

COMMUNITY PROPERTY FINAL EXAM
KATHERINE E. STONER
December 7, 2016

GENERAL EXAM INSTRUCTIONS

This is a three hour exam. Part I is an objective test consisting of short answer, multiple choice, and true-false questions. Part I will count for one third (33.33%) of your grade on the exam. In Part II there are two essay questions to be answered. Each essay question will count for one third (33.33%) of your grade on the exam.

Your grade on this final exam will count for 90% your grade for the course.

If you are handwriting this exam, your answers to Part I must be written in the spaces provided on this exam, not in a separate blue book.

If you are typing this exam on a typewriter or computer, your answers to Part IA (short answer) must be attached to this exam and each answer clearly labeled by question number and your exam ID number, and your answers to Parts IB & IC (multiple choice and true-false) must be written in the spaces provided on this exam, not on a separate blue book or paper.

Use only blue or black ink (not pencil) on this exam.

Each blue book and every page of any papers not in a blue book or this exam must be clearly labeled by Part, question number and your exam ID number.

* Answer outline not available for PART I

Your Exam ID Number

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PART II

ESSAY EXAM QUESTIONS AND MODEL OUTLINES
AND/OR ANSWERS

PART II - ESSAY QUESTIONS

Instructions for Essay Questions

Your essay answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material and immaterial facts, and to discern the points of law and fact 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 which are not pertinent to the solution of the problem.

ESSAY QUESTION NO. 1

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

In 2007, Alice, a Silicon Valley executive, decided to quit her job and move to the Monterey Peninsula. She bought A-Z, a gift shop in Carmel, for \$75,000 in December 2007. The gift shop specialized in handcrafted items, both imported and local. Alice worked in the shop every day. In April 2008, Alice began dating Beatrice, a local jeweler whose work was featured for sale in Alice's shop.

In October 2008, Alice and Beatrice decided to get married after learning of the California Supreme Court decision allowing same-sex marriage in California. They took out a marriage license on November 3rd, the day before Election Day in 2008. Their friend Jim, a law student, assured them that their marriage would be valid even if Proposition 8, the ballot initiative banning same-sex marriage in California, passed on November 4th, as long as they obtained their marriage license before then.

Alice and Beatrice were married by a friend who was a minister. The ceremony was held on November 22, 2008. After their marriage, Beatrice continued to produce jewelry that was sold in Alice's shop, and Alice paid her on consignment as she had done before they were married. Alice and Beatrice maintained separate bank accounts and they lived together in a house in Alice's sole name that Alice owned before marriage.

Because Alice and Beatrice were married after the passage of Proposition 8 and before the United States Supreme Court decision invalidating Proposition 8, their marriage was not valid.

Alice and Beatrice separated in May 2016. Beatrice has filed a petition for dissolution of marriage. Alice has filed a response and request for annulment. A-Z is now worth \$150,000. Beatrice claims an interest in a A-Z. Alice claims it is her sole and separate property.

What legal claim(s) may Beatrice assert with respect to A-Z? Discuss.

* * * * *

ESSAY QUESTION NO. 2

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

Hank, a professor at the naval postgraduate school, and Wendy, an elementary school teacher, married in June, 2010. They had a turbulent relationship, with frequent arguments. During a heated argument on June 30, 2013, Hank told Wendy he wished he had never married her and he wanted a divorce. He moved out of their family home and stayed with a friend for several months. In January 2014, Hank moved back into the family home. From then on, he and Wendy maintained separate bedrooms. They rarely encountered each other in the home and they took separate vacations. They maintained a joint bank account into which they deposited their earnings. The mortgage and other regular monthly payments were paid by automatic bank withdrawals. Wendy paid the rest of the household bills online.

In June 2016, Wendy underwent knee replacement surgery. When she returned from the hospital on June 30, 2016, she discovered that Hank had changed the locks on the family home. Wendy went to stay with a friend and filed a petition for dissolution of marriage, listing June 30, 2016 as the date of separation. Hank filed a response to the petition listing June 30, 2013 as the date of separation.

