

San Luis Obispo College of Law
Community Property Final Exam
Fall 2023
Prof. R. Lomeli

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

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

Question One

Hank and Wendy married in 2005 when both were students at Florida State University in Florida. Florida is an equitable distribution state. Shortly after marriage, Hank graduated and obtained employment as an attorney with a New York law firm. Soon after, Wendy gave birth to a child, and the couple agreed Wendy would quit her job and remain home to care for their child. In 2006, Hank and Wendy bought a loft in New York by obtaining a 30-year mortgage for the purchase. Mortgage payments were subsequently paid from Hank's earnings. Title to the home in New York was taken in Hank's name alone. New York, like Florida, is an equitable distribution state.

In 2010, Hank accepted a job offer from a California law firm and the couple moved to California with their child and rented out the New York loft for \$20,000.00 a month.

In 2013, Wendy's uncle died and left her a luxurious cabin located on the water in Morro Bay, California, valued at \$2.3 million.

In 2015, after speaking with a coworker at the law firm about ways in which to ensure Hank could gain an interest in the cabin, Hank persuaded Wendy to execute and record a deed conveying the lake cabin to "Hank and Wendy, as joint tenants with right of survivorship" under the auspice that the action was necessary to avoid probate. Wendy did so, believing Hank's explanation that the only effect of the conveyance would be to avoid probate.

In 2016, after three years of study paid for out of Hank's earnings, Wendy obtained a professional degree and opened a mortgage brokerage business. Her business has become extremely successful due to her enthusiasm, skill, and willingness to work long hours. Hank continued to work for the law firm.

In 2023, Hank and Wendy separated and filed for dissolution of marriage.

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

1. The Morro Bay property? Discuss.
2. The New York loft? Discuss.
3. Wendy's education? Discuss
4. Wendy's business? Discuss.

Answer according to California law.

Question Two

Shortly after he graduated from ITT Tech in 2010, Hubert took a job with a water district in Orange Cove, California, subsequently purchasing a home in Tesoro Viejo for \$1,000,000.00 and taking title in his name. Hubert's father gave him the \$150,000.00 down payment, and Hubert borrowed the balance of the purchase price on a note secured by a 30-year mortgage for the remainder.

Hubert and Wilma, who met on Tinderfly, married in California in 2015. Wilma was nurse practitioner who hoped to start her own medical practice. Prior to marriage, Hubert and Wilma entered into a written and signed premarital agreement providing that each spouse's wages would be his or her separate property and that any business created using separate property funds, including subsequent earnings and goodwill generated therefrom, would remain that spouses separate property.

During the premarital agreement discussions, Hubert was represented by counsel. Wilma implicitly trusted Hubert and decided she did not need an attorney. After verbally telling Hubert and his counsel that she did not need an attorney, Hubert's counsel provided Wilma with a written explanation of the basic effects of the agreement. The agreement was provided to Wilma 7 days prior to the wedding day and in a language in which Wilma was fluent, however, Hubert's counsel failed to disclose any of Hubert's financial and economic assets. Wilma signed the agreement just prior to her wedding ceremony before a group of 75 close friends and family.

At the time of Hubert and Wilma's marriage, the outstanding balance on the Tesoro Viejo home was \$250,000.00. After marriage, Hubert continued to make mortgage payments solely out of his salary. Wilma took a job as an NP at Kaiser Permanente and deposited all her wages into a separate account in her name alone.

In 2018, a woman who claimed Hubert was the father of her ten-year-old child filed a paternity suit against Hubert in California. The court determined that Hubert was the child's father and ordered him to pay \$1,000.00 per month as child support.

In 2020, Wilma filed for dissolution of marriage. Wilma moved out of the Tesoro Viejo home while Hubert continued living in the home and making mortgage payments. During marriage, the principal amount on the loan had been reduced by 100,000.00. At the date of separation, the house was worth \$2 million. At trial, the home is worth \$2.5 million.

1. What are Hubert's and Wilma's respective rights in the Tesoro Viejo home? Discuss.
2. What property set forth in the facts can be reached to satisfy the obligation to pay child support? Discuss.

Answer according to California law.

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Question Three

Harold and Winnie married in 2005 while attending college at Stanford University. Shortly after getting married and graduating from college, Harold took a job with a tech company in San Francisco, making \$500,000.00 a year. Winnie took a job as an administrative assistant to a real estate developer, making \$50,000.00 a year. The couple had a child in 2008.

In 2008, Winnie received an inheritance of \$10 million after her parents died in an automobile accident. Realizing she was no longer happy working as an administrative assistant, Winnie decided that she wanted to start her own development company.

