

**COMMUNITY PROPERTY**

**FINAL EXAMINATION**

Kern County School Of Law,

Fall 2023

Prof. P. Domen

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

Original  
hand written  
corrections  
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### Question 1

Harry and Wanda married in the year 2000. Three years prior to marriage, in 1997, Wanda opened a hair salon, and it continued to operate until the parties stopped living together in 2020. When the parties married, the hair salon had an estimated fair market value of \$100,000. When the parties' stopped cohabiting together in 2020, the salon had an estimated fair market value of \$200,000. Ironically, Wanda was not a licensed beautician, but, instead, rented 10 stations to ten talented hair stylists. Wanda's Salon, as it was aptly named, immediately drew in customers when it first opened in 1997, due to Wanda's Salon being a dog-friendly, champagne pouring, lounge – the first of its kind in the area. In 2005, Wanda noted that fewer of her customers were drinking champagne and fewer of her customers were bringing their dogs with them. What has become uncommon in today's world, Wanda's beauticians remained a constant fixture in her salon and they all retained a steady customer base based on their fantastic work from the Wanda's Salon's opening until Harry and Wanda stopped cohabiting in 2020.

During the parties' marriage until they stopped cohabiting in 2020, Wanda drew a reasonable salary and the parties' needs were always met.

In 2020, Harry and Wanda got into a verbal altercation, Harry moved out, and sent a text message to Wanda indicating that he did not know whether he could be married to her any longer. Shortly after this, Harry and Wanda remained in constant contact, and began vacationing together, spent an occasional overnight together, and exchanged pleasantries and gifts on all major holidays, including Valentine's Day. In the Spring of 2023, just before Wanda filed for dissolution of marriage, she voiced to Harry that she no longer wanted to be married and told Harry that she would be filing for divorce.

Wanda's Salon remained in operation up to and through their marital dissolution and, some months after Wanda filed for dissolution the value of the salon had risen to \$250,000, and Wanda opened a second location.

Questions:

1. What is the character of Wanda's salon and what, if any, economic interest does the marital community have in Wanda's Salon?
2. In valuing Wanda's Salon during the parties' marital dissolution proceeding, what arguments, if any, will Harry advance regarding its valuation date, and what arguments, if any, will Wanda advance regarding its valuation date.
3. Identify and analyze the parties' date of separation based on current California law.

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Question 2

Harold and William registered as domestic partners in the fall of 2013 and, at the time of their registration, William was an employee of the family business, Willy Wonka's Chocolates (herein "WWC"). Since joining the family business, many years before the registration of their domestic partnership, William owned several shares of WWC stock, and the dividends were deposited into a bank account in William's name alone. The bank account in which the dividends are deposited is called the Gobstopper Account (herein "GA"). At no point during Harold and William's domestic partnership did ~~Harold~~ <sup>William</sup> deposit the funds into their single joint bank account, that they opened shortly after registration.

During Harold and William's domestic partnership, both Harold and William worked – William in the family business and Harold in the restaurant industry. Unfortunately, Harold was a known spendthrift and would, more often than not, spend down the parties' joint bank account leaving a zero or a negative balance. In order to keep the account at a positive balance, and to pay their joint expenses in a timely fashion, William would transfer funds from the GA into their joint account. This happened throughout the duration of their domestic partnership.

Growing frustrated with Harold's spending habits, and after a few martinis at dinner with Harold, William scribbled down a note on a bar napkin that he wanted to be reimbursed for the monies being used from the GA account. Feeling the need to appease William, and to keep their joint account flush with cash, Harold signed the bar napkin.

On January 1, 2022, Harold and William permanently separated, and William filed a Petition for Dissolution of Domestic Partnership. Harold and William's domestic partnership was dissolved on July 1, 2022.

<sup>After</sup>  
~~Before~~ the parties' separated, but before the judgment of dissolution was entered, Harold purchased a powerball ticket using funds deposited into their joint bank account. Just days before Harold withdrew the money used to purchase the Powerball ticket, Harold's and William's earnings had been depleted and William had just made a deposit of monies from the GA. After the filing of the petition, but before the judgment was entered, Harold won the Powerball, but did not disclose the winnings to William. Harold confided in his new partner that he was proud of the fact that he did not disclose the winnings to William and that Harold wanted William to feel the hurt he was feeling due to William's filing his petition for dissolution.

Questions:

1. Discuss Harold's and William's claims to the GA.
2. Discuss Harold's and William's claims to the monies deposited into the joint account.
3. Discuss Harold's and William's claims to the Powerball proceeds.
4. Discuss any claims William may have against Harold.

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### Question 3

Holly and Winnie married on January 1, 2010, and, at the time of their marriage, Holly had \$10,000 of inheritance monies which were held in a bank account in her name only at Bakersfield Bank, as well as a large home in Grand Island that was currently occupied by her long-time tenants. Holly owns Grand Island free and clear. On January 1, 2011, Holly and Winne purchased a home in Silver Oak, and used Holly's inheritance monies as the down payment. Holly and Winnie took title to the Silver Oak property as joint tenants with a right of survivorship.

