

San Luis Obispo College of Law
Community Property Final Exam
Fall 2021
Prof. R. Lomeli

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted : Three (3) Hours

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

**San Luis Obispo College of Law
Community Property Final Exam
Fall 2021
Prof. R. Lomeli**

Question One

Hank and Wendy married in 1999 when both were students at Boston College in Massachusetts. Massachusetts is not a community property state. Shortly after the marriage, Hank graduated and obtained employment with a Boston engineering firm. Wendy gave birth to the couple's only child, and Hank and Wendy agreed that Wendy would quit her job and remain home to care for their child. They bought a house in Boston using their savings for the down payment and obtained a loan secured by a 15-year mortgage for the balance of the purchase price. Mortgage payments were subsequently paid from Hank's earnings. The title to the home in Boston was in Hank's name alone.

In 2009, Hank accepted a job offer from a California engineering firm. The couple moved to California with their child and rented out the Boston home.

In 2011, Wendy's uncle died and left her a painting with an appraised value of \$5,000 and a small cabin located on a lake in California. Wendy took the painting to the cabin and hung it over the fireplace.

In 2012, after speaking to a friend who was in law school about ways in which to ensure Hank would gain an interest in the cabin, Hank persuaded Wendy to execute and record a deed conveying the lake cabin to "Hank and Wendy, as joint tenants with right of survivorship" under the pretense that the action was necessary to avoid probate. Wendy did so, believing Hank's explanation that the only effect of the conveyance would be to avoid probate.

In 2014, after three years of study paid for out of Hank's earnings, Wendy obtained a professional degree in interior design and opened her own interior design business. Her business has become quite successful because of her enthusiasm, skill, and willingness to work long hours. Hank continued to work for the engineering firm.

In 2021, Hank and Wendy separated and filed for dissolution of marriage. Wendy had the painting reappraised. The artist, now deceased, has become immensely popular, and the painting is now worth \$50,000.

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

1. The lake cabin? Discuss.
2. The painting? Discuss.
3. The Boston House? Discuss.
4. Wendy's education and interior design business? Discuss.

Answer according to California law.

Question Two

In 2015, Hal and Wanda, both domiciled in Alabama, a non-community property state, began dating regularly. Hal, an attorney, told Wanda that Alabama permits common law marriage. Hal knew this statement was false, but Wanda reasonably believed him. In 2016, Wanda moved in with Hal and thought she was validly married to him. They used Hal's earnings to cover living expenses. Wanda deposited all her earnings in a savings account she opened and maintained in her name alone.

In February 2018, Hal and Wanda moved to California and become domiciled here. By that time Wanda's account contained \$60,000. She used the \$60,000 to buy a parcel of land in Alabama and took title in her name alone.

Shortly after their arrival in California, Wanda inherited an expensive sculpture. Hal bought a marble pedestal for their apartment and told Wanda it was "so we can display our sculpture." They both frequently referred to the sculpture as "our collector's prize."

In March of 2018, a woman who claimed Hal was the father of her ten-year-old child filed a paternity suit against Hal in California. In September 2018, the court determined that Hal was the child's father and ordered him to pay \$1,000 per month as child support.

In January 2020, Wanda discovered that she never has been validly married to Hal. Hal moved out of the apartment he shared with Wanda.

Hal paid the ordered child support for three months from his earnings but has paid nothing since.

1. What are Hal's and Wanda's respective rights in:
 - a. The parcel of land? Discuss.
 - b. The sculpture? Discuss.
2. Which of the property set forth in the facts can be reached to satisfy the obligation to pay child support? Discuss.

Answer according to California law.

Question Three

Henry and Wilma married in 2004 while attending college at Cal Poly in San Luis Obispo, California. Shortly after getting married and graduating from college, Wilma took a job with an internet-based company with offices in the city. Wilma was making a large salary while working with the company. Henry took a job as a legal clerk at the local courthouse. The couple had a child in 2006.

In 2008, Wilma received an inheritance in the amount of \$100,000 after her parents died in an automobile accident. Realizing that she was no longer happy working for her company, Wilma decided that she wanted to start her own internet technology firm. Henry agreed that he would quit his job and care for the couple's child to allow for Wilma to put all of her energy and focus into the creating and running her own business.