In 2010, Winnie started a development company for \$10 million, using only the inheritance she received when her parents died. The company grew substantially over time due to Winnie's hard work and effort in hiring only the best architects, engineers, and contractors for her developments. The business' growth was also substantially attributable to an unforeseen and extreme need for low-income housing and state law enactments allowing developers to avoid local development regulations. A similarly situated business owner would have been making \$1 million a year in wages; however, Winnie would routinely spend \$1.5 million a year on community expenses.

In 2015, Harold's grandmother died and left him a home in New York. The home was worth \$10 million at the time Harold received it. Both Harold and Winnie used the property as a joint vacation home and openly held out the home as belonging to both of them. In 2018, using income from her business, Winnie paid for the installation of a pool, patio, and outdoor dining area as upgrades to the New York property. The cost for the upgrades was \$500,000.00. In addition to the upgrades, Winnie also purchased a \$25,000 Rolex for Harold on his birthday. The watch had an inscription that read, "To my dearest husband Harold on this special day, a gift from your wife forever!"

In 2020, Winnie fell madly in love with her neighbor and filed for dissolution of marriage. At the time of trial, Winnie's development company had appreciated in value to \$100 million. At the time of separation, the home inherited by Harold had appreciated in value to \$15 million.

What are Harold and Winnie's rights and liabilities in:

1. Winnie's Development Company? Discuss.
2. The New York Residence? Discuss.
3. The Rolex Watch? Discuss

Answer according to California law.

Question One Outline

General Characterization Rules

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

Morro Bay Property

1. Issue
 - a. What is the characterization of a home acquired by inheritance when conveyed by the inheriting spouse to the community as JT with right of survivorship.
2. Transmutation
 - a. During marriage, spouses may change the status of their property.
 - i. Must be made in writing;
 - ii. Must expressly declare that a change in ownership is being made; and
 - iii. Must be consented to or accepted by the spouse whose interest is adversely affected.
 1. Lake cabin was initially SP because acquired through inheritance;
 2. W's conveyance ineffective because no change of ownership declared.
 3. If written title to purchased property is taken in a form that is inconsistent with character of funds used to purchase, an intent to change the character of the property to the form evidence by the written title is inferred.
 4. If a court extends this reasoning to SP conveyed by one spouse into a joint tenancy, W's conveyance would presumably transmute the cabin from SP to CP.
3. GCPP
 - a. The presumption that property is CP at divorce can be overcome only by a written agreement or statement within title that the property is SP.
 - i. If there is no writing to the contrary, at divorce any SP contributions to the acquisition of CP are reimbursed to the SP contributor.

1. If W's conveyance is valid, upon disso, JT presumed to be CP since now writing that property is SP.
 2. W to be reimbursed for her SP contributions;
 3. Any appreciation to be divided equally between H and W.
4. Fiduciary Duty
- a. Spouses owe each other fiduciary duties with respect to management of CP;
 - b. Rebuttable presumption of undue influence when one spouse gains an advantage over the other in a property transaction;
 - c. Spouse who obtained the advantage bears burden of rebuttal
 - i. W can contest transfer as violative of fiduciary duty;
 - ii. Rebuttable presumption of undue influence;
 - iii. H will fail to rebut presumption due to his intent and intentionally misleading statements to W about the purpose of the transfer.
 - iv. Lake cabin will be W's SP.

New York Loft

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

W's Education

1. Is the community entitled to reimbursement?
2. Reimbursement
 - a. At divorce, community has a right to reimbursement when CP funds are:
 - i. Used to pay for education or loans incurred or training of a spouse; and
 - ii. The education substantially enhances the earning capacity of the educated party.
 1. W's education was paid for out of H's earnings, which are CP;
 2. W's earning capacity substantially increased;
 3. The community is entitled to reimbursement with interest, with a possibility of reduction or medication.
3. Reimbursement Reduction
 - a. The education or training is offset by community funded education of other spouse;

- b. Education or training enables recipient to engage in gainful employment substantially reducing the need for SS;
- c. The community has already benefited from education or training.
- d. Rebuttable presumption community benefited (10 year presumption)
 - i. H did not receive community funded education;
 - ii. Fewer than 10 years have elapsed;
 - iii. W's education enabled her to reduce need for SS

W's Business

- 1. Issue
 - a. What is proper distribution of business?
- 2. GCPP
 - a. Business is a community asset
 - b. Pereira and VC do not apply
- 3. Valuation of business
 - a. Value of business including goodwill.
 - i. Market valuation;
 - ii. Capitalization of excess earnings
 - 1. H and W have a right to one-half of the value of the business;
 - 2. If court awards business to W, she will need to provide compensation/buyout.