From the time Holly and Winnie married until they permanently separated on January 1, 2023, Holly had been a successful vice president for Aera, and, on January 1, 2021, Holly received a grant of 900 stock options, that would vest equally over a three year period, beginning in 2022. The stock options were awarded to Holly due in part to a deal she closed in the Beldrige Oil field and to incentivize her to sign a new contract with Aera, that became effective on January 2, 2021.

Unfortunately, due to the instability in California's oil market, including legislation limiting Aera's ability to drill new wells and to workover existing wells, Aera's stock price was subject to erratic fluctuations and, at the time of the parties' dissolution trial, in September, 2023, had plummeted from \$100 per share, to \$3.00 per share. This, however, did not affect Holly's salary, which had remained a constant during the parties' marriage.

On January 1, 2020, Holly's long-time tenants vacated the Grand Island property, and Holly used her earnings from Aera to install new flooring, upgrade the kitchen with all new stainless steel professional appliances, install a saltwater pool, paint the interior and exterior, and install a fully integrated home electronics system. This substantially increased the fair market value of the Grand Island property from \$1,000,000, which was the fair market value at the date of marriage to \$1,800,000, at the time of the parties' dissolution trial.

How should the court:

1. Characterize the Silver Oak property?
2. Characterize and divide the Aera stock options?
3. Characterize the Grand Island Property?

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Kern County College of Law  
Community Property  
Fall 2023  
Prof. P. Domen

**Outline For Exam Question One**

*This paragraph must appear at the onset of each essay question:*

*California is a community property state. This means that all property, real or personal, acquired by a married person, during marriage, wherever situated, is community property. Separate property, on the other hand, is all property acquired by a party before marriage, or during marriage by gift, bequest devise, or descent, as well as the rents, profits, and issues therefrom.*

Question 1:

1. *Wanda's Salon is Separate Property: Student should discuss the above property presumptions and classify Wanda's salon as separate property. The business was started three years prior to marriage and is squarely Wanda's separate property. Because Wanda's salon is an asset that was acquired by Wanda prior to marriage, the community may have an interest in the value of the business.*
2. *Economic Interests: Because Wanda's Salon is Wanda's separate property, the student should identify the two apportionment methods used to identify the community's interest in a separate property business.*
  - a. *Van Camp: The Van Camp method of apportionment is used when the increase in the value of the business is attributable to factors other than the managing spouse's efforts. Under the Van Camp method of apportionment, the court will attribute a reasonable salary to the managing spouse and, assuming that salary was reasonable during marriage, the increase in the value of the business will be the managing spouse's separate property.*
    - i. *Key Facts: Wanda had ten talented stylists who maintained a steady customer base. Wanda had no control over the success of the salon from 2005 – date of separation, as its success could be attributable to her stylists. During marriage, Wanda drew a reasonable salary and the parties' needs were always met.*
  - b. *Pereira: The Pereira method of apportionment is most appropriate when a spouse's efforts, during marriage, can be attributed to the increase in value of the separate property interest. The court will look at the value as of the date*

*of marriage, and assign a reasonable rate of return to it, which becomes the managing spouse's separate property. The balance is community property.*

- i. Key Facts: Wanda created a salon that was one of a kind, although she was not a licensed beautician. She created a dog friendly salon that offered champagne during appointments, and that was a key factor in the salon's early success – from 1997 – 2000 (pre-marriage), until 2005. While Wanda's efforts from 1997-2005 led to the immediate success of the salon, for a five-year period during marriage. Outside of this, and from 2005-2020, Wanda's efforts did not play a key role in the increase in value of the salon. However, an argument can be made that Wanda's management of the salon was so successful, she was able to open a second location months after the parties' separated.*
- c. There should be a discussion about using two formulas in this case. The Pereira method from 2000-2005, and the VanCamp method from 2005-date of separation.*

**Question 2:**

- 1. Generally, assets must be valued as close to the time of trial as practicably possible. However, in some cases, the court, upon motion of one of the parties, can value the asset at a different date. This usually occurs in the context of professional practices and is used to recognize the managing spouse's separate property efforts after the date of separation.*
  - a. Time of Trial: Harry will argue that the court should value the salon at the date of trial. It more than doubled in value, the increase in value took place during marriage, and became so successful that Wanda was able to open a second location after the parties' separated.*
  - b. Date of Separation: Wanda will argue that the salon should be valued as of the date of separation. Wanda can argue that the opening of the second salon was the result of her post-separation efforts and that Harry should not be entitled to the presumed increase in value. Wanda can make an argument that the Salon is a professional practice, but that argument will ultimately fail.*
  - c. Likely Result: Wanda's request that the salon be valued at the date of separation will likely prevail.*