In 2009, Wilma opened her business, Clever Swans, using only the \$100,000 inheritance she received when her parents died. The business grew substantially over time due to Wilma's hard work and effort in hiring only the best IT specialists for her business. Wilma was also able to substantially grow her business due to a patent she had received for a special computer technology she developed in 2010. A similarly situated business owner would have been making \$100,000 a year in wages; however, Wilma would routinely spend \$450,000 a year on community expenses.

In 2011, Henry's grandmother died and left him a home in San Luis Obispo. The home was worth \$1,000,000 at the time that Henry received it. Both Henry and Wilma used the residence as their primary home and openly held out the home as belonging to both of them. In 2012, using income from her business, Wilma paid for the installation of a pool, patio and outdoor dining area as upgrades to the home. The cost for the upgrades was \$25,000. In addition to the upgrades, Wilma also purchased a \$25,000 Rolex for Henry on his birthday. The watch had an inscription that read, "To my dearest husband Henry on this special day, a gift from your wife forever!"

In 2016, Wilma fell madly in love with her Yoga instructor and filed for dissolution of marriage. At the time of trial, Clever Swans had appreciated in value to \$1,000,000. At the time of separation, the home inherited by Henry had appreciated in value to \$1.5 million.

What are Henry and Wilma's rights and liabilities in:

1. Clever Swans? Discuss.
2. The San Luis Obispo Residence? Discuss.
3. The Rolex Watch? Discuss

Answer according to California law.

Question ~~Two~~ One Outline

General Characterization Rules

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

The Lake Cabin

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

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

Boston, Mass. Residence

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

W's Education

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

3. The community is entitled to reimbursement with interest, with a possibility of reduction or ~~medication~~ modification.
3. Reimbursement Reduction
 - a. The education or training is offset by community funded education of other spouse;
 - b. Education or training enables recipient to engage in gainful employment substantially reducing the need for SS;
 - c. The community has already benefited from education or training.
 - d. Rebuttable presumption community benefited (10 year presumption)
 - i. H did not receive community funded education;
 - ii. Fewer than 10 years have elapsed;
 - iii. W's education enabled her to reduce need for SS

Interior Design Business

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

Question Two Outline

General Characterization Rules

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

Putative Spouse

1. A putative spouse is not lawfully married, but has subjective good faith belief that she is lawfully married.
2. QCP Division – all property that would be CP or QCP if marriage were lawful is labeled QMP and putative spouse has the same rights in QMP that she would have in CP or QCP if married.
 - a. W's is likely a putative spouse;
 - b. She believed she was married to H since he was an attorney and advised her that this was permitted.
 - c. If W is deemed a putative spouse all property would be QMP and W would have same rights in QMP that she would have in CP.
 - d. Although H lied to W, the court may allow H to take one-half of the QMP.

Parcel of Land

1. Putative Spouse/QMP - QCP
 - a. If W was validly married to H the land would have been CP
 - b. Fact that W put funds in an account she opened and was in her name alone not dispositive;
 - c. No written evidence that H intended to transmute the funds;
 - d. The parcel of land can be traced to the \$60,000
 - e. Land would be QCP if legally married to H.
 - f. Parcel of land would be QMP.

Sculpture

1. Transmutation – Interspousal Gift
 - a. Writing requirement does not apply to interspousal gifts of personal nature principally used by the spouse to whom the gift is given when gift is not substantial in value.
 - i. Sculpture is not an item of a personal nature and it is likely to be considered substantial in value.
 - ii. W acquired the sculpture through inheritance so it is her SP;
 - iii. No evidence W intended to transmute the sculpture.
 - iv. Sculpture likely W's SP.

