

San Luis Obispo College of Law
Community Property Final Exam
Fall 2024
Prof. A. Busick

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

SLO
Community Property Final
Fall 2024
Professor Busick

QUESTION ONE
(Time Estimate 60-75 Minutes)

Hank and Wendy met on February 1, 2000. On January 1, 2000, Hank's grandfather took Hank to the Mercedes dealership and let Hank pick out a vehicle. Hank picked out a \$50,000 Sprinter van, and his grandfather bought it for him. Hank picked out the van because he had a love for pet grooming and wanted to start a mobile pet grooming business. However, Hank and Wendy fell in love quickly after they met and desired to marry. Needing enough money for a wedding ring and wedding, Hank got a job at Pearly Paws working as a dog groomer.

Hank and Wendy got married on May 1, 2000. Hank remained employed at Pearly Paws, earning \$70,000 a year, while Wendy was working as a receptionist for a law firm, earning \$80k a year. Hank and Wendy lived well with their combined incomes, given their average annual household expenses were \$50,000. On February 14, 2005, Hank gave Wendy a poodle named Pearls the Poodle for Valentine's Day. To make Wendy's Valentine's Day special, Hank put Pearls the Poodle in a wrapped box, tied a pink ribbon over each ear, and got Pearls the Poodle a pink collar. Hank had special dog tags made for Pearls the Poodle that had engravings on the back of the dog tags that read: "I wanted to get you a gift as sweet as you. I hope that you cherish your pearls as much as I cherish you --she will forever be yours to cherish. Love Hank. "

Hank and Wendy loved Pearls the Poodle. Pearls quickly became the queen of the house and was cherished by Wendy. In January 2004, Hank's grandfather passed away and left Hank \$50,000 so that Hank could pursue his dreams and start a mobile dog grooming business. Hank deposited the \$50,000 check into his separate bank account that only his name was on and that only Hank had access to. Hank used the \$50,000 to deck out his Sprinter van and began a mobile pet grooming business on the side. Business was slow, and Hank hardly had any customers for the first year.

Then, in April of 2005, Pearls the Poodle somehow learned to whistle. Pearls, just like all spoiled poodles, had her own Instagram account and became an Instagram hit due to her whistling. Pearls had over 1 million followers within two months of her whistling. Business exploded, and Hank was filled with mobile grooming customers as everyone wanted to be groomed by Pearls' dad. Hank was so busy that he worked day and night and had no time for Wendy. On January 1, 2006, Hank's cousin offered to buy the pet grooming business from Hank for \$300,000 (the estimated value of the business at that time) so Hank could spend more time with Wendy. Hank refused to sell, and Wendy divorced Hank on February 14, 2006.

How will the Court characterize and divide the following:

1. The mobile pet grooming business? Discuss.
 2. Pearls the Poodle? Discuss.
 3. The Sprinter van? Discuss.
- Answer according to California Law.

QUESTION TWO
(Time Estimate 60 Minutes)

Henry and Wilma were married on March 1, 2010. Henry purchased a house on Love Lane on April 1, 2009 for 500,000. Henry put 100,000 down and took out a loan for \$400,000. On March 10, 2010, after coming back from their honeymoon, Wilma and Henry moved into Love Lane, which at that time was worth \$550,000 with \$380,000 owing. Henry was employed as a nurse and earned \$150,000 a year when he and Wilma married. Wilma was in her third year of law school when she and Henry were married. Wilma graduated from law school in May 2011.

Henry and Wilma had their first daughter on June 1, 2011. In July of 2011, Wilma took the California Bar exam and passed. She got a great discount with Barbri and only had to pay \$1,000 for her bar prep course. In July of 2012, Wilma began working as an associate attorney at a large law firm. In May of 2023, Wilma gave birth to their second daughter. Henry and Wilma needed a bigger home for their family and purchased a house on Quick Lane on the first of June in 2023 for \$600,000. They put down \$50,000 and financed the remaining \$550,000. They moved into the Quick Lane home and began renting out the Love Lane house. They rented the Love Lane house for \$2,000 a month. Henry deposited the \$2,000 rental check he got each month into a Chase savings account that was in his name only. From that Chase savings account he paid the \$1,500.00 mortgage on the Love Lane house.