Question Two Outline

General Characterization Rules

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

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

Hubert's Premarital Home

1. Premarital Agreement – Validity/Choice of Enforcement
 - a. Parties may make a premarital agreement specifying that after marriage each party's earning will remain her SP.
 - b. To be valid, a premarital agreement must: (i) be in writing, (ii) have been entered into voluntarily, and (iii) not be unconscionable.
 - c. An agreement is involuntary if the party against whom enforcement is sought was not represented by counsel, unless that party: (ii) was advised to consult an attorney and expressly waived that right, (iii) had seven days to examine the agreement, and (iv) was fully informed of the basic effects of the agreement and signed a separate writing.
 - d. Factors to consider in determining whether the premarital agreement was voluntary include: (i) Wilma was not represented by independent counsel and was not advised to seek independent counsel; (ii) Wilma did not expressly waive her right to an attorney in writing; and (iii) Wilma was not informed of the effects of the agreement in a signed and separate writing.
 - e. An agreement is unconscionable if a judge finds that it is unfair and: (ii) the objecting party was not fully advised of the financial status of the other party, (ii) did not waive such disclosure, and (iii) could not reasonably have obtained the information on his/her own.
 - f. Factors to consider in determining whether the premarital agreement was unconscionable include: (i) that the agreement at the time did not appear unfair based on the assets that each possessed at the time of marriage; (ii) that Wilma was not fully advised of the financial status of the other party; and (iii) Wilma did not waive disclosure.
 - g. If premarital agreement is found to be invalid, the residence must be apportioned between Hubert's SP initial capital investment plus paydown of principal and his community labor.
 - h. If invalid, the residence will be 10% CP and 90% SP; principal debt reduction attributable to CP \$100,000/ purchase price \$1,000,000, equals 1/10 (10%).
 - i. Hubert was SP owner who continued to live in home after separation and made payments, valuation date is DOS not date closest to trial.
 - j. CP is \$400,000 and SP is \$1.6 million.
2. Commingling Account/Valid Premarital Agreement
 - a. If PMA valid, Hubert will be able to show that reduction in principal was SP and therefore no CP interest in home.
 - b. Discuss direct tracing method/See compliant records and exhaustion method with no recapitulative accounting.
3. Election to Choose

- a. Wilma can choose to keep the PMA which would allow Hubert to demonstrate SP payments (wages during marriage and PMA) or she can invalidate and eliminate the ability of Hubert to avoid the CP interest in the home.
4. Conclusion
- a. PMA likely invalidated and CP will have a 20% interest equal to \$200,000.

Property that can be reached to satisfy debts

1. A spouses CS obligation from a prior relationship is treated as debt incurred before marriage.
 - a. All CP, QMP and debtor spouse's SP are liable for a debt the debtor spouse incurred before marriage;
 - b. Nondebtor spouse SP is not liable for a debt the debtor spouse incurred before marriage.
 - c. CP earnings of the nondebtor spouse are not liable for the debtor's premarital obligations as long as those earnings are held in a n account to which the debtor spouse has no right of withdrawal and no commingling has taken place.
 - i. CS is a debt H incurred before he began living with W;
 - ii. The home can be reached since it is Hubert's SP;
 - iii. If W's earnings continue to be deposited into her sole account, these earnings will also be unavailable to satisfy CS.

Question Three Outline

General Characterization Rules

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

Development Company

1. GCPP (Rule Above)
 - a. The money used by W to start the business was obtained by inheritance.
 - b. No indication that any community funds were used to start the business.
 - c. Business was purchased; was not started from ground up.