Property that can be reached to satisfy debts

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

Question Three Outline

General Characterization Rules

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

Clever Swans

1. GCPP (Rule Above)
 - a. The money used by W to start the business was obtained by inheritance.
 - b. No indication that any community funds were used to start the business.
 - c. Business was created from the ground up.
 - d. Business is W's SP, however, the community has an interest in W's labor during marriage.
2. Transmutation (Rule Above)
 - a. No facts to indicate that W's intended for the business to be a community asset;
 - b. No facts presented to indicate that W agreed to change the characterization of the business from SP to CP.
 - c. Business is W's SP.
3. Valuation of Property
 - a. A spouse may devote her CP labor to the management of an SP business;
 - b. VC and Pereira accounting methods can be used to apportion between the SP component of the business and the CP valued added by the managing spouses labor during marriage.
 - c. VAN CAMP METHOD
 - i. Under VC, the managing spouses services are valued at the going market salary for such services; family expenses that were paid from the business earnings are subtracted from the value of the manager's services; the remainder, if any, represents the CP portion of the business, and the rest of the business is the SP of the managing spouse).

- ii. VC used when the character of the separate business is largely responsible for its growth or productivity.
 1. Value for W's services have a market value of \$100,000.
 2. Family expenses paid from business earnings were \$450,000.
 3. The CP portion of the business would be zero (100,000-450,000).
 4. The value of the business of 1.5 million would be W's SP under VC.
 5. W's would likely argue that it was her recruitment strategy and work of her employees that grew her business not necessary only her work.
 6. W would also argue that the patent was another reason for the increase and that the patent was should not be considered actual management on her part.
 7. W would want VC to be applied.

d. PEREIRA METHOD

- i. The Pereira method begins with the separate capital and imputes a fair rate of return (typically current legal rate of 10%); the total SP interest is the principal plus the fair rate of return times the number of years the SP business was in operation and managed by the spouse during the marriage; the remainder is CP).
- ii. Pereira used when management by the spouse was the primary cause of the growth or productivity of the business.
 1. Value of separate capital was \$100,000.
 2. Fair rate of return would be \$10,000.
 3. SP interest would be \$170,000 (10,000x7=70,000 plus the initial 100,000 investment).
 4. CP portion of the business would be 1.33 million.
 5. H would argue for Pereira analysis.
 6. Would argue that Wife's effort both in hiring and developing patent would indicate that her efforts in management were the primary reason for growth.

e. Interest of Justice

- i. Court would likely find that the character of the business lead to growth and that W was entitled to 1.5 million since the community had already more than benefited from W's income during marriage.
- ii. The court can, in its discretion, decide which method to apply based on the interest of justice.
- iii. The court would likely find that VC would serve this purpose, especially if H was entitled to all of the SLO residence as SP; otherwise, the court might find that Pereira would be more equitable.

1. GCPP (Rule Above)
 - a. H received the home as an inheritance during marriage.
 - b. The home is H's SP.
2. Transmutation
 - a. During marriage, spouses may change the status of their property.
 - i. Must be made in writing;
 - ii. Must expressly declare that a change in ownership is being made; and
 - iii. Must be consented to or accepted by the spouse whose interest is adversely affected.
 1. Residence is H's SP because acquired through inheritance;
 2. No writing or change of ownership declared.
 3. Residence is H's SP.
3. Improvements
 - a. Improvements do not purchase an ownership interest in the realty. Improvements usually give rise to reimbursement claims.
 - b. Community Funds Used to Improve Other Spouse's SP
 - i. Traditionally a gift has been presumed.
 - ii. The presumption is only overcome by evidence of an agreement to reimburse.
 - iii. If there is such an agreement the precise terms control the amount of reimbursement; otherwise, the cost of the improvement is reimbursed.
 - iv. Modernly, the courts have rejected this tradition and have reimbursed the community for its contribution to the improvement even absent an agreement.
 1. H will argue that the improvements were a gift; however, it is likely that W will argue they were not a gift and demand reimbursement.
 2. If the court applies traditional analysis the improvements will be deemed a gift since there is no reimbursement agreement.
 3. If the court applies modern analysis W will be entitled to a reimbursement in the amount of \$25,000.

Rolex Watch

1. GCPP (Rule Above)
 - a. Item was purchased during marriage so it is presumed to be CP unless an exception applies or an agreement to change the character of the item to SP was reached by the spouses.
2. Transmutation (Rule Above)
 - a. No writing declaring a change in ownership.

b. No facts to indicate that a valid transmutation existed.