On October 1, 2023, Wilma told Henry she wanted a divorce and told Henry to move out of the Quick Lane residence. Henry moved out, and Wendy filed for divorce on November 1, 2023. On the advice of his divorce attorney, Henry had both houses appraised as of October 1, 2023. The Love Lane residence appraised for/had a fair market value of \$750,000, and the Quick Lane residence appraised for \$650,000. As of October 1, 2023, Henry and Wilma had an outstanding balance on the Quick Lane property of \$540,000. The outstanding debt on the Love Lane residence as of October 1, 2023 was 300,000.

By October 1, 2023, there was \$6,500 in the Chase savings account in Henry's name. Wendy wants to stay in the Quick Lane Residence for the children and is asking for the house in the divorce. Wendy's student loan debt, as of October 1, 2023, was \$80,000. During the marriage, Henry and Wilma paid down \$60,000 of Wilma's student loan debt.

What are Henry and Wilma's rights and liabilities, if any, regarding:

1. The Love Lane House? Discuss.
2. The Quick Lane House? Discuss.
3. The Chase Savings Account and funds therein? Discuss.
4. Wilma's student loan debt? Discuss.

Answer according to California Law.

QUESTION THREE
(Time Estimate 45-60 Minutes)

Harvey and Willow were married on May 5, 2005. They purchased a house on July 1, 2008, for \$700,000 in San Luis Obispo. The house was a small, older, 2-bedroom house. Willow was pleased with the house and did not mind its size or age. That changed, however, after Harvey and Willow had twins the following year. Willow wanted the house to be baby-proof and preferred that the children had their own bedrooms. Harvey was the only one working, and he and Willow did not have enough money to buy a new house.

In September 2010, Willow and Harvey had another set of twins. Still unable to purchase a new house, Willow decided she and Harvey would add a bedroom to their home. Harvey worked in construction, and Willow was handy, so she anticipated she and Harvey could do most of the work for the add-on. Willow had \$50,000 in a Bank of America savings account with her sister Sue meant for her and Sue's inheritance (\$25,000 was Willow's, and the other \$25,000 was Sue's). Willow took her \$25,000 inheritance from the Bank of America account and deposited it into her and Harvey's only account, which was their joint Citi bank checking account.

Several months went by, and Harvey and Willow had not started the add-on. They did, however, take a trip to Disneyland since their checking account had more funds in it than usual. The family had a great Christmas that year. Once the holidays passed, life, bills, and business continued as usual, and Harvey and Wendy began their add-on. By February 2011, they were 75% done, but there were no more additional funds left in their Citi account to allow them to finish the add-on. Sue wanted to help and told Willow she could take \$10,000 from her (Sue's) share of the inheritance so they could finish the add-on. Willow immediately transferred the \$10,000 into the Citi bank account. Harvey and Willow completed their add-on. The add-on increased their home's value.

A year later, Harvey and Willow separated. At the time of their separation, their house was worth 850,000.00.

How will the Court divide the Parties' house? Discuss.

Answer according to California Law.

Outline for Question One

1. Mobile pet grooming business

- a. CA is a community property state. General presumptions.
- b. Rule for separate property. Property acquired before DM and by gift or inheritance SP. Van SP and SP business.
- c. Tracing
- d. Value of Sp business. Pereira vs. Van Camp

i. Formulas for Pereira and Van Camp

1. Formula for Pereira: FMV of Business at Divorce – (SP Contribution and FRR) = CP

- a. FMV of Biz at Disso = 300k
- b. SP Contribution 100k
- c. FRR is 60,000 [10% of 100 = 10,000 x6 number of year married)

2. $300k - (160k) = 140k$ CP (140k divided by 2 = 70K)

- a. W = 70k
- b. $H = 70k + 160$ (SP) = 230k
 - i. Analysis on which spouse will argue use of Pereira. Favors community so likely W will argue use Pereira (if not arguing CP).
 - ii. Argument, Analysis and Facts in favor of applying Pereira. (H labor, H worked day and night, wanted Pearls' dad).