- d. Business is W's SP, however, the community has an interest in W's labor during marriage.
- 2. Transmutation (Rule Above)
 - a. No facts to indicate that W's intended for the business to be a community asset;
 - b. No facts presented to indicate that W agreed to change the characterization of the business from SP to CP.
 - c. Business is W's SP.
- 3. Valuation of Property
 - a. A spouse may devote her CP labor to the management of an SP business;
 - b. VC and Pereira accounting methods can be used to apportion between the SP component of the business and the CP valued added by the managing spouses labor during marriage.
 - c. VAN CAMP METHOD
 - i. Under VC, the managing spouses services are valued at the going market salary for such services; family expenses that were paid from the business earnings are subtracted from the value of the manager's services; the remainder, if any, represents the CP portion of the business, and the rest of the business is the SP of the managing spouse).
 - ii. VC used when the character of the separate business is largely responsible for its growth or productivity.
 - 1. Value for W's services have a market value of \$1,000,000.
 - 2. Family expenses paid from business earnings were \$1,500,000.
 - 3. The CP portion of the business would be zero (1,000,000-1,500,000).
 - 4. The value of the business, 100 million would be W's SP under VC.
 - 5. W would likely argue that it was her recruitment strategy and work of her employees that grew her business not necessary only her work.
 - 6. W would also argue that the patent was another reason for the increase and that the patent was should not be considered actual management on her part.
 - 7. W would want VC to be applied.
 - d. PEREIRA METHOD
 - i. The Pereira method begins with the separate capital and imputes a fair rate of return (typically current legal rate of 10%); the total SP interest is the principal plus the fair rate of return times the number of years the SP business was in operation and managed by the spouse during the marriage; the remainder is CP).
 - ii. Pereira used when management by the spouse was the primary cause of the growth or productivity of the business.
 - 1. Value of separate capital was \$10,000,000.
 - 2. Fair rate of return would be \$1,000,000.
 - 3. SP interest would be \$20,000,000 (1,000,000x10=10,000,000 plus the initial 10,000,000 investment).
 - 4. CP portion of the business would be 80 million.
 - 5. H would argue for Pereira analysis.
 - 6. Would argue that Wife's efforts in management were the primary reason for growth.
 - e. Interest of Justice

- i. Court would likely find that the character of the business led to growth and that W was entitled to 100 million since the community had already more than benefited from W's income during marriage.
- ii. The court can, in its discretion, decide which method to apply based on the interest of justice.
- iii. The court would likely find that VC would serve this purpose, especially if H was entitled to all of the NY residence as SP; otherwise, the court might find that Pereira would be more equitable.

New York Residence

- 1. GCPP (Rule Above)
 - a. H received the home as an inheritance during marriage.
 - b. The home is H's SP.
- 2. Transmutation
 - a. During marriage, spouses may change the status of their property.
 - i. Must be made in writing;
 - ii. Must expressly declare that a change in ownership is being made; and
 - iii. Must be consented to or accepted by the spouse whose interest is adversely affected.
 - 1. Residence is H's SP because acquired through inheritance;
 - 2. No writing or change of ownership declared.
 - 3. Residence is H's SP.
- 3. Improvements
 - a. Improvements do not purchase an ownership interest in the realty. Improvements usually give rise to reimbursement claims.
 - b. Community Funds Used to Improve Other Spouse's SP
 - i. Traditionally a gift has been presumed.
 - ii. The presumption is only overcome by evidence of an agreement to reimburse.
 - iii. If there is such an agreement the precise terms control the amount of reimbursement; otherwise, the cost of the improvement is reimbursed.
 - iv. Modernly, the courts have rejected this tradition and have reimbursed the community for its contribution to the improvement even absent an agreement.
 - 1. H will argue that the improvements were a gift; however, it is likely that W will argue they were not a gift and demand reimbursement.
 - 2. If the court applies traditional analysis the improvements will be deemed a gift since there is no reimbursement agreement.
 - 3. If the court applies modern analysis W will be entitled to a reimbursement in the amount of \$500,000.

Rolex Watch

- 1. GCPP (Rule Above)
 - a. Item was purchased during marriage so it is presumed to be CP unless an exception applies or an agreement to change the character of the item to SP was reached by the spouses.

2. Transmutation (Rule Above)
 - a. No writing declaring a change in ownership.
 - b. No facts to indicate that a valid transmutation existed.
3. Interspousal Gifts (Rule Above)
 - a. H will argue that the watch was an interspousal gift that did not require a writing to be valid.
 - b. H will point to the inscription on the watch to demonstrate the intent on W's part that the watch would be a gift.
 - c. H will point to the fact that the watch was \$25,000 but that they would routinely spend around \$1,500,000 per year on community expenses and that the gift was not therefore substantial when looking at the economic TOC for the community.
 - d. H will also point to the fact that the watch is of a highly personal nature.
 - e. W will argue that although the watch was inscribed, it was only inscribed to "to her dearest husband" and that such an inscription is not personal to H.
 - f. W will also point to the fact that \$25,000 is still a substantial amount even though the community would routinely spend \$1,500,000 per year on expenses.
 - g. It is likely that the court will find that the watch was an interspousal gift and that it was therefore H's SP.

1)

General Presumption

Community Property

California is a community property state. Any property acquired during marriage is considered community property unless there is an agreement to the contrary. All GOOD community property (CP) will be divided equally between the parties. Salary is considered to be CP in CA.

Here, Hank (H) and Wendy (W) were legally married in 2005. Thus all property acquired after this point would be considered CP until the date of separation.

