apply.

Conclusion

The community will be entitled to CP funds contributed to and directly associated with Harry's education, although the degree itself will have no value. Lastly, it is likely that a court will find that Harry has garnered goodwill through his partnership with the big law firm and will apportion some value of that to be CP in the dissolution.

4000

END OF EXAM