3. Formula for VanCamp: FMV at Divorce – (CP Labor – Family/House Hold Expense) = SP

- a. FMV of Biz @ Disso = 300k
- b. Cp Labor = $70k \times 6$, Family Expenses = $50k \times 6 = (20k \times 6)$ total 120k ← 120k CP

4. $300k - (120k) = 180k$ SP

- a. W = 60k (wife's $\frac{1}{2}$ CP interest is 60k)
- b. $H = 60k = 180k = 240k$
 - i. Analysis on which spouse will argue use of Van Camp. Favors SP so H will argue use Van Camp. Note slightly more to H if Sp with Van Camp.
 - ii. Argument, Analysis and Facts in favor of applying Van Camp. (Dog's whistling and Instagram not labor, no customers until Pearly was famous. Note is Pearls a CP asset?
- ii. Analysis on when to apply each and which spouse will argue what formula to be applied.
- iii. Amounts to be awarded to each spouse under each theory.
- iv. Mixed approach and alternate valuations.
 - 1. Goodwill

- e. Ultimate characterization of the business.
 - i. Arguments for W that CP. DM and with CP asset Pearly? Option of 2640 RR to H for 50k and/or arguments for 100K. W best argument is CP so each get 150k and give H his 50k back, have him keep the biz.
 - ii. Arguments for H that SP
- 2. Pearls the Poodle
 - a. CA is a community property state. General presumptions.
 - i. Exceptions to general com property presumptions.
 - ii. Transmutations.
 - 1. Need (1) writing, (2) express dec (3) adversely effected spouse
 - 2. Gift exception: Need (gift has to be clothing, jewelry, or tangible articles of personal nature, (2) used primarily by gifted spouse, (3) gift not substantial in value
 - a. Argument and analysis on if dog is a tangible article of personal nature. (note case law- not a necklace. Note not a car which has not been found to be personal in nature. CA treats animals as chattel.) Facts ie Queen of the house, Cherished by Wendy.
 - b. Argument and analysis on if dog is used primarily by W.
 - c. Conclude on gift exception, likely not met.
 - 3. Conclude on proper transmutation.
 - 4. Conclude on Characterization.
 - b. How pet is treated and how Court will divide.
 - i. If CP argument that Court will grant to W bc it was intend to be a gift for her. Arguments against going to W (ie, H biz depends on her? Is H keeping the biz? Was the gift intended to cherish DM the marriage only?)
- 3. Sprinter Van
 - a. CA is a community property state. General presumptions.
 - b. Sp property acquired before date of marriage.
 - c. Improvements of SP and right to reimbursement vs. SP van as part of SP business and contained in value thereof.

Outline for Question Two

1. Love Lane House

- a. Property acquired before DOM is characterized as SP.
- b. More/Marsden. When Cp pays down the principal of SP, CP has an interest.

i. Formula

- 1. Sp down payment + (SP Loan Proceeds – CP contributions)
= SP % divided by purchase price
- 2. CP contributions = CP % dividend by purchase price
- 3. Apply percentage to appreciation
 - a. $80k/500k = 16\%$ CP (CP Appreciation $0.16 \times 200k = 32k = 80k = 112k$ in CP)
 - b. $100k + 320 = 420k. \rightarrow 420k/500k = 84$ SP % (Sp Appreciation $168k + 100k + 70k = 338k$)

ii. Identify what the CP and SP interest are

- 1. $16\% =$ CP
- 2. 84% SP

iii. Effects on the CP interest with the renter paying portion of the mortgage

iv. Amounts to Each Party

- 1. W = \$56k (her one half of of the CP 16% interest or 112k divided by 2)
- 2. H = $56k + 338k = 394k$
 - a. \$450 in equity total

2. Quick Lane House

- a. Property acquired DM is CP.
- b. Characterization as CP.
- c. Formula to divide the equity.
 - i. Equity is \$110k. Divided by 2 is \$55k to each Party
- d. Options for the Court. (1) Wife keeps house and H buys out W's interest of \$55k (2) Court sells house and each party gets \$55k/their $\frac{1}{2}$ CP interest in equity. (3) Notes that if W gives up her interest in Love Lane of (56k she can easily buy out H with the 55k she would have owed).
- e. Duke order for W to stay in house pending Disso/Sale.

3. Chase Savings Account

- a. Property acquired DM is CP. SP rents remain SP property.
- b. Comingling and ultimate characterization.
 - i. Tracing. Methods of Tracing.
- c. Division and surplus as H SP

4. Wilma's student loan debt

- a. Current debt will remain SP.
- b. Presumption of community's reimbursement and 10 year period.

i. H right to reimbursement argument for payment of \$60,000k DM.

ii. H right to reimbursement argument for Barbi fees of \$1,000.