Separate Property

Any property acquired before marriage is considered Separate Property (SP) and is in the sole possession of the spouse who acquired it. Any property acquired after the dissolution of marriage is considered SP. Further, any property acquired by gift, bequest, design or rents and interests is SP. GOOD

Quasi-Community Property

Property that is acquired during the marriage while the couple lives outside California's GOOD jurisdiction is considered Quasi-Community Property (QCP). QCP is treated as CP by the CA courts and will be divided equally between the parties.

Date of Separation

The date of separation is considered to occur when one spouse makes their intentions known to the other spouse. It is not necessary for both spouses to agree to the separation. GOOD

There must be a considerable effort made to demonstrate intent to separate from each other.

Here, H and W had a valid date of separation in 2023 when H and W filed for a dissolution of marriage.

Therefore, the date of separation is in 2023.

Conclusion

Therefore, H and W had a valid date of marriage in 2005 and a valid date of separation in 2023. Good

At Divorce

At divorce all property acquired during the marriage up to the point of the date of separation is treated as CP and will be divided between the two parties equally. Spouses have a duty to help their spouses even at dissolution of marriage.

1) Morro Bay Property

Gift

Gifts are considered to be SP and thus are not divided among the community. Good

Here, W received the Morro Bay Property from her Uncle's will. This would make the property her SP.

Transmutation

Parties can transmute the classification of property to be CP from SP or vice versa. The conveyance of the property must be in writing on a legal document, with intent to declare

what is being transmuted, and describe the change in character to the property. The benefitting party must be able to demonstrate that they did not act with bad intent when the transmutation occurred. GREAT

Here, H and W transmuted the gifted Morro Bay property under the guise of avoiding probate. H persuaded W to label them as "Joint Tenants with right of survivorship." H and W properly executed and recorded the deed which conveyed the lake cabin to H and W. There was a proper declaration to the change in the property. Therefore, under these circumstances the lake house would now be considered CP. GREAT

Fiduciary Duty

Spouses have a fiduciary duty to one another in a relationship to be forward with all of their transactions in order to best benefit the community. It is unconscionable for one spouse to trick the other in order to gain influence or interest in one spouses SP in a spousal relationship. GOOD

Here, H misled W when he stated that the reason for the transmutation and the only effect of the conveyance would be to avoid probate. W could argue that H breached his fiduciary duty to W when he tried to gain an interest in the lake cabin. Although H may argue that W did have to sign the conveyance of property over to him, the courts will likely find that through his persuasion and manipulation he influenced W to convey the property over to him so he could gain an interest in the property.

Therefore, H breached his fiduciary duty, and the courts would determine that the lake cabin should be W's SP.

Conclusion

The lake cabin property is W's SP. GOOD

WHAT ABOUT THE UNDOE INFLUENCE PRESUMPTION?
- AUTOMATIC PRESUMPTION THAT TRANSFER IS NOT VALID.

2) New York Loft

Quasi-Community Property

See rule above.

Here, the NY loft was purchased in 2006 by what would be considered CP funds in CA. H used his salary to pay the 30 year mortgage payments. Salary is inherently CP in CA and thus it would be determined that the funds used to purchase the home and make the mortgage payments is CP.

Therefore, the home was paid for with QCP funds which would be considered CP in CA.

Transmutation

See rule above.

Here, the NY loft was in H's name alone. However, this alone does not identify the owner of the property. The funds that were used to purchase the home, as stated above, are considered CP funds. This would demonstrate that W has an interest in the property. There is no facts shown in the fact pattern that W transmuted all her interest of the NY loft to H. W never wrote any conveyance down nor did she orally state this. Further, there are no facts stated in the fact pattern that indicate that W intended the CP funds that were used to pay the mortgage for the home to be considered as a gift to H. Therefore, W has a stake in the home since the funds used to pay for the home are CP funds and W made no indication that she gifted the CP funds to H to pay the mortgage.

Therefore, the home, although in H's name alone in title, would be considered CP.

Conclusion

The property is QCP and will be divided equally as CP.

GOOD

3) Wendy's Education

Reimbursement

The community can be reimbursed for CP funds that were used to fund one spouses education. If the spouse seeking reimbursement can demonstrate that the spouse who received the education had their financial capabilities increase, and benefitted from the community funds to gain education. If the community has already benefitted from the education, there will be a reduction in reimbursement.

Here, the facts state that W after 3 years of study was able to open a mortgage brokerage business and her business became very successful due to her enthusiasm, skill, and willingness to work long hours. These facts indicate that the community would be entitled to a reimbursement since W drastically increased her earning capacity. Therefore, H may be entitled to a reimbursement since it was his salary which helped pay for W's education. However, W may be able to reduce the reimbursement if she can prove that H has already reaped the benefits of the education.