**Question 3:**

1. *The date of separation can be found when one spouse has expressed to the to the other to end the marriage and there is conduct consistent with that intent. The court can consider all relevant evidence in determining the date of separation.*

a. *Key Facts: The students should discuss the following facts in reaching their conclusion regarding the date of separation:*

i. *In 2020, Harry and Wanda got into a verbal altercation, Harry moved out, and expressed a wishy-washy intent to end the marriage. This conduct, while consistent with an intent to end the marriage, does not support a finding of the date of separation because Harry merely questioned whether he could be married to Wanda.*

ii. *After Harry moved out, the parties held themselves out as a married couple but they were living apart. This does not support an earlier date of separation (2020), based on the Baragry (Captain's Paradise) case.*

iii. *In the Spring of 2023, Wanda filed for divorce and voiced to Harry she no longer wanted to be married. This expression of intent to end the marriage and the coupled with Wanda's filing for dissolution is sufficient to support a valid date of separation. The date of separation is Spring, 2023.*

iv. *Likely Result: The date of separation is in the Spring of 2023 when Wanda filed for divorce and communicated the intent to end the marriage to Harry.*

b. *Tie-In to Valuation Date: The students should briefly tie this into the valuation date discussed in Question 2, supra.*

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## Outline For Exam Question Two

*This paragraph must appear at the onset of each essay question:*

*California is a community property state. This means that all property, real or personal, acquired by a married person, during marriage, wherever situated, is community property. Separate property, on the other hand, is all property acquired by a party before marriage, or during marriage by gift, bequest devise, or descent, as well as the rents, profits, and issues therefrom.*

*Question 1:*

- 1. The student must identify that domestic partners are afforded the same rights and responsibilities as married persons under the family code. Their registering a domestic partners does not change the analysis in connection with community property and separate property.*
- 2. The GA Account: The GA account was acquired by Harold prior to marriage and it held WWC stock that was acquired by Harold prior to marriage. There are no facts that indicate that the GA account was commingled in any way. This means that the GA account is squarely Harold's separate property. Moreover, the dividends generated by the GA account are Harold's separate property as they are the "rents, profits, and issue" from his separate property stock.*

*Question 2:*

- 1. During their domestic partnership, the parties opened a joint bank account. The students should identify this account as community property as well as Harold's income from employment as being community property.*
- 2. Commingling: During their partnership, Harold and William regularly depleted their community earnings and relied on income received from the WWC stock in the GA account to meet their living expenses.*
  - a. Rule: The separate property of one party used to meet community expenses is presumed to be a gift to the community absent a written agreement to the contrary. (See v. See)*
  - b. Key Facts: William grew tired of Harold's spending habits and jotted down on a bar napkin that he wanted to be reimbursed for the use of his separate property monies to pay the community's expenses. Harold signed the note on the bar napkin. This may entitle William to a reimbursement. The students should discuss William's capacity to enter into the agreement due to his having a few martinis and Harold's signing the agreement to appease*

*William. Nothing indicates that William was impaired nor does anything suggest that Harold was forced to sign the napkin. The agreement appears to be voluntary.*

3. *Subject to proof, Harold will likely be required to reimburse William for the use of his separate property income to pay their community property expenses.*

*Question 3:*

1. *The student should discuss that assets acquired during marriage, with presumptively community property funds, are community property in nature.*
2. *The student should discuss the reimbursement of separate property monies owing to William due to the parties' signing their note to abrogate the family expense exception as found in See v. See.*
3. *Due to the ticket being acquired with William's separate property funds from the GA account, and the Powerball ticket not being a community property expense, the ticket is, more likely than not, William's separate property.*
4. *The student should discuss William's duty to trace the funds used to acquire the asset to a separate property source. While the GA monies were commingled in a community property account, the parties' joint account had been depleted and the parties' agrees that William would be reimbursed for the funds used from the GA account.*

*Question 4:*

1. *Rule: A spouse has a fiduciary duty to the other of disclosure of all assets, community or separate, in which the community does or may have an interest. A spouse also has a fiduciary duty to update those disclosures if new assets are acquired or discovered. Should a spouse fail to do this, the other may be entitled to the full value of the asset if they can prove that the non-disclosing spouse acted with actual fraud or malice.*
2. *Harold never disclosed the Powerball winnings to William during the pendency of their dissolution of domestic partnership. Harold confided in his new partner that he wanted "William to feel the hurt he was feeling due to William's filing his petition for dissolution." This conduct is willful and wanton and rises to the level of actual fraud.*
3. *While William would otherwise be entitled to the asset, if his tracing claim fails, and the note does not holdup, Harold would be forced to disgorge the proceeds to William as he violated his fiduciary duties. William would be entitled to 100% of the Powerball winnings.*

### Outline For Exam Question Three

*This paragraph must appear at the onset of each essay question:*

*California is a community property state. This means that all property, real or personal, acquired by a married person, during marriage, wherever situated, is community property. Separate property, on the other hand, is all property acquired by a party before marriage, or during marriage by gift, bequest devise, or descent, as well as the rents, profits, and issues therefrom.*