Outline for Question Three

1. House

- a. CA is a community property state. General presumptions.
 - i. Prop acquired DM is Cp.
 - ii. Conclusion of characterization of house as CP.
- b. Rule for separate property. Property acquired before DM and by gift or inheritance SP.
 - i. W SP in heritage of 25k as SP.
 1. Comingled assets.
 2. Tracing, Exhaustion of funds and direct tracing.
- c. 2640 RR for Wife's 25k
 - i. If traced
 - ii. Analysis and conclusion on if W if entitled to 2640 RR.
 1. Wife's arguments that traceable by direct tracing, subject to RR.
 2. Counter arguments by H, that it is a gift? Can't trace, W has BOP. W will get any reimbursement back as she is going to gain in the increase in value.
- d. 10k as 2640 RR for Wife/Gift to community.
 - i. Sp rule and presumption is rebutted by W. W BOP to establish that the 10k was a gift to her, if she can then trace.
 1. W's arguments that 10k her Sp and she is entitled to 2640 RR.
 2. H's arguments that 10k is a gift to the community or a gift to each of them equally (5k each sp discussion).
- e. Conclusion on 35k and how it will be divided.

1)

Mobile Pet Grooming BusinessCA General Presumption

California is a community property state. There is a rebuttable presumption that all property acquired during marriage is community property. Property acquired before the date of marriage, after the date of separation, by inheritance or by gift is separate property. To rebut, a spouse must overcome the presumption by a preponderance of the evidence.

Sprinter Van as it relates to the Business

Here, Hank's grandfather bought a sprinter van for Hank on February 1, 2000 for Hank to start a pet grooming business. Hank did not marry Wendy until May 1, 2000. Hank's sprinter van was purchased as a gift to him before the date of marriage. Thus, the Sprinter van is likely to be characterized as a separate property asset.

Character of an Asset

The character of an asset is determined by the time of acquisition, the source of funds used to acquire the asset, or an agreement. An asset's character remains unchanged absent an agreement or a transmutation. Likewise, any income or profit from an asset will have the same character as the asset.

Here Hank's sprinter van is Separate Property (SP), if the van is used for business purposes and helps generate income, the income will also be characterized as SP absent an agreement or transmutation.

Inheritance for the Business

In January of 2004, Hank received an inheritance of \$50,000 from his grandfather to start a business. Hank received this inheritance during his marriage to Wendy and he will need to overcome the General Presumption that the \$50,000 is community property.

Although the inheritance was received during marriage, it is Hank's separate property, as defined in the CA general presumption. Additionally, Hank deposited the inheritance in a separate account in his name only and he maintained exclusive control over the account. A court will likely find the pet grooming business was created from SP funds, and SP assets, and is Henry's Separate Property. ✓ Very good.

2640 Right to Reimbursement/ Tracing

When separate property funds are used for a community asset, the separator has a right to a reimbursement. One way a spouse can prove the funds used were separate property is by tracing. There are two forms of tracing, Direct and Indirect. Direct tracing is when the Separate Property (SP) funds were kept separate and can be easily traced to an asset. Indirect tracing is used when Community Property (CP) funds are exhausted first to show the need for additional SP funds. When funds cannot be traced due to comingling, the court will presume they are CP.

Here, Henry used his inheritance, that was in a separate account, for a dog grooming business. The business was created during his marriage to Wendy and will be presumed community property.

Henry could rebut this presumption by using direct tracing. Henry can easily trace the source of the funds used to upgrade the sprinter van to an inheritance, which is his SP by law. Henry can also show he did not purchase the sprinter van because it was a gift from his grandfather. Henry maintained a separate account for his inheritance and maintained

exclusive control. A court will likely find that the Sprinter van, and startup cost for the pet grooming business came from SP funds. ✓ 9000 ✓

Business that Appreciates During Marriage: Pereira & Van Camp

When a business appreciates during marriage, the court has discretion on which formula to use to determine the SP ownership share and CP ownership share.

Pereira Formula and Application

Pereira is often used when a spouse's labor, skill or effort is the primary reason for the business appreciation. This formula tends to favor the community estate. Here, Hank's pet grooming business took off largely after Wendy's pet poodle's instagram account became very successful and drew in many customers. The facts are silent as to who managed and maintained the instagram account, Wendy could argue that her effort and marketing skills were the primary factor for the business growth. Likewise, Henry could make an argument, although not as strong, that his pet grooming skills were what caused the business to grow. Wendy would benefit most if Pereira formula is used, & she would argue that H labor (so the facts: morning, day & night) were the primary factor in the increase in value. → Doesn't have to be W's labor > H's labor!