GOOD

Reduced Reimbursement

The spouse who received the education can have the reimbursement reduced if they can demonstrate that the party seeking reimbursement has already benefitted from the education. Generally if the education increases the economic output of the benefitting spouse it will reduce the amount of spousal support needed to pay the spouse. Generally if the education was completed ten years prior there is no need to reimburse the spouse who is seeking reimbursement.

GOOD

Here, the facts indicate that W drastically increased her earning capacity after she received her education and started her own business. However, W will likely state that H has already benefitted from the education she received. Although ten years has not passed since she received her degree and higher paying employment the courts will likely find that due to W's increase in earning potential, H will now have to pay less in spousal support. This will greatly benefit him in the long term better than a reimbursement of funds would do. Therefore, it is likely that the courts will conclude that H will not be entitled to a reimbursement since he has already benefitted from W's education.

GOOD

Conclusion

H is not entitled to reimbursement of W's education.

4) Wendy's Business

Business

W's mortgage brokerage business was started after marriage and there is no indication that W used SP funds to start the business. There are no facts to support that W used any of her own personal SP funds to support the business or expand the business in any way. Further, since the business started after marriage and no SP funds were used the Van Camp and Pereira methods will not apply. It is likely that the courts will conclude that the business will be CP since it was started after marriage and no SP funds were used to start it. The courts will conclude that W and H each hold an interest in the business and it will be considered CP. If W wishes to own the entirety of her business she will need to buy out H of his half of the business given to him by the courts.

GOOD

Conclusion

W's business is CP.

REMEMBER TO DISCUSS THE METHODS USED TO VALUE THE BUSINESS.

END OF EXAM

Great job!

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2)

Property Characterization: Community Property, Separate Property, and Quasi-Community Property

California is a community property state. There is a rebuttable presumption that all property and earnings acquired during the course of marriage are that of the community. Separate property is defined as any property acquired prior to marriage, by gift or inheritance. Quasi-community property is any properties located outside of the state of California, and it follows the same rules and regulations as community property. good

Issue 2a: Whether Wilma has an interest in the Tesoro Viejo home.

Property Characterization

See above.

Here, the property was purchased in 2010 by Hubert. Using a down payment of 150k from his father, Hubert borrowed the remaining balance in his name solely. Furthermore, there is no indication that the property was transmuted in any way, meaning the Tesoro Viejo home is Hubert's sole and separate property.

A court would find that the subject property is Hubert's sole and separate property (pending discussion below) because it was acquired prior to marriage and there was no transmutation. good

Premarital Agreement

For a premarital agreement to be valid, the following must be satisfied: (1) written, (2) voluntarily entered into, (3) spouses have counsel or express written waiver, (4) presented

7 days in advance, (5) no fraud, duress, or undue influence, and (6) all assets must be fully disclosed.

Here, there are several issues with the premarital agreement.

Spouse's Counsel

Wilma did not have independent counsel review the document. Although she did orally state that she agrees, an oral statement alone is insufficient to manifest a legitimate premarital agreement.

Disclosure

Hubert's attorney failed to disclose Hubert's financial and economic assets. Not only did he neglect to mention one or two of them-- he neglected to mention any of them. The failure to disclose makes this an invalid premarital agreement.

Duress

Although the document was presented exactly 7 days in advance, which is appropriate according to the law, the document was not signed until the day of the wedding. Wendy could argue that, based on the facts and circumstances, she was fearful, or apprehensive, of the marriage without the agreement being signed, such that she would feel forced in some capacity to sign the agreement prior to the wedding. Hank would argue that this is not the case, and she had ample time to review the document, as it was presented in the time frame necessary.

Analysis of Premarital Agreements

Here, there are multiple violations that make this premarital agreement invalid; however, Wilma and Wilma alone has the power to determine if the premarital agreement is valid

because she was the party not represented by counsel, she was the party that was not fully disclosed, and arguably, she was the party that was in duress. Hubert does not have a say in which document is the leading document. Wilma will likely assert that the premarital agreement is in fact invalid because that opens her up to community property law, meaning, she is entitled to ~~half~~ of the Tesoro Veijo property.

↳ A PORTION

A court would likely find that, because the premarital agreement is invalid, community 9000 property common law presides.

Marital Community

MEC IS DOM TO DOS.

The marital community starts at the date of marriage and ends when a judgment of dissolution is finalized.

Here, the marital community started in 2015, and ended in 2020. There is a presumption that all earnings and properties acquired during this time are community property, unless they meet a separate property criteria.

Moore-Marsden

Courts will use the Moore-Marsden method to determine the interest a community has in separate property when community property funds have been used. This calculation determines the community property percent pro tanto. This is calculated by taking the initial down payment and dividing it by the total cost of the property.