*Question 1:*

- 1. Community Property: Silver Oak was acquired one year after the parties married, which makes the asset presumptively community property. Holly can rebut this presumption if she is able to trace the \$10,000 she used from her inheritance to a separate property source, which she can do here. She had the \$10,000 prior to marriage by way of inheritance.*
- 2. The Form of Title and The Community Property Presumption: The parties took title to the property as joint tenants with a right of survivorship. If title to property is taken in the name of both spouses, during marriage, regardless of how title is held, the property is presumptively community property, unless there is language in the deed that expresses a contrary intent. The parties took the property as joint tenants and there is nothing to suggest that Holly's separate property interest in the property was afforded any protection.*
- 3. Reimbursement: Family Code section 2640 allows the spouse who contributed their separate property to the acquisition of community property a dollar-for-dollar reimbursement, without interest, assuming there is no agreement to the contrary. Here, Holly will be entitled to a \$10,000 reimbursement for her separate property contribution toward the acquisition of the Silver Oak property.*
- 4. Result: Silver Oak is a community property asset subject to Holly's right to reimbursement of the \$10,000 of her separate property used to acquire the property.*

*Question 2:*

- 1. Community Property: The stock options were granted on January 1, 2021, during the parties' marriage. The stock options are presumptively community property.*
- 2. Exception - Nature of the Award: In characterizing stock options, the court will look to the intent of the grantor in making the grant. Generally speaking, stock options are granted to reward past performance, to incentivize employee retention or, a combination of both. (Marriage of Hug)*

- a. *Key Facts:*
    - i. *Part of the stock, although which number is unclear, were used to reward Holly's work on the Belridge Oil Field deal. These options rewarded efforts during marriage.*
    - ii. *Part of the stock, although which number is unclear, were used to incentivize Holly to stay with Aera, as she signed a new contract with Aera on January 2, 2021 – one day after the parties' permanently separated.*
    - iii. *In all likelihood, Holly's efforts at work in securing the deal led to her new contract with Aera.*
    - iv. *There are 900 shares, 300 shares in each tranche that vest equally beginning in 2022. Date of vesting is non-dispositive.*
  - b. *The student should look to the facts of this case and determine that the stock were used in part to reward past performance and in part to incentivize her to sign her new contract with Aera. The number of stock is unclear, but irrelevant to this analysis. There is an argument to be made both ways, but a comprehensive answer should discuss a split.*
  - c. *The student should conclude that the stock used to reward past performance are community in nature, and the stock used to incentivize Holly to sign her new contract are her separate property.*
3. *Equal Division Requirement: Generally, a court is obligated to divide the parties' property equally. In some situations, the court has the discretion to award certain assets to a party, subject to offset, if that asset is particularly volatile and one spouse is more capable of managing it. (Marriage of Connolly)*
- a. *Key Facts:*
    - i. *Holly is the VP of Aera and better positioned to absorb the inherent risk or loss associated with the Aera stock.*
    - ii. *Winnie is the "out spouse" and not as well equipped to handle the volatile nature of the Aera stock.*
  - b. *The students should recognize that this is a fact pattern that would yield Holly being awarded the Aera stock due to its volatile nature – she is better equipped to handle the losses as she is the VP of Aera and her taking the*

*stock would not subject Winnie, who is presumably less successful, to a total loss.*

- c. Holly will be awarded the stock subject to her paying Winnie for her one-half share of the stock's value at the time of trial. The students should also recognize that Winnie cannot later come back and make a claim for her share of the stock should the share price increase.*

**Question 3:**

- 1. Separate Property: The student should discuss the community property presumption and recognize that the Grand Island property is Holly's separate property as she owned the property prior to the parties' marriage. There should be no real dispute about this.*
- 2. Increase In Value: If community property is used to enhance the value of a spouse's separate property, that community is entitled to a reimbursement for monies used to increase the value of the property. (Marriage of Wolfe & Marriage of Allen) There is no presumption that the community is making a gift to the other spouse's separate property.*
  - a. Key Facts: Holly worked for Aera as a VP and used her earnings to make improvement to the Grand Island property. Earnings during marriage are presumptively those of the community. The Grand Island property, based on the improvements, rose in value from \$1,000,000 at the date of marriage, to \$1,800,000 at the time of trial.*
  - b. Pro Rata Reimbursement: If the value of the separate property was substantially enhanced using community property funds, the community should be entitled to a pro-rata reimbursement on the appreciation.*
  - c. Dollar-for-Dollar Reimbursement: If the value of the separate property was largely unchanged, the community should be reimbursed dollar for dollar for the improvements.*
- 3. Result: The Grand Island Property is Holly's separate property subject to the community's pro-rata reimbursement for the community monies used to increase the value of the property \$800,000.*

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1)

**Wanda (W) v. Harry (H)**

**1a. Character of W's Salon & Economic, Marital Interest of the Salon.**

CA is a community property state. Community property is all real property acquired by a married person during marriage and domiciled in the state. Separate property is all property acquired before or after marriage, or during the marriage by way of gift, devise, descent, or bequest, including all rents, issues, and profits therefrom. ✓ *- and personal*

**Relationship Status**

In CA, a marriage will be valid if both spouses enter in a consensual civil contract followed by certain legal procedures after. The marital economic interest begins at the date of marriage and ends at death, dissolution, or legal separation, whichever comes first. Here, the facts state that H and W were married in 2000. Therefore, their relationship status was that they were married in 2000 and the economic marital interest began from that point forward.