In determining the assets and liabilities of the community property estate, how is the court in the dissolution proceeding likely to classify the following:

- 1. Hank's Federal Employees Retirement System benefit, which he began earning in July of 2006, and which he continues to earn.*
- 2. Wendy's California State Teachers Retirement System benefit, which she earned from September 1995 until her retirement in August 2015.*
- 3. An outstanding hospital bill in the amount of \$2,800 incurred in connection with Wendy's knee replacement surgery.*

* * * * *

ESSAY QUESTION NO. 1
SAMPLE ANSWER/OUTLINE

Question 1.

1. May B establish that she is a putative spouse entitled to a Quasi-Marital Property interest in A-Z?

A-Z cannot be CP because only married persons can own community property. In an annulment proceeding, if a party is proved to be a putative spouse, the court may classify property acquired during the marriage as quasi marital property (QMP). A putative spouse is a party to an invalid marriage who had a good faith belief in the validity of the marriage. QMP is any property that would have been classified as CP but for the fact that the marriage was not valid. QMP is classified according to the rules that apply to CP.

Whether a party had a good faith belief in the validity of the marriage is determined by examining the totality of the circumstances. The test is a subjective one and is not determined by the reasonable person standard, although the reasonableness of a party's belief under the circumstances is one factor to be considered.

APPLY TO FACTS:

Good faith belief? Factors to consider: education, sophistication of parties, reasonableness of relying on Jim who is only a law student, participation in ceremony, prevalence of prop 8 issues in news, etc.

2. Would there be a community property interest in A-Z if the marriage were valid?

Where a SP business operated by one or both spouses during the marriage increases in the value during marriage, the increase is presumed to be due in part to spousal efforts. The court must apportion the increase between SP and CP.

The court has broad discretion to use a method of apportionment that will achieve substantial justice between the parties. Courts typically use one of two methods. The first method is the Pereira approach. This approach allocates a reasonable annual rate of return to the SP value of the business as of the date of marriage. The reasonable rate is based on evidence of what an appropriate market rate would be. If no evidence of a

reasonable rate is presented, the court may use the legal rate on judgments, which is currently 10%. The rate of return is applied as a annual simple rate, not compounded. That portion of the increase attributable to the reasonable rate of return is considered SP and the remaining balance of the increase in value is the CP portion of the increase.

The second method is the Van Camp approach. In this approach, the court determines the reasonable value of the spousal services in the form of an annual compensation for the years of marriage. Subtracted from this reasonable compensation are any amounts paid to the spouse or spouses as compensation, including any personal expenses paid by the business. If there is any balance of compensation remaining unpaid, that unpaid portion is the CP interest in the increase in value. The balance of the increase is SP.

APPLY TO FACTS:

A-Z is premarital asset so it is A's SP but it increased in value so court must apportion the increase. Factors favoring Pereira: A worked in the shop and B contributed jewelry, which might be significant factors in growth. Factors favoring Van Camp: retail profits depend on market, inventory and location. Argue both ways.

3. If B is not a putative spouse, can she claim an interest in A-Z on some other basis?

Unmarried cohabitants may state claims in civil court based on contract, quasi contract, or equitable claims arising out of the relationship. B would have to prove an agreement or other legal basis for her claim. Since they followed the same compensation practice as before the "marriage" B might not succeed in this, absent additional facts.

ESSAY QUESTION NO. 2
SAMPLE ANSWER/OUTLINE

A. Because classification depends in part on the date of separation, this must first be determined.

The community estate consists of all the community property and quasi community property (CP & QCP) and the community debts. In classifying community property the term “during marriage” refers to the period between the date of marriage and the date of separation. Earnings of a spouse before marriage or after the date of separation are separate property (SP).

