

**COMMUNITY PROPERTY  
FINAL EXAMINATION  
Kern County School Of Law,  
Fall 2022  
Prof. Jeffrey A. Travis**

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

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**QUESTION 1**

Harry ("H") was an unemployed software developer. In the weeks prior to marriage to Wanda ("W"), she convinced H to start an online pickleball business selling pickleball supplies because she could tell that it was an emerging sport that could become a moneymaker for those that get in this business early. H loved the idea. Prior to marriage, H had \$10,000 in savings and, with the encouragement of W, used those funds to purchase the needed equipment and online services to start a pickleball website called Picklemetender.com. H was proficient in website design, and he did technical work to get Picklemetender.com up and running. He was not so good at accounting and W slowly took over those duties as Picklemetender.com grew. Picklemetender.com became a distraction and obsession to H. In fact, he almost missed his wedding because of some technical glitches that brought the Picklemetender.com website down preventing customers from purchasing pickleball supplies. As W predicted, Picklemetender.com became a financial success. As of the date of marriage, it was earning \$274 per day or \$100,000 per year. As Picklemetender.com grew during marriage, it became the primary website for getting pickleball supplies as pickleball grew as a sport. At some point, the growth of Picklemetender.com became too much for one person to handle because, outside of handling technical issues that could be handled by technical staff, the biggest obstacle was having enough staff to receive and fulfill online orders and address other concerns with orders. H began hiring software developers and other staff to take over the day-to-day activities so that he could take more time to work on his relationship with W when his marriage began to deteriorate. When H and W separated Picklemetender.com was earning \$4,500 per day or, \$1,638,000 per year. H wants Picklemetender.com awarded to him, but, seeing the growth potential, W wants it awarded to her.

What are the community and separate property interests, if any, that can be asserted by H and W? How should Picklemetender.com be divided? Answer according to California law.

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**QUESTION 2**

Prior to marriage, Hubert (“H”) had purchased a home in Bakersfield, California for \$300,000 and Wendy (“W”) had purchased a home in Pismo Beach, California, for \$500,000. Each had been previously married and so tried to be careful about how they treated their separate property interests. As a mutual assurance of the extreme love and affection each had for the other, one morning at breakfast after a romantic evening out of town, H wrote on a napkin to W that he wanted to give her all that was his, and W wrote the same on a napkin to H. They each signed their respective napkins with a heart with their initials next to it. H and W both maintained his and her own bank accounts they had before marriage (“H Account” and “W Account”). At the time of marriage, the H Account contained \$50,000 and the W Account contained \$50,000. Further, at the time of marriage, the lien on H’s home had been reduced to \$100,000 and its value had appreciated to \$450,000. The lien on W’s home had been reduced to \$450,000, but it had increased in value to \$700,000 at the time of marriage. During marriage, H and W both rented out the homes they had purchased prior to marriage. W placed her net rental income in W Account, and from it she paid the mortgage on the home she purchased prior to marriage. H put his net rental income into H Account; however, it was unclear whether the mortgage payments were made from H Account or from some other source, which could have been a bank account H opened after the date of marriage. After the parties married, they decided they needed a larger home. H contributed \$50,000 from H Account and W contributed \$50,000 from W Account for a down payment on this new \$400,000 home in Bakersfield, California (“Family Residence”). Because of W’s bad credit, title for the Family Residence was put into H’s name to obtain better financing. Later, H and W decided they wanted to renovate the Family Residence to improve its value because they ultimately wanted to sell it and to retire to W’s residence in Pismo Beach, California. The improvements cost \$50,000. As part of the dissolution proceedings that came later, W testified that H had verbally agreed to improve the Family Residence. In fact, H had transferred \$50,000 from H Account into the parties’ joint bank account, which they maintained to pay community expenses, for that purpose. The parties’ marriage ended after W discovered H had been cheating on her with her best friend, the real estate agent who had sold them the Family Residence. At the time of separation, the parties had paid off \$50,000 in principle for the Family Residence.

