

MONTEREY COLLEGE OF LAW - HYBRID

COMMUNITY PROPERTY - SECTION 2

FINAL EXAMINATION

FALL 2024

Prof. A. Reyes

Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

QUESTION 1:

Daisy and Charles met in Monterey in 2009. When they met, Charles worked for the United States Federal Government and Daisy was a florist. When they met, Charles owned a ranch in Paso Robles inherited from his grandparents.

The couple became engaged in June 2011. Charles asked his friend, a law student, to write a Premarital Agreement for them. On July 1, 2011, Charles and Daisy signed the Premarital Agreement which included the following terms: 1) Each party's earnings during the marriage shall be their separate property; 2) At divorce, neither shall be required to pay child support and custody shall be 50/50%; 3) Neither party shall be required to pay spousal support; 4) Charles's family ranch in Paso Robles, shall remain his separate property; 5) Parties recognize that they have a right to retain independent counsel, and both waive that right and 6) If any provision of this agreement is found to be unenforceable, the remainder of the agreement shall remain in effect. The couple agreed to the terms, and both signed the premarital agreement on July 4, 2011, and married on July 28, 2011.

After marriage, Daisy began a side gig decorating weddings. She put in long hours, and Daisy's Floral Designs became a business worth \$750,000.00. Charles also made money from a side gig earning over \$150,000. In 2017, Charles took out a \$400,000 mortgage on the Paso Robles Ranch. He used the proceeds to build a pond as well as make other updates. Over the next few years, the couple used the following to make principal payments on the loan: 1) \$100,000 from an inheritance Daisy received from her mother, 2) \$150,000 from Charles' contractor work, and 3) \$50,000 from Daisy's business proceeds.

In 2020, Daisy became suspicious of Charles's long business trips. She hired a private investigator and discovered that Charles was having an affair. In 2021, Daisy filed for divorce in California.

Answer the following according to California law.

- 1) What is the validity of the Premarital Agreement and each of its terms?
- 2) What are Charles and Daisy's respective rights to "Daisy's Floral Designs"?
- 3) What are Charles and Daisy's respective interests in the Paso Robles Ranch?

QUESTION 2

Tracy, an Officer in the US Navy married Rachael, a waitress, in 2014. The couple created a joint checking account where they both deposited their earnings which Rachael used to pay all the couple's bills. Tracy often deposited additional funds in the joint checking account as needed but otherwise, she did not look at the account.

In 2015, Rachael hit an ice cream truck while she was on her way to a concert. She was afraid Tracy would judge her harshly and so she hid all the court proceedings. The court found that Rachael owed \$80,000 in damages. Rachael hid this judgment from Tracy. To pay off the debt, Rachael took an extra \$100-\$200 out of the joint account every time she paid a bill. Rachael paid off the judgment over 5 years. This was so exciting to Rachael that she continued the practice and saved up an additional \$50,000 which she placed in a separate checking under her name alone.

In 2016, Tracy used an inheritance from her mother to purchase a condo in DC titled in Tracy's name alone. For years Rachael pressured Tracy to put her name on the condo. One night after a huge fight, Tracy wrote a note stating, "Rachael's name is on the Condo if that will make her stop yelling."

In 2018, Rachael went back to school to obtain a Medical Tech degree. Between 2018-2020, the couple paid \$50,000 from the joint account toward Rachael's education, but she had to take out \$40,000 in additional loans to pay for tuition, books and living expenses to make ends meet while she wasn't working. In 2021, Rachael graduated with a med tech degree and went to work right away with Kaiser Hospital.

Tracy and Rachael separated in 2021 and filed for divorce in California. While gathering documents for disclosure, Tracy discovered the payments on the judgment and the undisclosed checking account of Rachael's with \$50,000 cash in it.

According to California law, what are the parties' rights and liabilities to:

1. The Condo in DC? Discuss.
2. The payments made to satisfy the tort judgment? Discuss.
3. The student loans? Discuss.
4. Rachael's account with \$50,000.00? Discuss.

QUESTION 3

Henry had premarital savings of \$10,000 in a bank account when he married Wren in California in 2015. After the wedding, Henry started working at a new job for the US Federal Government and deposited his \$3,000 salary check into the account. Shortly afterward, he paid \$2,000 for rent and \$2,000 for living expenses with checks drawn on the account. He then bought \$1,000 in First Time stock in his own name with another check drawn on the account. The First Time stock increased in value over time.

During the marriage, Henry earned \$350,000 in Federal Retirement based on his time working for the federal government from 2015-2022. Wren purchased disability insurance through her employer, and payments were deducted from her wages. In 2017 Wren was in an auto accident and later became disabled and could no longer work. As a result, she became entitled to monthly disability insurance payments, which will continue until she reaches the age of 65.

In 2018, Henry moved out of the home, but the couple went to counseling with the hope of reconciling. After Henry moved out, Henry started dating Sheila. Henry told Sheila that he was divorced, and the couple married at a Las Vegas ceremony in 2019.