The date of separation is the date when a complete and final break in the marital relationship has occurred, as evidenced by an expression of intent to end the relationship by one or both spouses, plus conduct consistent with that intent, taking into account all relevant evidence.

APPLY TO FACTS:

Facts tending to show 2013 separation: H’s statement of desire to divorce, moving out, little contact after that, separate bedrooms & vacations

Facts tending to show 2016 separation: H moved back in, parties still living together, maintaining joint accounts, household bills not separated

B. Classification

1. H’s FERS benefits

Retirement benefits will be characterized as community property to the extent that the benefits were earned during marriage. The term “during marriage” refers to the period from the date of marriage to the date of separation. Earnings prior to marriage or after the date of separation are the separate property of the party who earned them.

H’s pension is a federal pension. State family court jurisdiction over federal pensions, including FERS pensions, is preempted under the supremacy clause of the U.S. Constitution. However, Congress has enacted federal legislation granting state courts jurisdiction to characterize and divide a marital interests in federal pensions.

The court must apportion the SP and CP interests in the pension. In apportioning, the court has discretion to use whatever method is reasonable and fairly representative of the relative contributions of community property and separate property. A pension is

usually earned over time in equal and unvarying increments of time, so the courts often use what is called the “time rule” to apportion the SP and CP contributions in a pension.

When the time rule is used, the SP interest in the pension benefits would be determined by multiplying the benefits by a fraction, the numerator of which is the number of years and months prior to marriage and after separation during which the employed spouse earned the pension and the denominator of which is the total number of years of months during which the employed spouse earned the pension. Similarly, the CP interest would be determined by multiplying the benefits by a fraction, the numerator of which is the number of years of months during marriage during which the pension was earned and the denominator of which is the total number of years of months during which H the pension was earned.

APPLY TO FACTS – If date of separation is June 2013, the time allocated to the CP portion according to the time rule would be 3 years. This would be the numerator and the denominator would be H’s total length of service, beginning June 2006 (currently 10 years and 5 months. If the date of separation is found to be June 30 2016, the CP numerator would be 6 years. The denominator would not change.

2. W’s STRS Benefits

These are state benefits, so no preemption issue, otherwise, same rules apply. If June 2013 is the date of separation the CP numerator is 3 years and the denominator is the total length of service, 20 years. If the date of separation is June of 2016, the CP numerator would be 5 years (date of marriage to date of retirement) and the denominator would still be 20 years.

3. Hospital Debt

Debts incurred during marriage and before the date of separation are community debts unless it is shown they were not incurred for the benefit of the community. A spouse is solely liable for debts incurred by that spouse after the date of separation, except that a spouse may be personally liable for a debt incurred by the other spouse after separation for necessities of life.

APPY TO FACTS:

The debt was incurred after 2013 but before June 30, 2016, so the date of separation determines whether it is in the community estate. If the date of separation was June 30, 2016, the debt will be classified as a community debt, to be divided as part of the CP

estate. Medical treatment of a spouse during marriage will probably be viewed as benefitting the community.

Even if the earlier date of separation is used and the debt is not a community debt, H may be personally responsible for the debt. Medical treatment usually is a necessary of life. Knee surgery might be elective, but probably still viewed as a necessary.

2)

Before determining what legal claims Beatrice can assert with respect to A-Z, first the court must determine whether there is a putative marriage. If there is a good faith belief that there is a valid marriage by either or both spouses, but the marriage is in fact void, there is a putative spouse or putative spouses. This good faith belief is determined from the subjective beliefs of the putative spouse looking at all factors. If the court determines there is a putative spouse, all property acquired by the spouses during the "marriage" which would have been community property (CP) or quasi-community property (QCP) is now quasi-marital property (QMP), and if dissolution is at issue the court will divide the QMP according to CP principles, if the putative spouse requests it. Beatrice will be wanting to contend that she is a putative spouse, because if A-Z is divided according to CP principles she may have an interest in it.