What are the community and separate property interests, if any, that can be asserted by H and W? Has any property been properly transferred? How should the real property interests be divided? Answer according to California law.



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**QUESTION 3**

After 20 years of marriage, while Huey (“H”) and Wendy (“W”) were undergoing a temporary separation, H was injured when a driver, Sonic, negligently struck him with a car causing serious injuries to H. H was unconscious for months after the accident and not expected to fully recover until he underwent numerous surgeries. Immediately after H’s accident, W was moved to reconsider her separation with H, and she moved back into their residence to care for H full-time and did so until H finally regained cognitive abilities a year later. During that time, she collected H’s income and paid community property expenses and debt with H’s income. W was unable to work because she was tending to H’s needs. When H finally figured out what had happened, he filed for divorce. H also settled his claim against Sonic’s insurance carrier for \$5,000,000 based on a life care plan that assumed he would be impaired physically for the rest of his life. As it turns out, that was not true, and by the time of trial, H had made a full recovery. Several years after their divorce judgment was final, H discovered that W had won a lottery claim of \$10,000,000 from a ticket she purchased during the year he was not cognitive but failed to disclose it during their dissolution.

What are the community or separate property interests, if any, in that can be asserted by H and W? How should the court have divided the personal injury settlement? What are H’s remedies, if any, for W’s failure to disclose the lottery winnings? Answer according to California law.

**COMMUNITY PROPERTY FINAL  
ANSWER**

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**1. CP Presumptions**

- a. California is a community property state. All property acquired during marriage is presumptively community property, which can only be overcome by a proper tracing to a separate property source.
- b. Property acquired prior to marriage or during and after marriage from a separate property source is presumptively separate property unless commingled with community property.
- c. All community property shall be divided equally by a court when dividing community property and awarded to the parties pursuant to a judgment. All separate property shall be confirmed to the party with the separate property interest.

**2. Marvin Agreement: Whether the combination of H's and W's efforts prior to marriage were sufficient to form a partnership in Picklemetender.com within the meaning of Marvin v. Marvin?**

- a. Legal standard for Marvin agreements
- b. Analysis of efforts of W that would support her claim that she is a co-creator of Pickleball.com.
- c. \*Further, since this appears to be an oral agreement, then this would be considered a general partnership within the meaning of the California Corporations Code, which would entitle her to half of its value.
- d. \*The court has the jurisdiction to divide a separate property business

**3. Character of Picklemetender.com. Whether Picklemetender.com is a separate or a community property business within the meaning of section 760 or section 770 of the California Family Code?**

- a. If Picklemetender.com was started during marriage, then it is presumptively community property and should be awarded to one or both parties.
- b. On the other hand, if Picklemetender.com was started by H prior to marriage, then it is his separate property and should be confirmed to him
- c. Analyze facts supporting the character of Picklemetender.com with arguments supporting same.
- d. \*If Picklemetender.com is community property, then the party that does not receive it is entitled to a tax-free buyout under section 1041 of the Internal Revenue Code at the time of division.

**4. Separate Property Business Valuation. If Picklemetender.com is a separate property business, whether there is any community property reimbursement right to the community within the meaning of section 2640 of the California Family Code, and as set forth in Pereira v. Pereira, Van Camp v. Van Camp and other corollary case law?**



