

KERN COUNTY COLLEGE OF LAW

COMMUNITY PROPERTY

Final Examination

Fall 2019

Prof. J. A. Travis

Instructions:

This exam consists of 3 essay questions. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

Wanda is a California resident and was a labor attorney for the county in which she worked for many years. She retired in 2010, which included a hefty county pension and defined benefit plan. As part of her retirement plan, Wanda received her pension in both a lump sum and in monthly installments. She had these payments deposited into an account, which she opened in her name at Lucky Strike Bank along with the lump sum payment (herein "Wanda's Account"). In 2015, Wanda met Harry, also a California resident. Harry worked in a local hardware store. Prior to marriage, Harry contributed to a 401(k) plan. Wanda and Harry married two years later, in 2017. During marriage, Harry opened an account at Lucky Strike Bank in his name and deposited his salary from the store into this account (herein "Harry's Account"). Wanda and Harry paid all of their household expenses from Wanda's Account. These expenses included the payment of a \$50,000 Mercedes. In 2019, Wanda filed for divorce from Harry and they separated. The Mercedes is now worth \$35,000. What are Wanda's and Harry's rights and liabilities, if any, regarding their separate property and reimbursement claims?

Answer according to California law.

Question 2

Assume the facts as stated in Question Number 1. At Harry and Wanda's wedding, Wanda's mom gifted a fully paid townhouse worth \$300,000 and put it in Wanda's and Harry's name. During their marriage, Wanda and Harry took out a \$100,000 loan secured by a deed of trust against the townhouse. The payments on the mortgage (\$50,000) being made exclusively from Harry's Account to pay the lien on the townhouse in which they both lived. The townhouse was worth \$450,000 on the date of separation. During marriage, Wanda and Harry made \$20,000 worth of improvements from their community property from Harry's Account. After they separated, Wanda was the only one who could afford the mortgage payments, so she had the exclusive use and possession of it and faithfully made all of the mortgage payments until the date of trial. What are Wanda's and Harry's rights and liabilities, if any, regarding their community and separate property claims to the townhouse?

Answer according to California law.

Question 3

Wanda and Harry married in 2017 and separated four years later. During marriage, Harry was injured when a driver, Sonic, negligently struck him with his car causing serious injuries. Harry is not expected to fully recover until he undergoes several more surgeries. Fortunately, Wanda and Harry, in addition to their other retirement plans, had also purchased an insurance policy in the event of just such an accident. Before Harry and Wanda could settle the case or take advantage of the disability policy, they had to take out a \$100,000 loan to cover Harry's medical expenses. Wanda filed for divorce from Harry. After the date of separation, Harry also settled his claim against Sonic for \$3,000,000, most of it revolving around a life care plan for future medical expenses for Harry. What are Wanda's and Harry's right and liabilities regarding the division of the personal injury settlement and the disability insurance?

Answer according to California law.

1)

California is a community property state. All property acquired during marriage is presumptively community property (CP) and separate property must be proven. (FC 760.) Separate property (SP) is any property acquired before marriage or during marriage if through will, devise, or inheritance, and rents, issues, and profits of either. (FC 770.) Under FC 2550, any property that is determined to be community property will be equally divided between the parties. All of the property will be examined under these general property principals and the characterization of each property determined. The date of separation is determined by the intent, clearly communicated, and conduct that matches the intent. Here, the DOM was 2017 and DOS 2019.

Whether Wanda's pension is subject to the CP presumption?

Pensions

Pensions and stock options are deemed to be community property for the years earned during a marriage. In order to determine the value given to SP and CP, the time rule is examined. The time rule states that the number of years earned during the marriage over the total number of years in the program will be the contribution amount to SP and CP. Here, Wanda earned her entire pension prior to her marriage to Harry. She worked for the county and retired in 2010, however, she did not marry Harry until 2017. The lump sum and monthly installments are her separate property. Harry (or the community) will have no interest in her pension. Given the fact that she has used her SP for other CP expenses, she may be entitled to a reimbursement. (see below)

Wanda's pension (both lump sum and monthly installments) is Wanda's SP.

Whether Wanda's Lucky Strike Bank is subject to CP presumption?

Under the CP presumption, a bank account would be considered CP. However, the facts state that she had the account prior to marriage, which could go into the notion that it is her SP. Besides the fact that the account is being held in her name only, the only funds being put into the account are from her pension. Those funds have already been determined to be her SP. Under CAMPAL, a bank account held in joint title is presumptively CP. However, this does not apply here, as the account is in her name only and funds deposited are only her SP funds. Any sort of tracing that

could be done would show that the funds came from her pension, which is separate property. The account would remain her as there is no indication of commingling of funds.