**Separate Property**

Presumptively, separate property is all property acquired before or after marriage, or during the marriage way of gift, devise, descent, or bequest including all rents, issues, and profits therefrom. Here, when the parties were married in 2000, W was already the owner of Wanda's Salon. W acquired the salon in three years prior to marriage in 1997 and continued to operate up until the parties stopped living together, 20 years later. The source of funds used to acquire this property would be considered separate property funds as well. Therefore, the salon itself, would be considered Wanda's separate property. ✓ *- DOS.*

**1a. Economic Interest of the Business**

**Pereira v. Van Camp Approach**

CA has two approaches when determining the marital community in businesses, these are the *Pereira and Vamp Camp* approaches.

The *Pereira* approach favors the community property estate based on the spouse's management and skills contributing to the growth of the business. In this approach, the court will apply the time

rule formula to determine what the community property interest is. Here, Harry will argue that the court use this approach by stating that the increase in the business growth was due to Wanda's innovative ideas. At the time the parties were married, the business was valued at \$100,000 but since their separation, the value of the business has grown significantly with a \$100,000 increase. Within the last twenty years, the business has been able to stay a float and steadily increase their value. Harry will argue that this is because of Wanda's innovative idea of allowing the salon to be dog friendly and giving guests champagne. He will argue that Wanda ensured that her business was up to date on all the newest, innovative salon experiences. He will also note that due to Wanda's management of the salon, she was able to derive a reasonable salary during the 20 years that they were married and that their needs were always met. Although Wanda is not a licensed beautician, Harry will argue that the business has grown in success over the last 20 years primarily due to Wanda's fantastic marketing and business skills.

The *Van Camp* approach favor the separate property estate based on the character of the business's contribution to the growth of the business. In this approach, the court will apply the formula outlined in *Marriage of Nelson (1986)*. Here, Wanda will argue that the court use this approach by stating that the increase in business was due to the character of the business and NOT by her skill or management. She will note that when she started her business in 1997, she was not married yet. Therefore, her brilliant idea of having a dog-friendly, champagne pouring lounge was not a contributing factor to the growth of the business during the marriage. It was simply the concept of the salon from the very beginning. She will also point out that in 2005, there was a decrease in the number of clients that were bringing their dogs with them to salon and drinking champagne. This negates the idea that her concept of the salon was actually decreasing in trend and popularity. Further, she will argue that she actually does not contribute any skills to business because she was never a licensed beautician to begin with and all she did was rent out the space to other hairdressers. Wanda will argue that the success of the business is primarily due to the fact that all the original hairdressers that were hired have stayed employed there and maintained a steady client base. This further supports the fact that the success of the business is mainly in part to the character of the business and not because of anything Wanda has done through her skills or management of it. ✓

In conclusion, it is more than likely that the court follow the *Van Camp* approach and value the economic interest of the business as separate property. ✓

What about *Pereira 2000-2005* and *Van Camp 2005-POS*?

### 2a. Valuation Date

#### **Date of Separation**

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Rule<sup>re</sup> valuation of assets → DOS vs. as close as practicable to date of trial.

In California, a date of separation is determined when there is a complete and final break in the marriage and one spouse communicates to the other spouse their intent to end the marriage. After the date of separation, all economic marital interests end. Here, Harry will argue that he is entitled to the value of the business up until the filing of the dissolution in Spring of 2023, which would be the \$250,000 fair market value of the salon and potentially the second location. As mentioned in more detail below, he will argue that marital economic interest continue up until the legal papers were filed. By using this date, the court will find that there was a higher CP interest due to them being together for 23 years rather than 20 years. However, Wanda will argue that the valuation date is when Harry moved out of the home. At this point, he stopped benefitting from the reasonable salary that Wanda was bringing home.

It is more than likely that the court will support the valuation date of Spring 2023 for the reasons outlined in the next section.

### 3. Date of Separation

#### **Date of Separation**

In California, a date of separation is determined when there is a complete and final break in the marriage and one spouse communicates to the other spouse their intent to end the marriage. Here, Wanda will argue that the date of separation was in 2020 when Harry moved out and sent a text message stating he did not know whether he wanted to be married to her. Wanda will argue that this constituted at the final and complete break in the marriage because Harry was no longer living in the marital home. Further, she will argue that his text message to her along with his act of moving out showed his true intent of wanting to no longer be together. However, Harry will have a stronger argument by arguing that the date of separation was actually in the Spring of 2023 when W filed for dissolution. Harry will point that there an altercation in 2020 that resulted him texting his consideration of ending the marriage and moving out, however, he will point out that they were still going on vacations together, spending overnights together, gifts and pleasantries on all major holidays, including Valentines. Harry will argue that there was no clear intent of communicating the end of the marriage up until Wanda filed for divorce. At this point, it was made clear to Harry that there was a final break in the marriage when Wanda communicated to him through legal action that they would be divorcing.