↳ THIS SHOULD BE THE PRINCIPAL DEBT REDUCTION ATTRIBUTABLE TO COMMUNITY.

Here, the down payment on the home was \$150,000, and the total cost of the home was \$1,000,000. The community property percent of the home is 15%.

MOORE-MARSDEN =
$$\frac{\text{PRINCIPAL DEBT REDUCTION ATT. TO. COMM.}}{\text{PURCHASE PRICE}} = \frac{\$100,000}{1,000,000} = 10\%$$

Wilma is entitled to 15% of 2 million, which is the fair market value of the home at time of separation, plus a reimbursement of her principal debt reduction (see below) of an additional \$50,000 (half of the debt reduction of the community)

Principal Debt Reduction

The principal debt reduction is the amount of principal that was reduced by the community. The community is entitled to reimbursement for community funds used on separate property that pays towards the principal only. The community cannot be reimbursed on insurance, taxes, or interest.

4000

Here, the community paid the principal debt by \$100,000. Because Wilma will likely assert that community property rules take over as a result of an improper premarital agreement, Wilma will receive an additional \$50,000 in addition to her 15% of 2 million.

SEE PREVIOUS COMMENT
ADJUST DEBT REDUCTION.

Overall Conclusion

Here, when answering whether Wilma has an interest in the subject property, a court would likely find that she does. Wilma would be foolish to not allow the law to apply community property rules and regulations, and in doing so, she is entitled to 50% of the community, plus a percentage of the Tesoro Viejo property, ~~and a partial reimbursement for the principal debt reduction.~~

4000

Issue 2b: Whether the community owes for child support.

Child Support

In California, child support must be paid using the separate property funds of the spouse who owes child support. If there is insufficient separate property funds, the community

pays the child support, but the community is also able to be reimbursed for said child support at time of dissolution.

GOOD

Here, after Wilma asserts that she wants to use community property rules and regulations, finding the premarital agreement invalid, she will also be entitled to reimbursement for child support equalling half the amount owed. Hubert would argue that, he thought the premarital agreement would be valid due to the negligence of his attorney, and the reimbursement is not in the interest of justice.

GOOD

A court would find that the community is entitled to reimbursement for child support paid using community property funds.

END OF EXAM

GOOD JOB! MINOR SLIP UP ON THE USE OF PRINCIPAL DEBT REDUCTION. YOU WERE NOT PUNISHED FOR THAT.

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Question 3. Harold (H) Winnie (W)

California Community Property Presumptions

California is a community property state. Property acquired by either spouse during the course of marriage is presumed to be community property (CP) and will be equally divided between both spouses/partners at dissolution or death. Property acquired before or after marriage is presumed to be Separate Property. In addition, property acquired by gift, devise or bequest is presumed to be Separate property (SP). To determine the character of an asset, a court will trace the source or funds used to acquire the property as SP or CP. Quasi community property is property acquired by either spouse that would have been community property had the spouse been domiciled in California at the time of acquisition.

Characterization:

The characterization of an asset depends on three factors: 1. the source of an item 2. Actions of a party that may have altered the characterization of an item and 3. any statutory provisions affecting the asset.

In Kind Division:

At divorce, the family court has jurisdiction to divide all or any disputed quasi or community property in kind unless, there is special rule requiring deviation from the requirement or the parties agreeing in writing or by oral stipulation in court. A spouses SP remains there SP at divorce. good

Termination of the Marital Economic Community

Rule: In order to end the marital economic community, one spouse must manifest an intent to end the marriage and there must be conduct consistent with that intent.

Analysis: Here, H and W were married in 2005 that is when the marital economic community started. The marital economic community came to an end in 2020 W intent to not resume the marriage was her filing for dissolution of marriage. good

Conclusion: A court would find that H and W marriage lasted from 2005 to 2020 = 15 years

Issue: Is Winnie Development Company Community or SP ?

CP (See above)

Analysis Here W business opened during the marriage so the California community presumptions would apply. It would be up to W to rebut the community property presumption. good

SP(See definition above)

Analysis: Here H can show that the business was started with SP funds. The wife would show that the business is her own SP because she received an inheritance of \$10,000,000 that was used to start her SP business even though they were married at the time. good

Conclusion: A court would find that the business is W's SP business however the community would have an interest in the growth of the business

Issue: How should a court Allocate the Business Profits?

Pereira and Van Camp Method

If a business increases as a result of the community the community is entitle to the economic growth of a business profits. The courts will determine how much the community is entitle to the business. The courts have adopted two formulas The Pereira Method and the Van Camp Method. The court is not bound to use either formula but they choose which one will archive a substantial interest for the community. If the business increased as a result of the community labor,skills then. Pereira would apply and if the business increased to to other reasons the the courts will use Van Camp.