Wanda's bank account is her SP.

Whether Harry's 401(k) is subject to CP presumption?

Retirement Accounts

Retirement accounts are subject to division under community property principals if they are earned during the marriage. The number of years that the spouse has contributed to the 401(k) during the marriage would be a factor as to how much the community would gain an interest in a retirement account. Here, Harry had the account prior to marriage. At no time during their marriage did Harry contribute additional funds into his 401(k). As a result, the community will not gain an interest in his 401(k) account that he had prior to marriage. The retirement account would be H's SP, and Wanda would have no interest.

The 401(k) is Harry's SP.

Whether the bank account held solely in Harry's name at Lucky Strike is CP and whether his salary is CP?

Under the CP presumption, the bank account would be community property. Even though the account is held in Harry's name only, he opened the account during their marriage. The account is CP, regardless of the name on the account. He was depositing the funds he earned from his place of employment into the account. During their marriage, Harry worked at the local hardware store and earned a salary. The money he earned is community property. Harry will argue that he deposited his own earnings into a separate property account, he should have the funds as his separate property. However, the account should be classified as a community property asset and there is nothing in the facts to show that Wanda waived her rights to the community funds. There was no valid transmutation of the funds from CP to SP. (A transmutation must be in writing, expressly changing the character of the property, signed by the adverse party to be valid.) As a result, each party is entitled to the equal share of the funds in the account, per 2550.

The account is CP, as is the funds in the account.

Whether the Mercedes is CP?

Under the general presumption, the Mercedes is CP. It was acquired during the marriage, therefore meets the basic CP presumption. In order to rebut the presumption that it is community property, Wanda will argue that it was obtained using funds from Wanda's separate property bank account. Wanda will claim an interest in the car because it was purchased with funds solely from her separate account. In order to rebut the fact that separate property funds were used, Harry will argue that Wanda made a gift to the community. A gift to the community must meet the same transmutation requirements and cannot be substantial in value given the marriage. A \$50,000 car is substantial and is likely not a gift. However, since the property was acquired during marriage, the community property presumption should apply. He will want to receive his one-half interest in the car. Wanda may have a claim for reimbursement.

The car is CP.

Whether Wanda can receive a reimbursement for the purchase price of the Mercedes?

Reimbursement Rights

Under FC 2640, a spouse who contributes separate property to a community property asset is entitled to a dollar for dollar reimbursement upon dissolution. Wanda will argue that she should receive the full contribution of \$50,000 for the purchase price of the car as she used her separate property funds to acquire the community property interest. Since the vehicle is not worth what she paid for it, the community is not responsible to make up the difference on this type of asset.

Wanda will keep the car as her SP in lieu of a reimbursement.

Whether Wanda can receive any household expenses reimbursement?

Under FC 2640, a spouse who contributes separate property to a community property asset is entitled to a reimbursement. Wanda used funds from her separate property bank account to pay for the living expenses of both Harry and Wanda. She will claim that she should be entitled to a reimbursement. However, personal and living expenses don't fall under 2640 as a reimbursable

expenses. Things like child and spousal support from a prior relationship, SP funds for a CP asset, and SP funds to pay other spouse's debts, may qualify.

Wanda will not receive a reimbursement for household expenses paid out of her separate account.

END OF EXAM

2)

General Presumptions

California is a community property state. Pursuant to Family Code section 760 any property, wherever situated, acquired during marriage, while domiciled in California is community property.

Pursuant to Family Code section 770, separate property is any property acquired before marriage, after death, divorce, or permanent separation with an intent to end the marriage or by gift, bequest, or devise and any rents, issues, or profits from that property is also separate property.

The first step in determining the rights and obligations of each party in a dissolution is first determining the character of the property.

The courts use the time of acquisition rule to presumptively determine character of property and the source rule to determine any separate property rights that may be commingled with community property. (Mix, Heinz) In division of property, courts must divide the property as equal to the penny as possible unless an exception applies. (FC section 2550). The marital economic community begins at marriage and ends upon physical separation or divorce.

Here, Wanda and Harry married in 2017 and divorced and separated in 2019, therefore the marital economic community lasted from 2017 to 2019.

What is the characterization of the townhouse?

Pursuant to Family Code section 770, separate property is any property acquired before marriage, after death, divorce, or permanent separation with an intent to end the marriage or by gift, bequest, or devise and any rents, issues, or profits from that property is also separate property.

Wanda's mom gifted a fully paid townhouse worth \$300,000 and put it in Wanda and Harry's name. Therefore, the presumption exists that it was acquired after marriage and is community property.

However, Wanda will claim that it is a gift from her mother only to her.