Also in 2019, Henry won big in gambling at a local casino, and he used the winnings to open a New Investment account in his own name. Henry did not tell Wren or Sheila about his winnings or the New Investment account.

In 2022, after a period of counseling, Henry and Wren concluded that they would not reconcile, and Wren filed for dissolution.

Answer the following according to California law.

1. What are Wren and Henry's rights to The First Time stock? Discuss.
2. What are Wren's rights to Henry's Federal retirement account?
3. What are Wren and Henry's rights to disability insurance payments from 2018 to divorce?
4. What are Wren, Henry, and Sheila's respective rights to the New Investment account?

ANSWER OUTLINE
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QUESTION 1 OUTLINE:

1. Validity of Premarital agreement:
 - a. **PMA content requirements:** [Fam Code 1615(c)] tells us what PMA's will be enforceable: Must have independent counsel or express waiver, and 7 days to review between time presented and time signed and advised to get counsel. The out spouse must be fully informed in writing prior to the signing of the agreement and the rights he/she was giving up and was proficient in the language of the explanation and the agreement. There must be no fraud, duress or undue influence. Lastly, any other factors the court deems relevant. **Parties cannot waive CS and a waiver of SS is not enforceable if payee wasn't rep'd at time signed or enforcement would be unconscionable at the time of enforcement.**
 - b. **Unenforceable If unconscionable** when executed and no adequate knowledge of the wealth of the other party and did not waive her right to disclosure. A PMA is not enforceable if it was not entered into voluntarily or it is against public policy by promoting divorce, is unconscionable or makes someone public ward.
 - c. Apply facts: Cannot contract regarding child support, Cannot install fault divorce, spousal support provisions require independent counsel or are unenforceable, Timing of wedding not relevant to 7 day rule, signature is.
2. Daisy's Business: The business is community property, it was started during marriage. No Pereira/Van Camp analysis required.
3. The Paso Robles Ranch:
 - a. Ranch is inheritance [Fam Code 770] it is SP regardless of PMA invalidity.
 - b. Funds paying into Mortgage:
 - c. \$100k Daisy's inheritance is SP (770)
 - d. \$150k Charle's earnings are CP
 - e. \$50k Daisy's business income = CP
 - f. Due to payments with CP, the Community is entitled to reimbursement for Moore/Marsden interest. Community acquires a pro tanto interest in the property for principal pay down only (not interest, taxes or insurance.) Apportioned interest. Moore/Marsden Calculation
 - g. CP gets to share in a pro tanto interest in the increase in the value of the residence.
 - h. SP portion can also get increase (or decrease) in increased value of the home before marriage.
 - i. No indication that title was changed by the fact pattern.
 - j. Daisy can seek reimbursement for \$100k inheritance contribution under Fam Code 2640.

QUESTION 2 OUTLINE

General Community Property Presumptions: CP/SP etc. [Fam Code 760 and 770]

1) The Condo in DC

- a. GCPP presumption
- b. QCP rule
- c. Although purchased DM, under FC 770, condo is SP because inheritance.
- c. Post-Nuptial Agreements/Transmutations

i. Starting January 1, 1985, all transmutations must: FC 852(a)

- 1. Be in writing (statement in a will is not enough to establish a valid transmutation.)
 - 2. Contain an **express declaration** acknowledging the change in character of the asset meaning a present intent to change the character of the asset
 - 3. Made, joined in, consented to, or accepted by the spouse whose interest in the property was adversely affected by the transmutation
 - 4. Consideration is not required
 - 5. Parole evidence is inadmissible
- ii. Sequence of questions
- 1. Was there a valid transmutation? (I.E., was it valid as to form.) If yes, then,
 - 2. Did the other party receive an unfair advantage? (Was it obtained free of fraud?) If yes, then undue influence (constructive fraud) must be rebutted by the defendant by clear and convincing evidence. If the defendant succeeds, then go to FC 2640 tracing.
 - a. Adversely affected spouse must show:
 - i. Parties in confidential relationship which is presumed to exist;
 - ii. Spouse benefitted relied on that relationship;
 - iii. Benefitted spouse participated in transaction;
 - iv. Unfair advantage gained by bene'd spouse
 - b. Burden shifts to benefitted spouse to show to AA spouse:
 - i. Freely and voluntarily entered into agreement
 - ii. Knew all the facts needed
 - iii. Knew legal effect of transmutation
 - iv. Fair and just
 - v. Adequate consideration
 - 3. Even if there was a valid transmutation the AA spouse must have waived their FC 2640 tracing rights in writing.

2) Payments to Rachael's tort judgment:

- a) GCPP
- b) Debts incurred During marriage are CP. However, there are special rules for Tort debts.
- c) Duty to disclose [FC 1100]: [fiduciary] duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of

all assets in which the community has or may have an interest and debts for which the community is or may be liable.