The court will have to calculate the SP ownership share first by taking the SP contribution to the business (\$50,000 for the van and \$50,000 to upgrade for mobile grooming = \$100,000) this figure is then added to the initial SP contribution (\$100,000) plus a Fair Rate of Return (10%) and multiplied by the number of years of the marriage (6 years).

The court must then subtract the SP ownership share from the Fair Market Value (FMV) of the business at the time closes to dissolution (\$300,000) - FMV is defined as what a buyer is willing and ready to pay for the asset. In this case, The SP ownership share should be \$160,000. The community's share should be \$140,000. The CP share is divided evenly among Hank and Wendy, meaning they each get \$70,000 and Hank gets his initial SP contribution + a Fair Rate of Return for the business' appreciation, which in total

means Hank would receive \$70,000 plus \$160,000, and Wendy only receives her \$70,000. perfect Great catch on the SDC Sprinter & SDC Invent & for

Van Camp Formula and Application

The Van Camp formula is used when external factors are the main reason for a business appreciating during the marriage, such as market trends or word of mouth. Van Camp usually favors the separatizer spouse. Here, Hank has a strong argument that the community's labor did not cause the business to appreciate because the Instagram account was an external factor like marketing or word of mouth. This argument is especially strong because Wendy worked at a law firm and the facts are silent as to who was in control of the Instagram account. Even if one spouse managed the account, the marketing is an external factor contributing to the appreciation. good - and even just the dog whistling !!

To apply Van Camp a court will have to first calculate the Community's ownership share by adding the community's initial contribution to the business (in this case \$0) plus the fair market salary for the community's labor (Hank's salary for the pet grooming was \$70,000). This salary is then multiplied by the years of the marriage (6 years). The CP share would be \$420,000 less family expenses paid from the business (\$50,000/annual x 6 years = \$300,000, \$420,000 - \$300,000 = \$120,000 total CP share). Because these earnings were generated during marriage, Hank's income is community property. Then the court would deduct the CP share from the Fair Market Value of the business at the time closest to dissolution (\$300,000) - (\$120,000) share for a total of (\$180,000) for the total SP share. Henry and Wendy would each get half of the CP share (\$120,000/2 = \$60,000 each) and Henry would get the additional SP share of (\$180,000) Henry's total is (\$240,000). perfect!

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Poodle

CA General Presumption

See Above for rule.

Here, Hank gave Wendy a poodle during the marriage for valentines day on February 14, 2005. Because the poodle was acquired during the marriage, it is presumed community property.

Character of an Asset

The character of an asset is determined by the time of acquisition, the source of funds used to acquire the asset, or an agreement. An asset's character remains unchanged absent an agreement or a transmutation. Likewise, any income or profit from an asset will have the same character as the asset.

Although the poodle was purchased during the marriage and is presumed community property.

Gifts

Gifts that are not substantial in relation to the marital estate are personal property of the donee spouse. Personal property cannot be sold without express consent in writing from the spouse whom the personal property belongs to.

Here, there is strong evidence that Henry made a personal property gift to Wendy. Henry purchased the poodle on valentines day for Wendy with a special tag engraved with the phrase "I wanted to get you a gift as sweet as you...She will forever be yours to cherish." Henry and Wendy make a combined income of \$150,000 annually and a poodle would likely be seen as insubstantial compared to the marital estate. Further, Henry gave the poodle to Wendy with a special engraving that expressed his intent that the poodle was a gift for Wendy. Thus, a court will likely rule that the poodle is Wendy's personal property, gifted to her by Henry, which makes the poodle Wendy's Separate Property.

Conclusion:

What about FC 852. 3 gift exceptions. (1) Is the dog a tangible article of personal nature? (2) Was it used primarily by W?

The court will likely characterize the business as a community asset and will use either formula to award Henry and Wendy their respective ownership interests and appreciation.

Poodle

↳ if the court is charac to b? as comm property then would the court give each part 1/2 of the FMV of 300k, B H gets n.s 300k 3 spatter?

CA General Presumption

See Above for rule.

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Conclusion:

The court will likely characterize the poodle as Wendy's SP and award it to Henry.

if poodle was CP court might
award it Henry if he is
keeping b.z.