In conclusion, it is more than likely that the court will find that the date of separation is Spring of 2023. ✓

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2)

Whether the California Presumption applies to domestic partners

California recognizes registered domestic partnerships. In evaluating the separation of a domestic partnership, California applies the presumption of community property the same. The family code regarding dissolution applies in the same way to the separation of domestic partnerships.

Harold and William's domestic partnership shall be governed in the same manner as a marriage and dissolution in California; thus, the California community property presumption shall apply. ✓

1. Harold's and William's Claims to the GA

California Presumption

California is a community property ("CP") state. In California, there is a rebuttable presumption that all property acquired during marriage is CP. CP is all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in the state. Separate property ("SP") is all property acquired before marriage, after the date of separation, or during marriage by gift, devise, descent, or bequest, including the rents, profits, and issues therefrom. Upon divorce, CP is equally divided in kind absent a rule requiring a deviation. SP belonging to a spouse remains his or her SP.

Here, the GA is a bank account in William's name alone. It is presumably his separate property. *No... when acquired? Title in one name only is not enough to establish SP.*

Whether the stocks were SP or CP

At issue, however, is whether W, by placing the dividends in his separate property account during the partnership, commingled his separate account.

Stocks are subject to the community property presumption; any dividends or income made from the stocks take on the same characterization of the underlying stock.

Here, W owned many shares of stocks in his family business, which were purchased many years prior to the registration of H & W's domestic partnership. Because the stock was purchased prior to the registration, and it does not appear that W purchased any stock during the marriage, it is likely that the stocks will be separate property. As such, it is likely that the dividends placed into the account will take on the characterization of the underlying stocks, which will make the dividends W's separate property as well. ✓

H will likely argue, however, that the dividends should be treated as W's income and would thus be subject to the CP presumption, granting H an equal division of those dividends. W will likely argue in response that the stocks were purchased prior to the registration and thus, the stocks' dividends were also his separate property.

As such, W will rebut the CP presumption and maintain that the GA account is his separate property alone, thus not granting H any rights to that property. ✓

## 2. Harold's claims to the money

### California Presumption

California is a community property ("CP") state. In California, there is a rebuttable presumption that all property acquired during marriage is CP. CP is all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in the state. Separate property ("SP") is all property acquired before marriage, after the date of separation, or during marriage by gift, devise, descent, or bequest, including the rents, profits, and issues therefrom. Upon divorce, CP is equally divided in kind absent a rule requiring a deviation. SP belonging to a spouse remains his or her SP.

Here, the bank account was created during the partnership by the partners. They both would deposit their salaries into the account, and W would place additional money from his GA account into the joint account to keep the balance above zero. As such, the account was a community property account. ✓ *See v. See community / family expense exception.*

### Whether the bar note constituted a valid transmutation agreement

*↓  
§ 1551e*

Domestic partners may elect to change the characterization of property during the marriage/domestic partnership through a transmutation agreement. A transmutation agreement is valid if it is in writing on one document with an expressed, clear declaration of intent to transmute/change the character of the property signed by the adverse party.

Here, W scribbled down terms on a bar napkin stating he wanted to be reimbursed for the monies being used from his GA account, i.e., his separate property. Although it was written on a napkin, it was written. However, it does not appear that W was expressing a clear declaration of intent to change the character of the property in the joint bank account; rather, it appears that he was attempting to receive reimbursement for the money he placed into the community property bank account. Although H did sign it, the intent to transmute the property is not met.

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As such, there is no valid transmutation agreement here.

### **Whether W is entitled to reimbursement**

Family expenses are presumed to be paid with community funds. When community funds are exhausted, it is assumed that separate property funds are utilized to pay for community expenses. SP funds used to contribute to community/family expenses are not reimbursed and are considered a gift to the community, subject to an agreement in writing signed by the adversely affected party. ✓

Here, it is likely that W was putting SP funds once CP funds were exhausted into the joint account. It can likely be argued that his SP funds were being used for family expenses, as the funds were being placed into a joint account. Further, there appears to be a written agreement that H would reimburse W for the SP funds contributed to the community. It was both written and signed by the adversely affected party. On its face, it appears that a valid reimbursement agreement was created by W and H to reimburse W for his SP contributions to the community. ✓

H may argue that he W coerced H into signing the agreement, that the agreement was fraudulent, or that because W was intoxicated, he was of unsound mind to contract. H will likely argue that he was unable to consent to contract at this time either due to "feeling the need to" stay on good terms with his partner. W will respond that the agreement was valid and met the requisite elements to be a valid agreement to reimburse W for family expenses.

Ultimately, it is likely that the agreement will be enforced. ✓

### **3. H & W's claims to the Powerball proceeds**

#### **California Presumption**

California is a community property ("CP") state. In California, there is a rebuttable presumption that all property acquired during marriage is CP. CP is all property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in the state. Separate property ("SP") is all property acquired before marriage, after the date of separation, or during marriage by gift, devise, descent, or bequest, including the rents, profits, and issues therefrom. Upon divorce, CP is equally divided in kind absent a rule requiring a deviation. SP belonging to a spouse remains his or her SP. ✓

**Whether the money used to purchase the ticket was CP or W's SP; i.e., whether W has a pro tanto interest** *Pro tanto → n/a*

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Commingled property is the mixture of SP and CP. Typically, this is seen in a joint bank account during marriage or domestic partnership. A commingled bank account is presumptively community property unless the separate property proponent can prove through tracing or good recordkeeping that an asset was purchased with separate property funds. ✓

There are two types of tracing: direct tracing and exhaustion tracing/recapitulation.