- d) **Tort Liability:** Torts committed DM and for the benefit of the community are CP liabilities that are satisfied 1st out of insurance, then CP, then SP of the tortfeasor. Torts committed DM that are not for the benefit of the community are not CP liabilities and are satisfied first by insurance, then SP for the tortfeasor then CP. (Fam Code 1000)
- e) **Statute of Limitations:** Fam Code 1000 (c) There is a 7 yr. SOL for the community to be reimbursed for tort payments. The SOL begins to after “the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.”
 - i) Here the payments were made from CP in 2015, over 7 years ago but Rachel hid the payments. Tracy will still be able to seek reimbursement from Rachel’s separate property if there were any available at the time payments were made.

3) The student loans

- a) Fam Code 2641 – Education and training acquired during marriage **is not treated as CP asset**. Instead, at divorce, unless parties sign an agreement to the contrary, 2641 creates an **equitable right of reimbursement** with **interest** at the **legal** rate to the community when CP funds are used to repay a loan incurred for education and training and the education and training that **substantially enhances the earning capacity** of the educated party.
- b) Reimbursement can be reduced or modified to the extent that the community has **substantially benefited from the education**. There is a **rebuttable presumption** affecting the burden of proof that the community has not substantially benefited from community contributions to the education made **less than 10 years** before the commencement of the preceding.
- c) Parties can **contract** for reimbursement. In absence of a contract for reimbursement, community can **only** be reimbursed for **contribution to education, not living expenses**. When still outstanding, they are assigned to the educated spouse **without offset**.
- d) Apply facts

4) Hidden account with \$50,000.00

- a) Wages earned by spouse’s skill, labor and effort are CP.
- 5) **Management and Control:** [FC 1100] Each spouse has equal right to manage and control CP and there are limits. Under 1100(e), when a spouse acts alone in managing “[c]ommunity assets and liabilities ...” that spouse is subject to the “... general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence [FC 721] until such time as the assets and liabilities have been divided by the parties or by a court.”
 - a) Duty to disclose: [FC 1100]
 - b) Breach of Fiduciary Duty [FC 1101] “A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse’s present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse’s undivided one-half interest in the community estate.”
 - c) Remedies for Breach [FC §1101(h)] may include punitive damages and the court may award “to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.” Judge could order asset split evenly, unevenly, or give the entire amount to H per CFC section 1100 and 1101.

d) *Apply facts:*

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QUESTION 3 OUTLINE:

General Community Property Presumptions: CP/SP etc.

Date of Separation: FC 70 – were statement and conduct consistent with termination of marriage. Date of Separation: FC 70 – were statement and conduct consistent with termination of marriage.

1. *First Time Stock Purchase*
 - a. *Savings pre-marriage SP (770)*
 - b. *Earnings during marriage CP (760)*
 - c. *Comingled account: Payments from a comingled account.*
 - i. *Tracing Rules:*
 1. *Hicks-Mix Direct tracing.*
 2. *Sees Indirect: Priority of payments: living expenses paid from CP first*
 - d. *Increase in Stock value Earnings profits from CP [FC 760]*
 - e. *Apply facts: Differing amounts depending on determination of date of separation:*
 - i. *If the court determines date of separation is in 2018*
 - ii. *If the court determines date of separation is in 2022*
2. *Federal Retirement account:*
 - a. *Time rule for Retirement Accounts*
 - b. *Possible Preemption clause issue for Federal Benefits*
 - c. *Apply facts: Differing amounts depending on determination of date of separation:*
 - i. *If the court determines date of separation is in 2018*
 - ii. *If the court determines date of separation is in 2022*
3. *Disability Insurance:*
 - a. *Purchase of Insurance from CP*
 - b. *Disability/PI payment proceeds [FC 2603]*
4. *Investment account:*
 - a. *CAMPAL – Account title not determinative*
 - b. *Source of funds: character of earnings is dependent on Date of separation [FC 70 see answer to #1 above].*
 - c. *If DOS is in 2018*
 - i. *Wren has no rights DOS was prior to winnings.*
 - ii. *H has 50% interest and shares as CP with Sheila.*
 - d. *If DOS is in 2022:*
 - i. *W has 50% interest*
 1. *Concealment [duty to disclose FC 1100 and 1101] – Discuss fiduciary duties. If concealed funds are cp if fraud, oppression or malice, W could receive 100% of proceeds. If not fraud oppression or malice still subject to discovery sanctions*
 - ii. *H has 50% interest shares as CP with wren*

iii. *Sheila has putative spouse interest.*

1. Putative spouse: *Sheila can elect putative spouse, H cannot.*
2. *Good faith belief.*
3. *Spouses share with putative spouse.*
4. *Non-martial agreements*

1)

The PMA

Valid Pre-Marital Agreement

PMA's require (1) a writing, (2) to not be unconscionable at enforcement, (3) to be in a language the parties are proficient in, (4) have at least 7 days to reflect & seek legal counsel, (5) cannot waive CS, (6) if there is a waiver of SS, then both parties must be represented by attorneys, (7) fully inform of all assets, and (8) signed by both parties. ✓

(1) Writing. Here, the PMA was in writing, so this is valid. Even though it was a law student, not a practicing and licensed attorney that wrote the agreement, it simply needs to be in writing.