Sprinter Van

CA General Presumption

(See rule above)

Here, Hank's grandfather bought a sprinter van for Hank on February 1, 2000 for Hank to start a pet grooming business. Hank did not marry Wendy until May 1, 2000. Hank's sprinter van was purchased by Henry's grandfather as a gift to Henry before the date of marriage. Thus, the court will likely rule the sprinter van is Henry's Separate Property. *good.*

Character of an Asset

(See Rule Above)

Here, the sprinter Van was purchased before marriage and is presumed to be separate property. There are no facts to suggest there is an agreement to the contrary between Wendy and Henry. Thus, the court will likely

2640 Tracing

(See Rule above)

Here, Henry can easily trace the source of the funds that purchased the van to his grandfather. Thus the court will likely rule the van is Henry's SP. ✓

Conclusion:

The van will be characterized as Henry's SP and awarded to Henry. ✓

11-267318

Exam Name: ComPrty-SLO-F24-Busick-OS

END OF EXAM



2)

Love Lane (LL) HomeCA General Presumption

California is a community property (CP) state. There is a rebuttable presumption that all property acquired during marriage is community property. Property acquired before the date of marriage, after the date of separation, by inheritance or by gift is separate property (SP). To rebut, a spouse must overcome the presumption by a preponderance of the evidence.

Here, Wilma (W) and Henry (H) married in March 1, 2010. Henry purchased the Love Lane (LL) home in April 1, 2009. Henry acquired the LL home prior to the date of marriage. Thus, the LL home is Henry's Separate Property (SP) - good. M.A. concise, but effective rule, analy, concis.

Character of an Asset

The character of an asset is determined by the time of acquisition, the source of funds used to acquire the asset, or an agreement. An asset's character remains unchanged absent an agreement or a transmutation. Likewise, any income or profit from an asset will have the same character as the asset. - good

Here, the LL home is H's SP because it was acquired before marriage. There are no facts to indicate that H and W entered into an agreement or transmuted the LL home to change its character, thus the LL home remains H's SP. Additionally any rent from the LL home will remain H's Separate property so long as it is not comingled and can be traced. - good

2640 Right to Reimbursement/ Tracing

very good rule & good to add this in!

When separate property funds are used for a community asset, the separatizer has a right to a reimbursement. One way a spouse can prove the funds used were separate property is by tracing. There are two forms of tracing, Direct and Indirect. Direct tracing is when the Separate Property (SP) funds were kept separate and can be easily traced to an asset. Indirect tracing is used when Community Property (CP) funds are exhausted first to show the need for additional SP funds. When funds cannot be traced due to comingling, the court will presume they are CP.

Here, Henry maintained a separate account for the rent from the LL property. Henry's LL home is not subject to the general presumption because it was acquired before marriage. The rent from the LL home can be directly traced to the separate account that is in H's name. It also appears that H maintained exclusive control of the bank account used for the LL rents. When H and W lived in the LL home, W was a student and presumably not working while in law school. It is likely that W does not have a right to reimbursement because she did not contribute to the principal of the LL home's loan. It is likely that H alone continued to pay down the mortgage for his SP LL home. Thus, W will not have a right to reimbursement.

Debt

Debts acquired during marriage are attributed to the community. Debts acquired by one spouse before marriage will remain that spouse's debt unless the lender intended otherwise (lender's Intent Test). Creditors cannot reach a nondebtor spouse for debts acquired by the debtor spouse before marriage.

Here, Henry took out a loan to finance his LL home. The loan was taken out before marriage as the home was purchased 4/1/2009 and H and W married in 2010. The home loan is H's debt alone and W will not be liable for H's SP debts. = true, so

CP gains an interest in the residence for paying the mortgage. However, remains SP of H; stays w/ H @ division & W is entitled

to her 1/2 CP share, which here is 1/2 of \$10k.

Conclusion:

Henry is liable for the LL home's SP debts, W does not have a right to reimbursement.

Quick Lane (QL) HomeCA General Presumption

California is a community property (CP) state. There is a rebuttable presumption that all property acquired during marriage is community property. Property acquired before the date of marriage, after the date of separation, by inheritance or by gift is separate property (SP). To rebut, a spouse must overcome the presumption by a preponderance of the evidence.

Here, Wilma (W) and Henry (H) married in March 1, 2010. Henry purchased the QL home in June 2023. The QL home was acquired during the marriage. Thus, the QL home is presumed Community Property (CP). good.