GREAT

Pereira Method : The pereira formula is used to alocate the business profits. Since the business profits increased due to the skill and labor a court would apply the Pereia method. The pereria method takes the initial investment and times it my a rate of return usually .10 and calculate it based on the number of years that they were married.

9000

Here the initial investment was 10,000,000 and times that by a rate of return you would get 1 million the one million is times the years that they were married that would be 15 million SP for the Wife.

BUSINESS WAS OPEN FOR 10 YEARS → 10

The business is now worth 100,000,000 so you subtract the initial investment of 10 million and subtrat the 15 million SP of the wife and you are left with 84,000,000 The wife gets her half of the CP pulse the initial investment and the Sp 15 Million and here initial investment of the 10 Million tthat came from the inheratence she recived

SP = 10MIL
WIFE'S +
10 MIL
INITIAL
WIFE'S PART
20MIL

CONCLUSION : The Husband would get his half of the CP which is 42,000,000 and the wife would get 58,000,000 her SP and initialinvestment and her half of the CP. The

court would want to use the Pereira formula because of the interest of justice for the community because the husband is a stay at home dad and has no job and is taking care of their child while the wife is working to bring in all the money.

GOOD

Van camp Method:

Rule: The Van camp method is used to allocate business profits. It starts with a similarly situated business owner would make times that by the years that they were married 15 and subtracts the family expenses times the years that they were married 15. and you subtract both of them and that would be the SP for W. Then you get the value of the business which is now 100,000,000 The math for some reason is not adding up right at the moment, but what is more important is to know that the business owner would want the court to use Van camp and would W would probably get more at the end of the day vs Pereira.

Conclusion : The wife would argue for Van Cam but the court will choose Pereira for the interest of Justice.

FAMILY EXPENSES EXCLUDED FM SALARY; THEREFORE, THE BUSINESS IS ALL SP.

The New York Residents

STILL NEED A QCP/CP/SP DISCUSSION.

SP (See definition above) H grandmother gifted H in 2015 a home in New York .. This would be treated Quasi Property.

Conclusion: the House would Be H's SP but H would have to reimburse W for the improvements that she made on his SP.

Improvements to SP From the community : A spouse who improves a SP would be considered a gift but if there is no agreement to be reimbursed a spouse can ^{GET} get their initial investment back.

Here W Installed a pool, patio and an out door dining area as upgrades with her business profits. Under DIP (Down Payments, Improvements and Principle Debt reduction are reasons for a spouse to be reimbursed.

All the improvements that W did would be improvements and W should be entitled to the improvements. The Cost of the upgrades was 500,000

Conclusion: A court would find that the W should be reimbursed for the improvements that she made to H's SP house.

DONT FORGET TRADITIONAL AND MODERN DEPARTMENT AND THE FACT THAT DEMONSTRATION COULD ALSO BE THE INCREASE IN VALUE.

Issue is the Rolex watch SP or CP?

CP (See above) Here, W will say the watch is part of the community because she used the funds from her business. H will say it was a gift from the community and the watch should be his because she transmuted the watch over in a form of writing the inscription of the watch.

Rule :Transmutations: A spouse may transfer their property from SP to CP or from CP to SP or from SP to the others SP, this is know as transmutations. In order for a transmutation to be valid after Jan ,1 ,1985, it must be put in to writing in order to satisfy the statue of frauds. The party who interests that are Adversely affected must have agreed and signed the property being transferred. ^{GOOD}

Analysis: Here, H is gonna argue that W Transmuted the Watch from CP to SP for the watch had the written message stating "To my dearest husband Harold on this special day, a gift from your wife Forever. This will probably not be a a valid transmutation because it did not have the written consent of the person who was Adversely affected in this case W. GOOD

Conclusion: A court would find that there was not a valid transmutation because the writing requirement.

Inter-spousal gift Exception

Rule: The inter-spousal gift exception is an exception to the writing requirement for a transmutation. The gift must be personal in nature and it must not be substantially in value. GOOD

Analysis: Here the Watch is of substantial value \$25,000 that is practically the value of a car! However if we take a step back Winnie would spend 1.5 million on family expenses. If the Wife has the money to to make these substantial gifts like 500,000 in improvements in H's New your home, then the watch would probably not be of substantial value to the W. The court would look to see that W intended to give the watch as a gift for she thought she was gonna spend the rest of her life with H. However she decided to fall in love with her neighbor. GREAT

Conclusion :A court would rule that the Watch was a gift to H and therefore should be his.

GREAT JOB! (80)

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END OF EXAM