(2) Not unconscionable at enforcement. Parties are allowed to agree or modify almost all of the Community Property presumptions/rules but the court has discretion to disregard agreements if, at the time of enforcement, one party would be significantly impacted and essentially left destitute. The courts do not want to create burdens on the welfare system. Here, the majority of the terms are allowed, but more details will be needed to see if any specifics are unconscionable at dissolution. For now, this element is met. ✓

(3) Proficient Language

The PMA must be in a language both parties are proficient in. Here, no facts suggest any issues in language proficiency and is therefore valid unless more information is discovered later.

(4) 7+ days

The legislature requires that, when presented with a PMA, the parties have a minimum of seven days to reflect AND seek legal counsel if they desire. Here, the facts state that the parties signed the agreement on two separate occasions, July 1, 2011 and on July 4, 2011. It is unclear when the parties were presented with the PMA and therefore inconclusive to determine if the 7 day minimum was met. If the parties were first presented the PMA on July 1, and then signed on July 4, then it is prima facially invalid because the seven day

take a position

minimum was not met.

(5) Waiver of CS.

The legislature strictly prohibits waiver of Child Support. Here, the parties agreed to waive CS, this is invalid as a matter of law and unenforceable.

(6) SS Waiver

The parties are allowed to waive Spousal Support so long as BOTH parties were represented by their own attorney(s). Here, neither Charles nor Daisy were represented by lawyers and therefore, the waiver of SS is invalid. Additionally, the court can override a SS waiver in the interest of justice where necessary. The waiver is unenforceable.

(7) Fully Informed

In a PMA, the parties must fully disclose ALL assets and debts to fully inform the other party. Here, no facts suggest that the PMA fully informed both parties. More information is needed to determine if this element is met.

(8) Signatures.

Signatures are required, ideally with notarization. Here, the parties both signed. Therefore this element is met.

CONCLUSION

The PMA is most likely invalid in its entirety because of the defects discussed above. In particular, that the time between receipt of the PMA and signatures was less than 7 days.

Rights to Daisy's Floral Designs

Community Property Presumption

All property acquired during marriage, while domiciled in CA, is presumed to be community property. Here, the business, Daisy's Floral Designs, was started during marriage. The facts do not state if separate property funds were used to launch the business. Without more information about what funds were used to launch the business,

the default presumption will be that Daisy's Floral Designs is community property and will be divided evenly/equitably at dissolution. ✓
yay

Tracing

In order for Daisy to overcome the CP presumption, she will need to be able to trace (track) the source of funds used to launch the business. If the source of the funds were from her separate property, then it is possible that she can retain a higher percentage of division in the business. If that is the case, the court will, at its discretion, use the Pereira or Van Camp calculations to determine how to split the business accordingly.

Pereira

$((\text{Fair Market Value at marriage} + (\text{Rate of Return} * \text{length of marriage})) / \text{FMV at dissolution})$. This is primarily used where a SP business grows during marriage as a result of the labor of one spouse (labor is considered a CP asset). Here, the business was started during marriage and no facts suggest that it was started using SP funds. The facts do state that it grew because Daisy "worked long hours". These long hours are labor, and is CP. However, without more information, the business is presumed to be CP because it was stated during marriage and used CP funds to launch. Therefore, without more information, Pereira is not applicable.

Van Camp

$(\text{CP Labor} + \text{Family Expenses}) - \text{FMV at dissolution}$. This is primarily used where little to no labor is used to grow the business. Here, the business was started during marriage and no facts suggest that it was started using SP funds. Additionally, the primary reason for growth was because Daisy "put in long hours" meaning that the better valuation would be Moore. Therefore, the Van Camp valuation is most likely inapplicable.

* Missed PMA if valid income is SP
if invalid Biz income is CP

Paso Robles Ranch

Community Property Presumption

Rule supra. Here, the Paso Robles Ranch was acquired before marriage, making it Charles' separate property.

Separate Property

Separate property is acquired before marriage, by gift, inheritance, or bequest. The rents, issues, and profits of SP create SP. Here, Charles acquired the Paso Robles Ranch from his Uncle's estate as an inheritance, so it is initially classified as his Separate Property.

The Mortgage During Marriage -- Pro Rata Interest

Where a Separate Property home uses either CP funds of the SP of the other spouse, the "other" funds create a Pro Rata interest in the property. The court has discretion to apply Section 2640, Moore, Marsden, or Aufmuth calculations to determine the correct division/reimbursement.

Section 2640

Allows for a dollar-for-dollar reimbursement of SP funds used on real estate including the mortgage principal payment, improvements, etc.; insurance, taxes, and finance fees are not reimbursable. Here, Daisy used \$100k of inheritance funds to pay some of the mortgage. These funds are Daisy's SP because they were acquired by inheritance. Daisy also used \$50k of her business proceeds, but this is likely community funds because, as discussed above, the business is CP. Therefore, Daisy could petition to have a reimbursement of the \$100k inheritance funds.