Character of an Asset

(see rule above)

Here, the QL home is acquired during the marriage and is presumed community property. Absent an agreement or transmutation the QL home remains community property. Thus the home will likely be characterized as a community asset.

Debt

(See rule above)

Here, the debt for the QL home was acquired during the marriage. Both H and W contributed to the down payment and both financed a loan for the remainder (\$550,000).

The facts indicate that both H and W financed the loan, meaning that creditors can go after community assets and each spouse's SP to satisfy the debt. ✓

Both H and W are liable for the loan on the QL home.

CP funds used to pay SP Debt

LL Home

The court can use a Moore/Marsden or Aufmuth/Moore calculation when SP funds are used to pay down the principal of a CP debt. Here, because H and W moved into the LL home during the marriage, any income made by H during the marriage is presumed CP. ✓ The facts suggest that H continued to pay down the mortgage using his CP earnings on the LL home during the marriage while W was still a student. The LL home appreciated in value during the marriage, value at purchase was \$500,000 and value at dissolution was \$750,000 based on H's appraisal. ✓

Moore Application:

The court will have to determine the CP share. For the CP share of either home the court will divide the CP contribution (\$50,000 for the QL home + payments made to principal multiplied by the number of years of the marriage (13) and divide this figure by the Fair Market Value of the home at time of purchase (\$500,000). This figure is then subtracted from the appreciation (FMV at dissolution - FMV at Marriage) to get the CP ownership and appreciation shares.

Marsden Application:

The court will determine the SP share. For the SP share of either home the court will take the SP contribution (\$100,000) plus payments on principal multiplied by the number of

years of the marriage (13) and divide by the value of the home at dissolution (\$750,000) the resulting figure will then be subtracted from the appreciation (FMV at dissolution - FMV at Marriage) to get the SP % of ownership plus appreciation.

The court will only apply this when SP is used to improve, pay the principal on a loan or downpayment of a community asset.

Marital Home

The spouse that remains in the marital home can request to stay in the CP home after separation to raise the children, and ask that the court not divide the home as a CP asset. It is in the interest of public policy that the courts will allow the spouse with custody of the children to remain in the home until the children are of legal age, and not order a sale to divide as CP. After this period the marital home can be divided as a CP asset.

W is asking to remain in the QL home after separation for the children but is also asking to keep the home after dissolution. The QL home is CP. The court will likely allow W to remain in the marital home after separation. W will have to keep paying the mortgage and property taxes while she remains in the home, unless the court has arranged otherwise.

After the children reach legal age, the court will determine how to divide the home as a CP asset. If W wants to stay in QL and there is \$110 in equity in QL (so \$55K to each), she could buyout H's interest of \$55K, right?

Conclusion: W also has \$6K as her 1/2 CP share in LL, she could use her \$6K in LL to buyout H in QL or educate her son(s).

H and W are both liable for the Debt on the QL home. The court can divide the share of appreciation based on More/Marsden, and the court will allow W to stay in the QL to raise the children. The QL home will be divided as CP once the children are of legal age.

Chase Savings Account Funds

Character of an Asset

The character of an asset is determined by the time of acquisition, the source of funds used to acquire the asset, or an agreement. An asset's character remains unchanged absent an agreement or a transmutation. Likewise, any income or profit from an asset will have the same character as the asset.

Here, the LL home is H's SP because it was acquired before marriage. There are no facts to indicate that H and W entered into an agreement or transmuted the LL home to change its character, thus the LL home remains H's SP. Additionally any rent from the LL home will remain H's Separate property so long as it is not comingled and can be traced. *good*

Here, there are no facts to indicate that any other funds were comingled with the LL home's rental income.

2640 Right to Reimbursement/ Tracing

When separate property funds are used for a community asset, the separatizer has a right to a reimbursement. One way a spouse can prove the funds used were separate property is by tracing. There are two forms of tracing, Direct and Indirect. Direct tracing is when the Separate Property (SP) funds were kept separate and can be easily traced to an asset. Indirect tracing is used when Community Property (CP) funds are exhausted first to show the need for additional SP funds. When funds cannot be traced due to comingling, the court will presume they are CP.

Here, Henry maintained a separate account for the rent from the LL property. Henry's LL home is not subject to the general presumption because it was acquired before marriage. The rent from the LL home can be directly traced to the separate account that is in H's name. It also appears that H maintained exclusive control of the bank account used for the LL rents. *yes*

Conslusion: The court will likely find that the Chase account is H's SP.