- a. Legal analysis of standards for valuing reimbursement to the community for contributions of the efforts of a spouse to a separate property business during marriage.
  - b. Analyze facts to law and explore possible reimbursements under Pereira/Van Camp or even a hybrid approach as done in the case of In re Marriage of Brandes.
5. **Community Property Business Valuation.** If Picklemetender.com is a community property business, what should be its value within the meaning of 2550 of the California Family Code and explanatory cases?
- a. Legal standard for analyzing a community property business using valuation standards, such as the marital value as set forth in In re Marriage of Honer.
  - b. Apply facts to law. Since valuations are typically conducted by experts, the model answer will state this since there is insufficient information in the hypothetical to fully value the business.
6. **\*Alternate Valuation Date.** Whether a motion for alternate valuation date for Picklemetender.com is appropriate within the meaning of 2552 of the California Family Code?
- a. General rule is to value as of the date of trial under section 2556 of the California Family Code.
  - b. However, in certain cases, a community property business where the business growth revolves primarily around the efforts of a spouse, such as a professional practice or a small closed corporation, can be valued as of the date of separation.
7. **Division of Picklemetender.com In Judgment.** Whether Picklemetender.com should be awarded to the H or W, or sold with the assets divided evenly under section 2550 of the California Family Code?
- a. Whether to award a business to one spouse or the other is subject to the facts of each case and within the discretion of the trial court.
    - i. Award Under Judgment
      1. Analysis of facts in support of award to H.
      2. Analysis of acts in support of award to W.
  - b. \*Equalization Payment subject to a tax-free buyout
8. **\*\$10,000 Reimbursement to H.** A
- a. Whether H is entitled to reimbursement for the \$10,000 he invested in Pickleball.com within the meaning of section 2640 of the California Family Code?
  - b. If Pickleball.com is a community property asset, then, at the date of division, H is entitled to reimbursement for his \$10,000 separate property investment under section 2640 of the California Family Code.



1. **Character of Homes Acquired Prior to Marriage.** Whether the character of H's and W's separate property homes were transmuted within the meaning of section 852 of the California Family Code (herein "Section 852")?

- a. Separate property presumption states that separate property retains its separate property character unless commingled with a community property source.
- b. Section 852 of the California Family Code requires a valid transmutation
  - i. Writing
  - ii. Single document
  - iii. Voluntarily made
  - iv. Transmutation
- c. Analysis of facts to law

✓ 2. **Validity of Napkin Agreement**

- a. Whether the Napkin Agreement is a valid transmutation within the meaning of Section 852?
- b. Section 852 Analysis of Napkin Agreement.
- c. Analysis of facts to law – In addition to not meeting the requirements of Section 852, you cannot transmute property that does not actually exist

3. **Character of Family Residence.** Whether the Family Residence was transmuted to the separate property of H within the meaning of Section 852?

- a. Comparison of section 662 of the California Evidence Code to section 852 of the California Family Code. California Family Code trumps California Evidence Code.
- b. Section 852 analysis
- c. Compare facts between Marriage of Starr (promise to deed back) to Marriage of Matthews (no promise to deed back).
- d. Analysis of Facts to law

4. **Reimbursement of Improvements For Family Residence.** Whether the H is entitled to a reimbursement of the \$50,000 he contributed to the improvement of the Family Residence within the meaning of section 2640 of the California Family Code (herein "Section 2640")?

- a. A party is entitled to a reimbursement of his or her separate property contribution to the community provided he or she can properly trace that contribution to a separate property source. A proper tracing includes providing documentary evidence of the separate property contribution
- b. The money contributed must have actually improved the value of the home.
- c. Analysis of facts to law.
- d. Sub-Issue Gift Analysis. Whether the contribution of the \$50,000 towards the improvement of the family residence can be considered a gift?
  - i. Gift of separate property can proven by evidence
  - ii. Analysis of facts to law

5. **Moore-Marsden Claims.**

- a. Whether the community is entitled to a community property reimbursement for the paydown of principal of the family residence during marriage within the meaning of Section 2640 of the California Family Code?
- i. Assume the Family Residence is separate property, this does not mean the community is not entitled to reimbursement.
  - ii. The community is entitled to pro tanto reimbursement for amounts contributed by the community during marriage. Wages during marriage are community property.
  - iii. State Moore-Marsden Analysis:
    1. community property percentage (principal paid divided by sale price of home)
    2. Net sale proceeds reduced by separate property claims.
    3. Percentage of net sale proceeds divided between community property and separate property.
- b. Whether the community is entitled to a community property reimbursement for the paydown of principal of the H's property he acquired prior to marriage within the meaning of Section 2640 of the California Family Code?