Moore

$((\text{SP downpayment} + \text{initial loan amount}) - \text{CP loan payments}) - \text{purchase price}$. Here, the property was acquired via inheritance, so there is no SP down payment or initial loan, only the loan taken out during marriage--\$400k. Charles will need to have a forensic accountant or other expert determine the value of the property before marriage to complete the calculation. However, the community has contributed \$200k in principal loan payments from Charles' contractor work and Daisy's business proceeds. These are

CP funds because both businesses were started during marriage, no facts suggest that SP funds were used to start the businesses, and the PMA is invalid. The parties can only overcome this by adequately tracing, but more information will be needed.

Marsden

(((SP downpayment + initial loan amount) - CP loan payments) - purchase price) + (SP loan payments before marriage + appreciation before marriage). Here, much like in the Moore calculation, more facts will be needed to determine the value. However, the Marsden formula is typically used for property acquired long before marriage, where the spouse has contributed a larger portion of their SP before marriage to the principal and can benefit from the appreciation up to marriage, the court is unlikely to use the Marsden formula because the facts don't align with this very much.

Aufmuth

Where property is acquired during marriage and SP funds are used or it is titled in one spouses name, the Aufmuth formula determines the percentage of ownership. It is very simple, at purchase, the percent of SP used to purchase is retained. Here, the property was acquired before marriage, so this formula is not likely to be applicable.

Conclusion

The Paso Robles Ranch will be primarily Charles' SP, however, the community will be entitled to reimbursement of Daisy's SP funds used to pay the principal, or (if more facts are uncovered) then the community may have a percentage of ownership, which will then be divided accordingly.

Lender's Intent Rule

Where spouses purchase (or refinance) with credit, the parties can trace back to the lenders intent with the loan to determine the intended character. The court will consider factors like (1) signature(s) on the loan, (2) the lender's history & intent with previous loans, (3) the source of down payment funds, and (4) the source of repayment funds. Here, the facts show that Charles was the one who took out the loan and are silent about

if Daisy was also on it. More information is needed to be conclusive, but it is likely that the lender intended to do business with Charles. The facts are also silent about previous loans, so this element is inapplicable. The facts are also silent about if there was any down payment, although Charles has a good argument that no down payment was needed because he was likely using something like a Cash-Out Refi or similar real estate loan, which leans in Charles' favor that the lender intended to work with Charles. However, the source of funds to repay were primarily CP because the PMA was invalid. But, the lender likely didn't know that the PMA was invalid and may have assumed that the property would always be only Charles'. This could be a good defense for Charles to keep the majority of the property his SP, but more facts will be needed.

2)

GCPP: California is a community property state. There is a rebuttable presumption that all property acquired during the marriage is community property and all property acquired before, or after the marriage, or by gift or inheritance is separate property.

Equitable Division: The court must divide all community property between the spouses. 1/2 of each CP asset will be awarded to each spouse.

THE CONDO IN DC

Issue: Did Tracy validly transmute her SP asset to Rachel?

Rule: Transmutation: A spouse can change the character of an asset from SP to CP as long as (1) the transmutation is in writing, (2) there is an express declaration of intent to transfer, (3) the transfer is made by, accepted by, or joined in by the adverse spouse. ✓

Exceptions to Transmutations: Undue influence, gifts of personal nature that are reasonable in value under the circumstances ✓

Analysis: Here, Tracy used inheritance from her mother to purchase the condo in DC and titled it in her name alone. Because the source of this purchase can be linked to inheritance, which under GCPP, is the separate property of the spouse, Tracy's condo is her own separate property.

Under the rules of Transmutation, Tracy can change the character of this asset from SP to CP as long as it is in writing, with an express declaration of intent to transfer, and is made by, accepted or joined by the adversely affected spouse, which in this case would be Tracy. Here, the transfer was in writing, as it was on a note that said "Rachel's name is on the Condo if that will make her stop yelling." The court would likely rule that there is not an express declaration of intent to transfer, as the transfer has a condition that "if that will

make her stop yelling." The note was very informal, and had conditions that the court cannot determine if they were satisfied. It is not known whether Tracy stopped yelling. A transmutation that has conditions is not express and is not valid. The third element requiring that it be accepted or joined by Tracy may be satisfied as Tracy was the one who made the gift. Also, under the exceptions of transmutations is undue influence. Rachel pressured Tracy for years to put her name on the title. When Tracy finally did it it was during a fight and it was done reluctantly just to get Rachel to calm down. Here, there was likely undue influence, and Tracy also likely failed to expressly declare her intent to transfer the property. An express intent would be to use a title instrument to add Rachel's name on the title. An express intent also would not come with conditions for the transfer.

Conclusion: Because the transmutation lacked a declaration of intent and because it was made under undue influence, the transmutation is not valid, and the condo in DC remains Tracy's separate property.