Direct tracing is utilized when a separate property proponent is attempting to evidence that an asset was purchased with SP funds. To do so, the proponent must prove that on the day of the purchase of the asset, there were SP and CP funds available in the account. The proponent also must show that there was expressed, direct intent to purchase the property by the proponent in writing and the spouse/domestic partner knew. ✓

Exhaustion tracing is utilized to show that at the time of the purchase of the asset, the community property funds were exhausted, and so separate property must have been used to purchase the property at issue. ✓

In the event that there is no valid records available due to no fault of the separate property proponent, direct testimony may be used to prove the correct characterization of the funds utilized for the purchase of the asset. This is recapitulation. ✓

Here, the money used to purchase the lottery ticket was purchased with funds from a community property joint bank account.

H will argue that because he purchased the lottery ticket with community funds, it was community property, and he would still be entitled to half of the lottery winnings. He will argue that the account was a community property account and he used the community's funds to purchase the ticket. ✓

However, W will argue that the money H used was actually W's separate property. He will likely use exhaustion tracing to show that the community funds were exhausted at the time of the lottery ticket purchase, and because there were no more community funds available, H actually used W's separate property to purchase the ticket. So long as W can prove through proper tracing and record keeping that the community funds were exhausted, he very well may be able to collect the entirety of the lottery ticket winnings. ✓

H will likely argue in response that the money was acquired after the date of separation and regardless, W would not be entitled to the one-half of the proceeds available as community property because it was post-separation. However, the money used came from a joint bank account that

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would be deemed a community property asset, because it was used to pay their joint expenses in a timely fashion. Both spouses used the bank account, and the account was used to pay joint expenses throughout the duration of the domestic partnership. Both partners put money into the account. Despite this, if there were separate funds placed in that bank account following the date of separation, and H used those funds to purchase the lottery ticket, it is likely that W will have a claim to the proceeds of the lottery ticket.

It is likely that W can claim the lottery ticket's winnings are his SP. ✓ Don't forget that W will be reimbursed for SP in the commingled account for CP expenses.

#### 4. Claims W has against H

##### Breach of fiduciary duty

At issue is whether W has a claim of breach of fiduciary marital duty against H.

Those who are married or are in a domestic partnership owe the highest duty of good faith in the management and control of marital property, or property acquired during the domestic partnership. The duties are similar to those that are owed in a regular fiduciary relationship. ✓ There is a presumption of undue influence if one partner is benefitted while the other partner suffers due to a property action by one spouse. This presumption can be rebutted by the benefitted spouse by showing the partner new of the transaction. The fiduciary duty continues until the final dissolution judgment is entered. ✓ The duty of good faith includes the duty to disclose important information pertaining to the community property or other assets acquired during the community. ✓

Here, H purchased a powerball ticket using community property funds prior to the final judgment of dissolution. After he won the powerball, H did not disclose the his winnings to W. In fact, he confided in his new partner that he was proud of the fact that he did not disclose the winnings to W because he wanted to get back at him for filing the petition for dissolution. ✓

It appears that H breached his fiduciary duty to W. H did not disclose important community property asset information to W. He had the duty to do so under his fiduciary duties. When he failed to disclose that information, he caused W to be placed in a position of inferiority to him while he stood to benefit greatly from the winnings. Further, he openly discussed with his new partner that he was proud of the fact that he did not disclose this information, which further evidences that he wanted to cause harm to W. As such, it is likely that H breached his fiduciary duty to W, and W would have a claim against him. ✓

As such, W would be entitled to 100 percent of the proceedings plus attorney's fees for the breach of fiduciary duty by H. ✓

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3)

California is a community property state. Community property is all real or personal property, wherever situated, acquired during marriage by a married person while domiciled in the state. Separate property is all property acquired before marriage or during marriage through gift, bequest, devise, or descent, along with all the gifts, profits, and issues therefrom.

### 1. What characterization is the Silver Oak Property?

#### Characterization

California presumes that all property acquired during a marriage is community property. Separate property is all property acquired before marriage or during marriage through gift, bequest, devise, or descent, along with all the gifts, profits, and issues therefrom.

Here, the Silver Oak property was purchased during marriage by Winnie and Holly. However, although this presumes Silver Oak to be community property, the property was purchased with Holly's inheritance. Inheritance is a separate property division awarded through "gift, bequest, devise, or descent." Here, Holly may have a separate property interest in Silver Oak, because her inheritance was used as the down payment. However, the payments were made with community property funds and it was purchased with the intent of belonging to the community.

Silver Oak is community property.