1. **Date of Separation Analysis.** Whether the parties separated prior to the dissolution being filed within the meaning of section 70 of the California Family Code?
  - a. Separation occurs when one spouse has expressed an intention to end the marriage and there are objective facts that show his or her conduct is consistent with that intent,
  - b. Analysis of facts to law. Here, although W expressed an intention to reconcile, H never did.
2. **The Division Of The Personal Injury Settlement.** Whether the personal injury settlement is community property or separate property within the meaning of sections 781 and 2603 of the California Family Code?
  - a. Damages resulting from injuries suffered during marriage are presume CP but are separate property before or after the date of separation.
  - b. Presumptively awarded to the injured party
  - c. Based on facts and circumstances, court has discretion to award a portion to non-injured spouse
  - d. But no less than half to the injured spouse
  - e. Even though the settlement was made post-separation, this does not defeat the presumptively CP nature of any damages
  - f. Analysis of facts to law. The disability here suggests the injury was severe indicating that all or most of the award should go to Huey.
  - g. Equitable Division. If community property then a court has discretion to make an equitable division of personal injury damages, but with Huey receiving no less than half the value of the settlement.
3. **Division of Lottery Winnings.** Whether the lottery winnings are subject to a community property division within the meaning of section 2556 of the California Family Code?
  - a. By statute, the family law court retains jurisdiction over an undisclosed marital asset.
  - b. Here, if the lottery ticket was purchased by W after the date of separation, then it should be confirmed to her.
  - c. However, as a threshold issue, W will need to prove that the lottery ticket was purchased with her separate property because she was not making any money when she acquired it and she will have to prove that it came from her separate property source.
  - d. W has a fiduciary duty to disclose separate property as well as community property.
    - i. Section 721
    - ii. Section 1100
    - iii. Section 2100, et seq.
    - iv. Claiming that the other party knew about the asset is not an excuse not to disclose.



**e. If The Asset Is CP, Whether W's Breach Warrants An Unequal Division**

- i. Typically, marital assets are divided evenly between the parties.
- ii. However, if one party breaches his or duty to disclose an asset, then the non-breaching party can ask the court to award half the asset and for an award of attorney's fees if they have been impaired by the breach.
- iii. Further, if the breaching party intentionally failed to disclose by hiding an asset, then the court can award the entire asset to the non-breaching party and also award him or her attorney's fees.
- iv. Analysis of facts to law. Students should analyze the intentionality of W's acts and apply any equitable discretion of the court to make an appropriate award.

**f. If The Asset Is SP, Whether W's Breach Warrants Any Remedies**

- i. Analysis of facts to law. Students should analyze the intentionality of W's acts and apply any equitable discretion of the court to make an appropriate award.
- ii. If there is no intentionality, then court shall award H his attorney's fees.

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1)

**What are the property interest of H and W.**

✓  
good  
California is a community property state. A community property (CP) presumption applies to all property acquired during marriage, the fruit of any labor during marriage (i.e. wages, artwork, copyrights), and commingled assets. A separate property (SP) presumption applies to all property acquired before marriage, after separation, and after dissolution; to all property acquired by gift, will, or inheritance; and to any royalties, rents, or profits derived from separate property. The CP presumption can be rebutted by tracing, evidence of the nature of the property (i.e. gift, royalty, etc.) or my agreement. On dissolution the court must equally divide CP down to the penny if possible. CP is awarded to each spouse and SP is confirmed to the owning spouse.

**Ownership of Picklemetender.com (PMT)**

✓  
**Are H & W co-owners via a Marvin Agreement?**

good  
A Marvin agreement is an express or implied agreement between unmarried cohabitants, not in anticipation of marriage, to classify property as CP that would otherwise not necessarily be CP.