PAYMENTS TO SATISFY TORT JUDGMENT

Issue: Was the tort committed for the benefit of the community, thus making the judgement a CP liability?

Rules:

Tort Liability: A judgment for a tort committed for the benefit of the community is paid first by insurance, then by the CP funds, then by SP funds of the tortfeasor. A judgment for a tort that does not benefit the community is paid first by insurance, then by SP funds of the tortfeasor, then by CP funds. The CP has a 7 year statute of limitations to be reimbursed for the CP contribution when the tort is not for the benefit of the community. ✓

Fiduciary Duty: Spouses have a duty to deal with one another with good faith and fair dealing. Spouses must disclose all material information and disclose of all assets and liabilities one has. The Fiduciary duty ends when the divorce is finalized.

Breach of Fiduciary Duty: When a spouse does not disclose material facts, assets or liabilities, the court will award the other spouse with 50% of the value of that asset. When a spouse fails to disclose intentionally, due to self-dealing, the court can award 100% of the value of that asset to the non-self-dealing spouse.

CAMPAL: Sums of deposits during the marriage are presumed to be CP, and this presumption can be rebutted if the spouse can trace the funds to a SP source. Joint accounts of unmarried individuals are to pass by rights of survivorship based on the title of the account.

Analysis: Here, Rachel was not acting for the benefit of the community, as she hit the ice cream truck while she was on the way to a concert. The concert would not further the position of the community, but rather is a personal pleasure where only Rachel benefits. Because of this, the tort was not in the benefit of the community and would be paid first by insurance, then by Rachel's SP, and then by CP funds. The community would have a 7 year SOL to be reimbursed for their contribution. Here, Rachel owed \$80,000 in damages for the tort. She used money from a joint account to pay off the debt. Under CAMPAL, the money in the account is community property because the money was not traced to Rachel's own SP, and was held in a joint bank account. Therefore, Rachel used CP funds to pay off her judgement debt from her tort, when she should have first exhausted separate property funds. Not only that, but Rachel also hid the judgment from Tracy, which is a breach of her fiduciary duty to Tracy to disclose all assets and liabilities during the marriage. Rachel was self-dealing in this breach because she purposely hid the judgment and purposely hid that she was stealing CP funds to avoid making Tracy mad. Because of this intentional breach, the court would award the reimbursement of the judgement to Tracy 100%.

Conclusion: Because the tort was not for the benefit of the community, and because Rachel breached her fiduciary duty to Tracy, Tracy is entitled to a full \$80,000 reimbursement of the funds taken from the community to pay Rachel's judgment.

THE STUDENT LOANS

Issue: Is the community entitled to a reimbursement for the funds paid towards Rachel's education, tuition, books and living expenses?

Rules:

Education CFC 2641: Education is personal by nature and has no divisible value. The community may be entitled to reimbursement for contribution to the cost of education. ✓

Right to Reimbursement: A community can be reimbursed for costs associated with education if (1) community property funds were used for the education, (2) the education enhanced the earning capacity of the spouse. The court will reimburse the community and add interest at the legal rate, but can modify or reduce the reimbursement depending on if the community has significantly benefited from the education.

Rebuttable Presumption: There is a rebuttable presumption that the community has not significantly benefitted from education received less than 10 years from the commencement of the proceeding.

Defense to Reimbursement: (1) The community has significantly benefitted from the education (it has been more than 10 years), (2) The community also paid for the other spouse's education, (3) The education lessens the need for spousal support.

Analysis: Here, the value of the education is Rachel's, as education is not a divisible asset, however the community is entitled to reimbursement for fees made for the education. Rachel's education was completed and she immediately was hired at Kaiser, and therefore

her earning capacity was enhanced. Here, couple paid \$50,000 for the education. The community has a right to reimbursement for the funds contributed to the education. There was an additional loan taken out for \$40,000 that was used for tuition, books, and living expenses. The community is only entitled to reimbursement used for education, not for living expenses, as the spouses have a duty to support. In this instance. The community can be reimbursed the entire \$50,000, plus the portion of the \$40,000 that was used for only tuition and books, but not for living expenses. Here, Rachel cannot argue that the community already received the benefit of the education, as the education was only finished in 2021, the same year that they were separated, and therefore the community did not gain any lifestyle advances from her increased income. Rachel may argue that the education lessens her need for spousal support, and the court can reduce the community reimbursement based on this factor.

Conclusion: The community can be reimbursed for the \$50,000 towards the payment for Rachel's education and whatever portion of the \$40,000 that was used for books and tuition. The portion of the \$40,000 used for living expenses is not subject to reimbursement. The court may decide to lessen the reimbursement for the contribution towards the education if the court finds that without this education Rachel may have required more spousal support. Rachel will be entitled to half of the community reimbursement and Tracy will be entitled to the other half.

RACHEL'S ACCOUNT WITH \$50,000

Issue: Is the \$50,000 that Rachel took from the joint account her own SP?