Here, Alice (A) and Beatrice (B) took out their marriage license on November 3, 2008, the last day their law student friend told them it would be legal. They also had a marriage ceremony where they were married by a minister. This all shows that from B and A's point of view, they were in a valid marriage. A may contend that she never subjectively held this view, but it only depends on if B had this view. The court will likely find that B did have a good faith belief that she was in a valid marriage, therefore she is a putative spouse. When B is a putative spouse, she will likely request the court to administer A-Z according to CP principals because it would be in her best interest. If she is not a putative spouse, the outcome may be different (discussed infra).

*I suit + leave a7
months 13 months*

A-Z

The rights of B with respect to A-Z depend on its classification.

Separate property (SP) is all property acquired before marriage, or the rents, profits, and issues of that SP.

Here, A bought A-Z in 2007, therefore it was before marriage and her SP.

However, there may be a community interest in A-Z because it increased in value during the marriage. Where a SP business operated by spouses generates profits or increases in value, the court must apportion those profits and increases between CP and SP interests due to the spousal efforts. The court has discretion to apportion those profits and increases between the CP and SP interests using the method that just and equitable. The

*use formula of joint income
2008-2010*

court usually uses two methods, the *Pereira* method and the *Van Camp* method.

***Pereira* Method**

This method is often used when the increase in the business is primarily due to the spousal efforts and skill. The SP owner is given their initial SP investment at the date of marriage, plus a fair rate of return. When the court determines the rate of return, they will use a reasonable market rate, but if there is no evidence for this, they will use the judgment rate of 10%.

Here, A bought A-Z in 2007 for \$75,000. A-Z increased in value by \$75,000 over an eight year period. A may argue that the date of marriage should be used for this equation. B may argue that the date should begin in 2007 when acquired because she has been participating in the business by having her jewelry featured at the shop. Because the increase may be due to B's efforts, the court may use this date. Therefore, the CP interest in A-Z would be $(\$75,000 * 10\%) * 8$ years.

***Van Camp* Method**

This method is often used when the increase in the business is primarily due to extrinsic factors such as the industry or market and the nature of the business. The SP owner is given their initial SP investment at the date of marriage, plus reasonable compensation for their efforts less any salary given or community expenses paid from the business.

Here, there is no evidence for calculating this, but usually based on this method there is not much left for the community.

It is likely that B will want the court to use the *Pereira* method because the community will have a bigger interest when it is used, thus she will get more out of the distribution. This also has to do with the labor put into the business. Because there is no evidence that the increase was due to outside market conditions, it was likely due to the labor and efforts of the spouses and the court is more likely to use the *Pereira* method. Also, because B had here jewelry on display, it may be more equitable for the court to find that her efforts were also a factor in the increase of the business.

Non-Marital Cohabitation

If the court does find that there is no putative spouse, it will likely find that A and B are non-marital cohabitants. It will look to whether there has been an express contract or implied contracts from the conduct of the parties. If the court finds that there is an

implied contract, it will use contract law to determine the rights of the parties. The court may find that there was unjust enrichment or other equitable remedies to make sure there is no injustice to the parties.

Conclusion: Beatrice may claim there is a ~~CP~~ (QMP) interest in A-Z which would be determined by using the *Pereira* method of apportionment.

END OF EXAM

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3)

California is a ~~community property state~~. All property acquired by married persons during marriage while domiciled in California are presumed to be community property. All property acquired prior to marriage, after separation, or during marriage by gift or inheritance are separate property.

What is the issue?

*Who owns
date of
separation
11/30/13?*

The date of separation is the date that a permanent break in the marital relationship occurred, as evidenced by 1) the date a spouse expressed his or her intent to separate and 2) the conduct of a spouse(s) consistent with that intent. Earnings acquired after separation, but before trial, are the separate property of each spouse. However, After separation, but before trial, both spouses are liable to one another for the necessities of life. Necessaries include food, clothing, and housing.