There are no facts to indicate that there was an express, oral or written agreement, that PMT was co-owned. H will argue that it was not co-owned as he started the company with his SP 10,000, and used his labor, it was only sometime later that W began to help with accounting and "slowly took over those duties" at which time the company was already established. W will argue that there was an implied Marvin agreement since the business was her idea and she too labored to help the business by doing the accounting. While the fact pattern does not indicate if W was paid for her part-time accounting work, she nonetheless benefited from her help as the company grew. Because the company was funded purely with H's SP and he performed all the work to get the company up and running the court will likely find PMT is the SP of H.

PMT will be H's Separate property.

✓  
**Did H & W form a General Partnership?**

A General partnership is formed when two or more people, carry on a business for profit, and share in the losses and profits, with or without an express agreement.

W may well be able to argue that they did form a partnership....but this is the wrong class.



### How should PMT be divided?

On Dissolution an SP owned business can be divided a couple ways. The CP and SP interests in an SP business can be divided using either the Pereira or Van Camp methods, or a hybrid approach.

#### **Pereira**

✓ The Pereira method applies where the success of the business is largely due to the skill and talent of the SP owner. Using this method the SP owner is compensated for their investment plus a reasonable rate of return (i.e. 10% per year x \$10,000 x years), with the balance being CP, which is then split 50/50 between the parties. This method could apply here at least early in the business life-cycle as the success was largely due to H's capital, labor, skill and talent to the point that H worked on PMT obsessively and nearly missed his own wedding due to technical glitches.

#### **Van Camp**

✓ The Van Camp method applies where the success of the business is market driven and outside the skill and labor of the owner. Using this method the CP interest is calculated as the reasonable salary payable over the applicable period less the community expenses paid by the SP business, and the balance is then characterized as SP. This type of division would be more appropriate for the latter portion of the PMT business life-cycle.

#### **Hybrid Pereira-Van Camp**

✓ A hybrid approach seems most applicable here because PMT started as a small owner's labor/skill/talent driven SP business growing to \$100,000/yr by the Date of Marriage (DOM). Sometime between the DOM and the Date of Separation (DOS), PMT ceased having the characteristics of a Pereira-like SP business and became more of a Van Camp business driven by market forces as H brought on software developers, technical staff, and others to take on the day to day operations so H could work on his relationship with W. The company had grown significantly and was earning \$1.638 million per year.

### Conclusion

✓ The best approach would be for the court to award the PMT to H as his SP based on the factors surrounding his capital, skill, talent, and labor. A hybrid approach would be most appropriate giving H a reasonable return on his investment from startup to the point at which the court determines PMT transitioned to a more Van Camp business driven by market forces and factors external to H. H and

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W would each then receive 1/2 of the CP interest at time. Then for the duration up to the DOS, CP would be credited for the difference between H's reasonable salary and the actual CP expenses, and the balance of appreciation in the SP business which accrued between the Pereira split and the DOS would be H's SP.

Missed Issues

- ① CP character of Biz
- ② \$10,000 reimbursement



9/5

2)

California is a Community Property (CP) state. All property acquired during marriage is presumed to be CP (CFC 760). All property acquired prior to marriage or after permanent separation, or during marriage by will, inheritance, gift, bequest, and the rents, issues, and profits thereof are presumed to be Separate Property (SP) (CFC 770). At dissolution of marriage all CP will be divided equally (CFC 2250/2251).

**Whether there was a proper transmutation of H and W's separate property homes into community property under CFC 852?**

A valid transmutation requires that the transmutation be (1) in writing; (2) signed by the spouse giving their interest up; (3) in one document; (4) with transmutational language. If all elements of 852 are met, there is still a presumption of undue influence that the spouse gaining a financial advantage has the burden of overcoming. This can be proven by showing the spouse transmuting the property has signed a document that shows his intent to change the character of the property.