Rules:

CAMPAL - Supra

Fiduciary Duty - Supra

Breach of Fiduciary Duty - Supra

+ Duty to Disclose

Taking Title: Property that is titled in one spouses name does not change the character of the asset to SP if the original source of the property is CP.

Analysis: Here, Rachel took the \$100-200 from a joint account, which under CAMPAL, is community property unless traceable to a SP source. As stated above, there was no traceability to a SP source. It is not enough that the asset is in Rachel's name only, because the asset could be traced to the CP source of the joint bank account. The \$50,000 is CP. Rachel also breached her fiduciary duty, as stated above, by lying and stealing the funds from the joint bank account. Because she breached her fiduciary duty of fair dealing and good faith, and because she did so in a way that was self-dealing, by stealing the money and holding it as her own, the court will award 100% of the asset to Tracy, rather than 50% of the asset which would have been awarded if the non-disclosure of the asset was by mistake.

Conclusion: Tracy is entitled to the entire \$50,000 sum in the bank account.

excellent!

3)

General Community Property Presumption

California is a community property state (CP). All assets and income acquired during the marriage are presumed to be CP. Any assets or income acquired before the marriage or after date of separation (DOS) is presumed to be separate property (SP). At dissolution, CP is equally divided between the spouses. The GCPP can be rebutted if the proponent proves by a preponderance of the evidence that the property is SP either by 1) tracing or by 2) agreement between the parties.

What are Wren and Henry's right to The First Time stock?

Characterization of Assets

The characterization of assets depends on 1) the source of funds, 2) any actions taken by the parties to change the character, and 3) any statutory presumptions affecting the property. Here, Henry (H) had a premarital savings account with \$10,000 in it when he married Wren (W) in 2015. These savings are presumed to be SP funds since they existed in the account before his marriage. Shortly after marriage he starts a job with the US Federal Government and makes \$3,000 salary. This salary is CP since it is income earned during marriage. From these deposits, H pays \$2,000 a month for rent and \$2,000 for living expenses using checks drawn on the account. He then bought First Time stock worth \$1,000 from fund in the account in his name only. The issue here is that the account now has funds that are SP and CP in nature. H will have to prove that the stock was purchased using SP funds if he wants the increased value of the stock at dissolution to be assigned to him. He will have to trace the source of the funds.

CAMPAL- Sums on Deposit

An account of a married person is presumed CP. The sums on deposit into that account

are also presumed CP. Here, H will have to trace the source of assets used for the various expenses because the account is now, upon marriage, presumed CP but it contains commingled funds.

Commingled Assets

Where CP and SP funds are commingled, the spouse that wants to establish the character of an asset has to trace the asset to the source of its funds. If funds become so commingled that it is not possible to separate them, the CP presumptions will apply. The spouse that first commingled the account has the burden of tracing.

Therefore, H has to trace and provide evidence to the court of the source of the stock funds.

Tracing

Tracing is used to prove the source of funds used for an asset. It requires documentation of the transactions to prove by a preponderance of the evidence that the asset is of a certain character. Tracing can be direct or indirect.

Indirect Tracing

A proponent can show that the CP funds in the account had been exhausted on the date of the transaction and, therefore, the remaining SP funds were used to make the purchase. Here, H will argue that his CP salary of \$3,000 per month is exhausted each month by paying the rent (\$2,000) and the living expenses (\$2,000). He will show that the account had \$10,000 in SP when he married and he then made a \$3,000 deposit. Shortly after he paid \$2,000 rent and \$2,000 living expenses. This means that the CP fund is now \$0 and the SP funds are now \$9,000. He then purchases \$1,000 in First Time stock. He will argue that by indirect tracing he showed that the CP funds were exhausted and, therefore, the purchase was made with SP.

See Compliant Records

Records for tracing must be dated and describe the character of the transaction. They

have to be taken ongoing and concurrently with transactions on the account. Here, H first commingled the account and is now responsible for keeping See compliant records. If he can provide these records, he will succeed at indirectly tracing the stock to SP source funds.

Therefore, the First Time stock is SP. Henry will get the full value of the stock at dissolution and Wren will get none of it.

What are Wren's rights to Henry's Federal retirement account?

Federal Preemption

Federal law will preempt inconsistent state law. This can have the effect of keeping certain state CP principles from applying. Here, if there is a federal law that states that federal retirement is not subject to CP principles, then California law of GCPP will be pre-empted and the retirement account will remain H's SP. ✓

Time Rule

Courts will use time to determine and apportion the value of pensions, stocks, bonds based on earnings. They will use a formula of dividing the number of years worked during the marriage by the total number of years worked. Here, if the GCPP is not preempted, ✓ then the court will value the retirement account using the time rule. Based on this formula, H was married in 2015 which is when he started working for the federal government. he worked there until 2022 which is the same year that they filed for dissolution. This means 100% of the retirement account is CP.

Therefore, assuming that there is no federal pre-emption, the entire \$350,000 retirement account would be CP. It would be equally distributed to H and W. If GCPP is preempted, then the account is H's SP and W has no rights to it.