Characterization when Joint Title is taken

Prior to 1986, characterization of property was determined in common law by form of title. However, after 1986, FC section 2581 superseded common law and to rebut the community property presumption, the SP proponent must prove through clear and convincing evidence that the property was intended to be SP and not CP. Testimony and tracing is not enough. Documentary evidence must be used and clearly states that the property was meant to be SP otherwise, the property will be considered community property.

Although the facts state the home was a gift, it does not state that it was meant only for Wanda. Also, the title was taken in joint names. No facts or evidence was given that suggested the townhouse was intended to be Wanda's separate property, therefore the community would get the townhouse.

Characterization of the \$100,000 loan - Lender's Intent

Loans obtained during marriage are considered community obligations unless the lender intended to rely solely on one spouse's income/funds and did in fact rely on those funds.

Here, the facts do not state the lender relied on either H or W and therefore, the obligation to repay the loan would fall to both parties.

When community property funds are used for a separate property asset - Moore - Marsden analysis

When a community uses funds to pay for a separate property asset, the community gets a pro tanto interest in that asset. The interest is determined by finding the ratio the community funds were used in proportion to separate property funds against the original purchase price, subtracting any separate property down payment or paydowns, then dividing that over the historical purchase price of the property. (Moore) Secondly, appreciation value is determined and assigned to both the CP and SP according to the ratio determined in step one. (Marsden).

Here, the townhouse was fully paid at 300,000. The loan obtained was only for 100,000. The payments on the mortgage was paid exclusively by Harry's account at \$50,000, leaving a balance of \$50K. However, Wanda and Harry made 20K worth of improvement from their community account. The community gets reimbursed dollar for dollar for any improvements made to a SP property pursuant to 2640. The CP would then get reimbursed the 20K in addition to any paydown the community made towards the loan divided by the 300,000 with the remainder proportion being the sp ratio and then the appreciation would be the 150K net difference between historical purchase price and the current fair market value multiplied by the cp and sp ratios respectively.

Watts Charges and Epstein Credits

When a spouse lives in the community home rather than selling or dividing the asset after physical separation, the other spouse gets a fair rental value reimbursed. (Watts) If the spouse pays for any community obligations after separation, those debts get credited and reimbursed. (Epstein)

Here, Wanda had exclusive use and possession of the home after separation. Therefore, per Watts, Harry could be reimbursed fair rental value. However, because Wanda paid the community mortgage obligation, that will be credited to her against the fair rental value.

Here, Wan

END OF EXAM

3)

California is a community property state. All property acquired during marriage is presumptively community property (CP) and separate property must be proven. (760.) Separate property (SP) is any property acquired before marriage or during marriage if through will, devise, or inheritance, and rents, issues, and profits of either. Under FC 2550, any property that is determined to be community property will be equally divided between the parties. All of the property will be examined under these general property principals and the characterization of each property determined.

Whether the community has an interest in the personal injury award?

Personal Injury

The character of the a personal injury award is determined when the spouse was injured, not when the case settled. If a spouse is injured during marriage, the award is presumptively community property. However, upon dissolution, the injured spouse generally retains 100% of the settlement, less a reimbursement to the community for medical bills paid from the community as a result of the injury. Harry and Wanda married in 2017 and during their marriage, Harry was negligently struck by Sonic. He required multiple surgeries and his injuries appear so severe that he is required to have a life care plan for the future. This is a huge burden on Harry and the personal injury award to will follow him will help pay for his future medical expenses. Wanda has no rights to the personal injury award. At dissolution, Harry will be awarded the entire amount of the settlement (\$3,000,000) minus the amount of the loan that was to cover his medical expenses during the settlement.

The personal injury award is Harry's separate property, minus the \$100,000 to pay off the loan taken out to cover his medical expenses.

Disability Insurance

Insurance policies are usually kept by the insured. If there is cash value and the payments were made by the community for the policy, the amount will be considered community property and each party would be entitled to one-half of the cash value per the equal division rule. From the facts, it does not appear that they were able to utilize the disability insurance. They held the policy, but did not take advantage of it. Since they did not take advantage of the policy, there is no amount to be considered for community property distribution.

There is no amount to be considered for CP interests.

Debts

The characterization of debts is based on when they were acquired and the intent of the lender. Wanda and Harry took out a \$100,000 loan to cover Harry's medical expenses. This is a CP debt. However, since Harry received a settlement, the community will be reimbursed the amount paid for his medical expenses. Therefore, the debt will be paid through the settlement funds and the remainder of the funds will remain Harry's SP. The personal injury award will be awarded to the community to repay the debt for the medical expense.

The community will receive \$100,000 of the injury award.

END OF EXAM