Here, the facts do not state exactly when the signed napkins were made, only that it was after a romantic evening. Assuming that they were signed after marriage, this analysis must be an 852 analysis. Both spouses are attempting to transmute their separate property ("all that was his") into community property ("give [to W]"), and vice versa. The transmutation done by both H and W was in writing, and one document, even if the document was a napkin. It was signed and initialed by the respective spouse attempting to transmute their separate property interests into community property interests. However, there was not sufficient transmutational language that would show that either spouse truly had intent to transmute their separate property homes into community property. Neither spouse specifically names the property they wish to transmute, which they have to do, nor do they say they wish to specifically change the character of the property. The language would have to say that either spouse intends to specifically change the character of the house or other property. Since there was no transmutational language nor intent to change the character of the property, there is no transmutation.

There would also have to be proof that no undue influence was present when transmuting the property, which would be hard to prove by either spouse, since the document purporting to transmute the property was on a napkin signed after a romantic night out. It would be assumed that there was undue influence.

There was not a proper transmutation of H and W's separate property homes into community property under CFC 852.

**Whether W's bank account can be considered separate property under 770?**

All property acquired prior to marriage or after permanent separation, or during marriage by will, inheritance, gift, bequest, and the rents, issues, and profits thereof are presumed to be Separate Property (SP) (CFC 770).

W opened "W Account" prior to marriage, so presumptively it is SP. She did not commingle any CP funds into the account, nor use the account to pay for any CP expenses.

W's bank account is considered SP under 770.

**Whether W's rental profits from her SP home can be considered CP?**

All property acquired prior to marriage or after permanent separation, or during marriage by will, inheritance, gift, bequest, and the rents, issues, and profits thereof are presumed to be Separate Property (SP) (CFC 770).

As discussed above, there was not a proper transmutation of W's SP home into CP, so it is presumptively SP. She made rent from the SP home, and that also is presumptively SP. She placed the SP rents into her SP "W account", so there is no commingling with CP.

W's rental profits from her SP home are SP.

**Whether H's bank account can be Considered SP under 770?**

All property acquired prior to marriage or after permanent separation, or during marriage by will, inheritance, gift, bequest, and the rents, issues, and profits thereof are presumed to be Separate Property (SP) (CFC 770)

**Whether H's rental profits can be considered SP?**

Rule supra.

As discussed above, H's SP property home was not properly transmuted into CP. The rents from this SP are also presumptively SP.

H's rental profits are SP.

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✓ **Whether H commingled funds when paying off the mortgage on his SP home?**

SP funds remain SP even if they are commingled with CP. However, the commingler then has the burden of proving that his SP remained SP by tracing the SP funds to an SP source. Tracing can be done in two ways. The first is Direct tracing, where the commingler has the burden of showing itemized expenses that are traceable to his SP. He must do this with documentary evidence. The second method is exhaustion/recapitulation, where the commingler shows the community expenses are above the community income, and everything not covered by the community income must have been paid with SP. this method is not preferred.

Here, it is unclear where the money that H was using to pay the mortgage on his home came from. If it was only from H account then it is SP, as he never commingled funds and it was SP to begin with. However, if he paid from a second account that he opened after marriage, this is CP. In order to prove that he only paid with SP, H must now show an itemized list of all the payments made on the SP home to prove that they came from an SP source. He must show documentary evidence of this as well. If he is unable to do this, then the money paid on the SP home is presumed to be CP and the community can have a claim on it.

If he uses the exhaustion method, he will have to show that the community expense were higher than the community income, and everything paid off after was from SP. But this method will likely not help him.

H most likely commingled funds when paying the mortgage on his SP home.

✓ **Whether the community has a pro tanto interest in H's SP home under Moore/Marsden?**

The Moore/Marsden formula gives a percentage interest reimbursement in a home to the community if the home is purchased with separate property funds, but payments are made with community property. The formula has several steps: 1. take the value of the home and subtract the remaining lien on the home. 2. Find the CP funds used to pay the principal on the home divided by the historic purchase price to get the community share. 3. add any SP down payments, payments on principal, and CP payments on principal together and subtract from 1. 4. use this number times the community share from 2. That is the pro tanto community interest.