W's Student Loans

Student loans are only attributable to the debtor spouse. Creditors cannot go after the non-debtor spouse for satisfaction of the debt.

Here, W was in law school at the time of her marriage. The facts are silent as to when W took out her loans but the loans are only attributable to W regardless of when she entered the loan agreement. Thus H will not be reached by W's creditors for student loans.

Community's right to reimbursement for education

The community has a right to reimbursement when CP funds contributed to a spouses education, not necessities or family expenses. The education of the spouse must substantially increase the educated spouse's earning capacity. Teh community is presumed to have benefitted from the education after ten years.

Here, H helped W pay down her sudent loan debt during the marriage. This means that CP funds were used for the spouse's education. W was a law student at the time of marriage and H can argue the education substantially enhanced W's earning capacity, as she later became an associate attorney at a large firm and was able to help with the down payment on the QL home. However, because W and H have been married for 13 years, it is presumed that teh community has benefitted from W's education.

Conclusion: H can ask for a reimbursement but the court will likely find that the community has benefitted from W's education and is no longer has a to reimbursement.

Overall very good use of Rule, analysis, reasoning & conclusion!

10-26-18

Exam Name: ComPrty-SLO-F24-Busick-OS

END OF EXAM

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3)

General Community Property Presumptions

California is a community property state. There is a rebuttable presumption that all property acquired during marriage is community property (CP) and all property acquired before marriage, after date of separation, or by gift or inheritance is separate property (SP). Profits and rents from SP is also SP. The presumption may be rebutted by a preponderance of the evidence and the burden is on the separator.

Characterization

All assets acquired by married persons while domiciled in CA will be characterized as either CP or SP. The characterization of an asset is determined by three factors: 1) source of the asset; 2) any actions taken by the parties to alter the characterization of the asset, and 3) any statutory presumptions.

Transmutation

After 1985, agreements to change the character of an asset must be in writing, signed by the adversely affected spouse, expressly stating the change in ownership.

Date of Separation

Permanent separation occurs when there is a complete and final break in the marriage, one spouse communicates their intent to end the marriage, and their conduct is consistent with that intent.

Division

At dissolution, CP assets and debts will be divided evenly and each spouse will retain their SP.

How will the court divide the house?

Harvey (H) and Willow (W) purchased a house during their marriage, therefore it is presumed CP.

W's SP contribution

When SP is used to contribute to CP property, the SP is generally entitled to reimbursement, but does not gain an interest in the property. SP money that is spent on community expenses is considered a gift and not reimbursed.

Here, W had \$50,000 in bank account jointly titled with her sister. The money was an inheritance and \$25,000 of it belonged to W. The facts do not say if the account was opened before marriage or during marriage, but inheritance is SP. Therefore the \$25,000 belonging to W in the account was SP.

W transferred the \$25k into her joint account with H intending to use it for an addition on their house. However, some of the money was used for a family trip to Disneyland, Christmas gifts, and other family expenses. The money spent on the family is not reimbursable. W may have meant to convert the \$25,000 from SP to CP because it was intended to improve the situation of the family by building a larger home for their four children. But because it wasn't put in writing, it would not be a valid transmutation from SP to CP.

In order to be reimbursed for the portion of the \$25,000 that was spent on improving the home, W will need to trace the funds to her SP. This might be difficult since it was co-mingled with CP money in the couple's joint bank account. She can use direct tracing if

she can track all their expenses, or use the exhaustion tracing method. That would require proving that there were no more CP funds in the account so the only money left for the addition must have come from SP funds. ✓

Sue's \$10,000 gift

After H and W ran out of money, W's sister S gave them \$10,000 to finish the remodel. If S intended the money to be a gift to W only, it would then be W's SP. However, if S intended the money to be a gift to the couple, it would be CP. W will certainly argue that her sister intended it to be a gift to her alone since they are sisters. If it was SP, W would be entitled to reimbursement for the SP contribution to the CP house. However, considering the gift was meant to help the couple finish the family home, it is likely it was meant as a gift to them both and will not be reimbursed to W.

Whatever SP funds used to improve the property that W can trace will be reimbursed to her. The remaining profit from selling the house will be divided equally between the parties.

would H try to argue that the \$10k was a gift to her community?

What about the 10k? - I see your

discussion mainly on the 10k being a gift to community!

END OF EXAM

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