*acquired in a joint form of title DM = CP*

#### Reimbursement

A spouse is entitled to a dollar-for-dollar reimbursement if they used separate property funds to make a down payment, make improvements to a home, or make principal payments. ✓

Here, Holly used \$10,000 of her separate property money to make a down payment on the Silver Oak property. Holly is entitled to a \$10,000 reimbursement from the community. Holly may argue that the \$10,000 was a gift to the community and is not entitled to reimbursement. However, a down payment is entitled to reimburse whether it was a gift or not.

Holly will receive a \$10,000 reimbursement from the community. ✓

#### Transmutations

A transmutation must be (1) expressed, (2) in writing, (3) signed by the party transmuting the property, (4) with transmutational language.

Here, there does not appear to be a transmutation of Silver Oak property.

Silver Oak is community property. ✓

### Pro Tanto

If the community shares an ownership interest, they may have a Moore/Marden agreement to determine the valuation.

Here, the Moore/Marsden formula may apply to evaluate what portion of Silver Oak is community property. This would ensure that a proportionate amount is given to each spouse to ensure that the loan amount payments, down payments, etc. are covered.

## **2. How should the Aera stock options be divided?**

### Characterization

California presumes that all property acquired during a marriage is community property. Separate property is all property acquired before marriage or during marriage through gift, bequest, devise, or descent, along with all the gifts, profits, and issues therefrom.

Here, the stocks were acquired during marriage and are presumptively community property.

### Stock Options

Stock options are employee benefits rewarded to an employee for past performance or to maintain employee retention. If a stock option is given to award past performance, then it is evaluated by using the pro rata or time formula given in Marriage of Hug. This formula takes the number of years married divided with the years of service provided to the company. If a stock option is given for employee retention, it is evaluated using the formula given in Marriage of Nelson. This formula is similar to Hug's, but changes the date from start of employment to the date the stock was granted.

Here, Holly received a grant of 900 stock options, to vest over a three year period. Holly was awarded these stock options partly for her performance in closing and deal and partly to incentivize her to sign a new contract with Aera. This would create a hybrid-Hug/Nelson approach in which both

formulas would have to be examined to determine what portions apply to part performance and what portion goes to employee retention. The amounts given from these formulas would be community property.

The stock options are community property as there is a hybrid stock option awarded. If the company intended the stock to be solely for Holly, then Holly may be able to obtain a separate property interest. *no.*

*CP and SP stocks depending on whether post perf. or incentivization*

### 3. How should Grand Island be characterized?

#### Characterization

California presumes that all property acquired during a marriage is community property. Separate property is all property acquired before marriage or during marriage through gift, bequest, devise, or descent, along with all the gifts, profits, and issues therefrom.

Here, Grand Island was purchased by Holly prior to her marriage with Winnie. Winnie may try to argue that payments on Grand Island were made while married to Holly. However, Holly will prove that she owned Grand Island free and clear. She may argue that it was paid with payments from her long-time tenants. Upon this argument, Winnie may try to argue that she is entitled to the profits attained from the tenants, but this will fail as it was not Holly's salary, but rather a "rent, profit, or issue therefrom" her separate property.

Grand Island is Holly's separate property.

#### Commingling/Tracing

*Not a commingling issue.*

Commingling of funds occurs when a spouse mixes their separate property funds with the community's funds. Commingled funds may be commingled, but still separate property if the commingler can prove that the funds trace back to separate property. There are two types of tracing: direct and exhaustive. Under direct tracing, the commingler must prove that there was both separate and community funds available, but there is documentary evidence that the funds were separate property. Exhaustion/recapitulation tracing occurs when the commingler proves that the community had fully exhausted all funds and separate property funds were the only funds available.

Here, Holly owned Grand Island outright and decided to make improvements using her funds from Aera. Winnie will argue that the funds from Aera were a part of Holly's salary that commingled with

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the community's funds. Winnie will argue that the improvements made to Grand Island were from the community's funds and thus, Winnie is entitled to reimbursement and the market increase. Holly will argue that the funds can be traced back to her separate property through direct tracing. Holly will argue that the community property had funds but there was an agreement that Grand Island came from her separate property. However, Holly would have to provide documentary evidence.

Since there is no documentary evidence, Holly's funds from Aera commingled with the community.

### Reimbursement/Valuation

A spouse is entitled to a dollar-for-dollar reimbursement if they used separate property funds to make a down payment, make improvements to a home, or make principal payments. Any increase in the fair market value of a home may be awarded to the community, *if CP funds used to improve SP.*

Here, Winnie will argue that since community funds were used she is entitled to a reimbursement for any funds used to make improvements to Grand Island. Winnie will further argue that because the improvements made Grand Island improve by \$800,000, she is entitled to a portion of the growth of the fair market value. Holly will argue that Grand Island is her separate property and she is entitled to any fair market growth of the property. Holly will further argue that only separate property funds were used to make the improvements. Winnie will argue that the improvement to the home increased the fair market value while her and Holly were married which makes it a community interest. However, Holly owns Grand Island outright.

Here, Winnie may be entitled to a reimbursement if there is evidence commingled funds were used. However, Holly is the only one entitled to the \$800,000 increase in fair market value. ✓

**END OF EXAM**