Here, since H commingled funds and most likely won't trace them back, the community can have an interest in the payments he made. The interest is the amount that he paid during marriage on the principal of the loan divided by the purchase price. So whatever the community funds he used divided by \$300k is the community interest in his SP home.

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The community has an interest in H's SP home.

**Whether the community has a pro tanto interest in the family residence under Moore/Marsden?**

The Moore/Marsden formula gives a percentage interest reimbursement in a home to the community if the home is purchased with separate property funds, but payments are made with community property. The formula has several steps: 1. take the value of the home and subtract the remaining lien on the home. 2. Find the CP funds used to pay the principal on the home divided by the historic purchase price to get the community share. 3. add any SP down payments, payments on principal, and CP payments on principal together and subtract from 1. 4. use this number times the community share from 2. That is the pro tanto community interest.

Here, SP was used as a downpayment on the home in the amount of \$100k total. The community had paid off \$50k in principle at the time of separation, and the purchase price was \$400k.  $\frac{\$50k}{\$400k}$  = the community interest in the home.

**Whether H or W has a reimbursement right from the SP they used on the Family Residence?**

Separate property receives a dollar for dollar reimbursement for down payments, improvements, or principal paid on a loan on community property. The community receives a 1/2 dollar reimbursement plus pro tanto interest.

Since both H and W used money from their separate property bank accounts as a down payment on the family residence, they both receive a dollar for dollar reimbursement, which means they both get their \$50k back.

H and W both have reimbursement claims on the SP they used on the Family residence.

**Whether H has a reimbursement claim for the SP he used on improvements for the Family Residence?**

Separate property receives a dollar for dollar reimbursement for down payments, improvements, or principal paid on a loan on community property. The community receives a 1/2 dollar reimbursement plus pro tanto interest. A spouse can waive their reimbursement right on SP used to improve CP, but this must be in writing and show intent to waive their reimbursement right.

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Here, H used SP from his SP bank account to improve CP. This allows him to get a dollar for dollar reimbursement. W claims that he verbally agreed to gift the community the \$50k used on improvements. However, the waiver of reimbursement must be written, which it was not.

H has a reimbursement claim for the SP he used to improve the family residence.

**Whether the Family residence is H's SP based on the title presumption?**

Property acquired during marriage is presumed to be CP, even if title is taken in 1 spouses name. However, the lenders intent doctrine must also be considered, which also presumes that the lender is basing their loan on community property.

The title presumption is overcome by the fact that all property acquired during marriage is presumably CP. Even though H took title of the home because of W's bad credit, the lender would be basing their loan on all of the CP available, and not on H's SP.

The family residence is CP.

The real property interests should be divided as such: W has 100% claim to her SP home. Both H and W have equal claim to the family residence. the community has an interest in H's SP home.

*Really  
Excellent  
job!*

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3)

California is a Community Property (CP) state. All property acquired during marriage is presumed to be CP (CFC 760). All property acquired prior to marriage or after permanent separation, or during marriage by will, inheritance, gift, bequest, and the rents, issues, and profits thereof are presumed to be Separate Property (SP) (CFC 770). At dissolution of marriage all CP will be divided equally (CFC 2250/2251).

✓ **Whether H and W were permanently separated at the time of H's injury?**

Date of separation must have objective facts that show that one party intended to permanently end the marriage.

Here, the facts state the separation was temporary, and there were no objective facts to indicate that one party intended to permanently end the marriage. H will argue that W moving out shows intent, but since the facts state otherwise, this is not enough.

↳ not sure the facts weigh this way

H and W were not permanently separated at the time of H's injury.

**Whether H's Personal Injury (PI) settlement is CP?**

✓ If the injury claim arose during marriage, then the claim and settlement are presumed community property. Upon dissolution, the settlement will be 100% awarded to the injured spouse, unless in the interest of justice the court finds that it must be awarded differently, however no less than 50% should go to the injured spouse. If the settlement is used for specific things, such as a life care plan, then it will be fully awarded to the injured spouse.