In order to determine the assets and liabilities of the community property estate of Hank and Wendy, the courts must first determine the official date of separation, In this case there are 2 possible dates of separation. Hank asserts June 30, 2013 as the date of separation, since that is the date that he expressed his intent to divorce, and he followed that expressed intention to divorce with conduct consistent with separation, including moving out of their family home for a few months and sleeping in separate bedrooms upon his return to the family home. However, Wendy asserts June 30, 2016 as the date of separation, because that is the date that Hank changed the locks on the family home and she no longer resided with Hank. The court is likely to find that the date of separation asserted by Hank, June 30, 2013 is the legal date of separation, because his expressed intention to divorce coupled with his conduct to separate fits the statutory requirements for separation.

Too broad

What about the fact that he moved back a

Hank and Wendy were married in June, 2010. Assuming a date of separation of June 30, 2013, the length of their marriage was 3 years.

Once the date of separation is known, and the length of the marriage, the court can attempt to classify and apportion the following:

1. Hank's federal employees retirement system benefit

Pre-emption

When federal laws conflict with state laws, federal laws control. This is known as pre-emption, and the authority for pre-emption is derived from the supremacy clause in the United States Constitution which states that the U.S. Constitution is the supreme law of the land, and federal laws are supreme over state laws. Because federal law is supreme over state law, and community property is a law of the state of California, community property principles can be pre-empted by federal laws in the division of some benefits. However, Congress passed legislation allowing federal employees retirement system benefits to be apportioned according to state laws, and therefore Hank's federal retirement benefits are subject to the community property laws of California, and the community will receive an interest in Hank's federal retirement benefits.

Retirement benefits are considered to be community property to the extent that they are earned during marriage. In the case of a deferred benefit such as retirement plans, Courts apply a time rule to determine the amount of benefit earned by the community during the marriage. The time rule takes the number of years (or months) of the marriage and multiplies this number by the amount of the benefit earned during that time in order to apportion the amount of the benefit earned by the community during marriage.

*Not a salary
Disability
Time rule
Should be
insert here*

Hank began earning his Federal Employees Retirement System benefit in July 2006, prior to his marriage with Wendy in June 2010. Therefore Hank's federal employees retirement system benefit is his separate property, but the community will earn an interest for the 3 years of the marriage according to California community property laws. Upon Hank's retirement, Wendy will receive 50% of the community property interest in Hank's retirement benefits.

2. Wendy's California State Teacher's Retirement System Benefit

Retirement benefits are considered to be community property to the extent that they are earned during marriage. In the case of a deferred benefit such as retirement plans, Courts apply a time rule to determine the amount of benefit earned by the community during the marriage. The time rule takes the number of years (or months) of the marriage and multiplies this number by the amount of the benefit earned during that time in order to apportion the amount of the benefit earned by the community during marriage.

Same concept

Wendy began earning her California State Teacher's retirement system benefit in September 1995, prior to her marriage with Hank in June 2010. Therefore, Wendy's retirement benefits are her separate property, but the community will earn an interest for

their 3 years of marriage. Since Wendy has already retired in August 2015, Hank will begin receiving 50% of the community property interest in her retirement benefits after trial.

3. An outstanding hospital bill in the amount of \$2,800

The court has discretion in applying debts upon dissolution. Since the 2,800 was incurred in connection with Wendy's knee replacement surgery, and the surgery occurred after the date of separation of the spouses, the court will consider this bill to be Wendy's separate property. However, since both spouses are liable for each other's necessities of life, the portion of the bill that was for her food and housing at the hospital would be considered payable by the community.

What rule(s) apply?
Debts and property

If, however, the court in its discretion chose Wendy's preferred date of separation date of June 30, 2016 as the date of separation, the debt would have been incurred during the marriage and would be a community expense payable by the community estate.

END OF EXAM

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