What are Wren and Henry's rights to disability insurance payments from 2018 to divorce?

Characterization of Assets, see supra.

Here, W purchased disability insurance through her employer and the payments were deducted from her wages. She was married in 2015 and she purchased the insurance during marriage, therefore, her earnings are CP. The payments deducted from her wages are sourced by CP so the disability insurance is characterized as CP.

Disability

Where disability payments replace income, they are characterized as CP. Here, W purchased disability insurance and in 2017 she was in an auto accident rendering her disabled and no longer able to work. She became entitled to monthly disability payments until reaching the age of 65. Here, H will argue that the disability payments were replacing her income because she could no longer work and they are being paid to her until she reaches the age of retirement which is normally when income stops. Additionally, he will point to the fact that the insurance payments were made with her income when she was working. ✓

Therefore, the disability payments will be characterized as income replacement and, therefore, CP. The court will find that all payments made between 2018-divorce are CP and will be distributed evenly to H and W at dissolution.

What are Wren, Henry and Sheila's respective rights to the New Investment account

Marital Economic Community (MEC)

The marital economic community begins at marriage and ends at 1) divorce, 2) death, or 3) permanent separation.

Henry and Wren's MEC

Here, H and W were married in 2015 and in 2018 H moved out of the home but the couple went to counseling in hopes of reconciling. It wasn't until 2022 that they concluded they could not reconcile. H will argue that the court should find the MEC ended when he moved out because he started dating Sheila and put himself out as if he was divorced. He subsequently married Sheila(S) in 2019. W will argue that the court should find their MEC lasted until 2022 because even though H moved out they were still going to counseling and H made W think they were still working on their marriage. She will argue that she did not know about S and that H led her to believe they were still in a marriage even though they were separated. She will point to the fact that they didn't conclude until 2022 that they could not reconcile. W will argue that the fact that she didn't file for dissolution until 2022 should also inform that their MEC lasted until 2022.

The court will have to look at the circumstance to determine the date of separation.

Date of Separation- How Determined

DOS is determined based on the circumstances of the marriage. Normally, it is when one spouse conveys to the other spouse that they no longer want to live as spouses behave in a manner that aligns with that intent. Here, H will argue that he conveyed he no longer wanted to live as spouses when he moved out in 2018. He further acted in alignment with that intent when he started dating S and subsequently married her. W will argue that H kept coming to counseling and that this behavior was not in alignment with an intent to not live as married because it made her believe that they were still working on their marriage and that they could reconcile. She will point to the fact that she held that belief for 3 years until she filed for divorce in 2022. ✓

Given that H kept going to counseling and didn't tell W about S, the court will likely find that the DOS and MEC didn't end until 2022.

Henry and Sheila's MEC

MEC, see supra.

S will argue that her MEC with H lasted from 2019 through 2022. She likely found out about the invalid marriage when W filed for divorce. Otherwise, it's possible she is unaware and the MEC is ongoing.

Putative Spouse

A putative spouse is someone who has a good faith but mistaken belief that they are in a valid marriage. The putative spouse is entitled to quasi marital property as if they had been married up until the point they find out they are in an invalid marriage. Here, S will argue that she is a putative spouse because H told her that he was divorced and they got married in a ceremony in Las Vegas in 2019. She will argue that she believed they were married from that point on. ✓

Since H was still married to W from 2019-2022, S is a putative spouse because her marriage to H was invalid.

Quasi Marital Property

A putative spouse is entitled to quasi marital property as if they had been in a valid marriage. Here, S will argue that she has an interest in the New Investment account because she was a putative spouse. ✓

Therefore, H and S's MEC lasted from 2019 through atleast 2022.

CP, see supra

The New Investment account was opened by H using gambling earnings from a local casino. H likely used his CP account, which is commingled, to gamble with. If so, the funds used to get the gambling earnings were presumably CP unless he can trace them to SP. Therefore, the New Investments account is CP unless he can trace it to SP source.

Tracing, see supra

Here, H can trace the funds in his account as he did with the stock. If he kept See compliant records since that time, he should be able to easily trace the source of funds. Assuming he still makes the same amount of money (\$3,000), his expenses were reduced because he moved out of the home. It is unlikely he still pays the \$2,000 rent or the \$2,000 living expenses. Therefore, he has available CP funds in the account.

Direct Tracing

A proponent can show that there were enough of a certain type of funds to pay for an asset, then the asset is presumed to have that character. Here, the tracing would show that H has available CP assets from his income since he no longer has the \$4,000 expenses he had when he lived with W.

Therefore, the character of the New Investment Account is likely CP.

CAMPAL- Sums on Deposit

An account of a married person is presumed CP. The sums on deposit into that account are also presumed CP. Here, H put the account in his name only but that is not enough to overcome the presumption.

Thus, because H had a valid MEC with W and S simultaneously at the time that he opened the New Investment account, W, H and S all have rights to the account.

END OF EXAM

amazing!