Here, H was injured while he and W were separated, but this was not a permanent separation as discussed above, and so it is still considered as during marriage. As such the PI settlement is presumed to be CP. On dissolution of marriage, courts will typically award the full amount of the PI settlement to the injured spouse. H will argue that he should get the full amount since he was the injured spouse, and his settlement was based on a life care plan that he would need. However, in the interest of justice, the court will look at other factors in determining whether to fully award the PI settlement to the injured spouse. Here, the court will take into consideration that W moved back to the residence to take care of H fulltime and did not have a job. And even though the settlement was based on a life care plan assuming that H would be permanently physically impaired, this was not true and he was fully recovered at trial. Since the money would not need to go to his life care plan the court can consider whether to award some to W. Taking all of these factors into consideration,



most likely the court will find that W is entitled to some portion of the PI settlement. Whatever that portion is, it cannot be more than 50%. ✓

H's PI settlement is partially CP.

**Whether the court has jurisdiction over W's lottery winnings?**

✓ The court has jurisdiction in perpetuity over omitted assets.

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Here, W did not disclose the lottery ticket she received during marriage, which makes it an omitted asset.

The court has jurisdiction over W's lottery winnings.

**Whether W breached her fiduciary duty by not disclosing the lottery ticket?**

Spouses have a fiduciary duty that arises out of a confidential relationship. This imposes a duty of acting in good faith and fair dealing, and that no spouse should take unfair advantage of the other. Spouses also have a duty of disclosure of any CP gained during marriage.

✓ W bought the lottery ticket during marriage, so it is presumptively CP. She had a duty to disclose this purchase of CP to her husband, which she failed to do. She can argue that he was not cognitive, so there's no way she could've told him, but she had the duty to tell him as soon as he was able to understand, which she failed to do.

W breached her fiduciary duty by not disclosing the lottery ticket.

**Whether H has any remedies for W's nondisclosure of the lottery ticket under CFC 1100(g) or (h)?**

Under CFC 1100 (g), if a spouse breaches their fiduciary duty and unintentionally fails to disclose an asset during separation proceedings, then the spouse who was harmed can get a 50% interest of the other spouses interest in the asset. Under 1100(h), if the spouse intentionally fails to disclose an asset, then the other spouse can get 100% of the other spouses interest in the asset.

Here, W bought the ticket during marriage, so it is presumptively CP. It is unclear whether this was intentional, but based on case law and human nature, it most likely was an intentional non disclosure on W's part. Since it was intentional, it falls under 1100(h), and H can be awarded all of

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W's interest in the lottery winnings. The court will most likely grant this to H and he will be awarded all of the lottery winnings.

H has a remedy under 1100(h) for W's nondisclosure of the lottery ticket.

**Whether H can file a post-judgment set aside claim for nondisclosure of the lottery ticket?**

✓ In general, a spouse has 6 months to file a post judgment motion to set aside the judgment. It is a year if there is fraud, mistake, or perjury, and 2 years if there is duress or mental incapacity. The time starts when the spouse knows, or should have known about the issue regarding the judgment.

Here, H was unconscious for months and took a year to be fully cognitive. He will argue that this made him mentally incapacitated during the time when he would have found out about the ticket, and should have the full 2 years to bring his claim. The facts state he found out about the ticket several years after the divorce judgment was final, which can be 2 years. The facts state that he was fully physically recovered by trial, but does not mention his mental capacity. If he was still suffering from mental incapacity at some level, he can argue he should be allowed to get the full 2 years to bring his motion to set aside the judgment. W will most likely argue that H should have known she had omitted some assets, since she was probably living commensurate with the level of a lottery winner, and since she did not receive too much from his PI injury, he should have known.

Most likely, H will be able to file a post judgment motion.

END OF EXAM

*not  
excellent*