3. Interspousal Gifts (Rule Above)

- a. H will argue that the watch was an interspousal gift that did not require a writing to be valid.
- b. H will point to the inscription on the watch to demonstrate the intent on W's part that the watch would be a gift.
- c. H will point to the fact that the watch was \$25,000 but that they would routinely spend around \$450,000 per year on community expenses and that the gift was not therefore substantial when looking at the economic TOC for the community.
- d. H will also point to the fact that the watch is of a highly personal nature.
- e. W will argue that although the watch was inscribed, it was only inscribed to "to her dearest husband" and that such an inscription is not personal to H.
- f. W will also point to the fact that \$25,000 is still a substantial amount even though the community would routinely spend \$450,000 per year on expenses.
- g. It is likely that the court will find that the watch was an interspousal gift and that it was therefore H's SP.

93

1)

COMMUNITY PROPERTY

GOOD

California is a community property state. Absent an agreement to the contrary, all property acquired during marriage or domestic partnership is presumably community property (CP) and will be equally divided between the spouses/partners at dissolution or death. The CP presumption arises for all property acquired onerously (through labor and skill) during marriage or, in the case of a long marriage, owned during marriage. The separate property (SP) proponent usually bears the burden to show that property falling under the CP presumption is actually SP.

Here, Hank (H) and Wendy (W) married in 1999 in Boston, Massachusetts. MA is not a CP state, however by the time H and W decided to divorce in 2021, they had been living in California for more than a decade. Therefore, in a dissolution action before a California court, the CP system will be applied.

Jurisdiction of the Family Court

+2

In a dissolution action, the family court has jurisdiction to divide all (quasi) CP (or disputed CP) property and debts as well as jointly titled SP if either spouse asks for it. If they both request it, undisputed SP can also be divided. As explained more fully below, quasi-CP realty is a unique problem since it is technically subject to the rules of its situs, not California courts.

Because H and W are divorcing in California, the court will have jurisdiction over all of their CP and quasi-CP. If there is any disputed SP, or if the couple asks for their SP to be included in the division, the court will take jurisdiction over that as well.

MARRIAGE OF HANK AND WENDY: THRESHOLD ISSUES

Valid Marriage Begins Marital Community

A valid marriage requires that two people with the legal capacity to marry publicly and unequivocally declare their intent to marry before an authorized officiant and witnesses. They must also obtain a license from the county and subsequently register the marriage. The date of marriage marks the beginning of the marital estate for the purposes of CP.

There are no fact to suggest that H and W were not validly married in 1999. They were both students at Boston College so presumably old enough to marry and there are no facts to suggest that they lacked capacity in any other sense or failed to perform any aspect of the valid marriage formalities.

Date of Separation Marks End of Marital Community

The marital community ends when the couple separates and at least one expresses the intention to make the separation permanent and conducts themselves accordingly. For most purposes, CP ceases to accrue after the date of separation.

H and W separated in 2021 and filed for dissolution. Certainly by the time they filed for dissolution it was clear to both parties that the marriage was ending. Filing for divorce constitutes conduct in conformity with that intention.

Conclusion

H and W were validly married for 22 years, from 1999 until they filed for separation and dissolution in 2021. All property acquired from 1999 until 2009 while they were living in Boston is presumptively quasi-CP, discussed *infra*, and all property acquired after they moved to California in 2009 is presumptively CP. Absent an agreement to the contrary or proof of SP acquisition, all of their property is subject to equal in-kind division under California law.

CP&AT!

LAKE CABIN

Separate Property

Property acquired prior to marriage, after separation, and during marriage by lucrative means, that is by gift, bequest, devise, or descent, is SP because it was not acquired through the labor of skill of the spouses during the marriage. Provided that the owner of the SP either keeps it separate or at least is able to trace it within commingled accounts, it will be treated as SP at divorce and not subjected to equal division requirements.

In 2011, Wendy inherited or was devised a lake cabin from her uncle. Because the cabin came to her from a lucrative means, it is SP.

Title Presumption

AREA 1

All property acquired in joint title form during marriage is presumed CP. This presumption can only be rebutted by a writing in the title or some contemporaneous document; tracing is not permitted to show SP.

In 2012, under questionable circumstances discussed infra, W conveyed the property to herself and H as joint tenants with rights of survivorship. Because H and W acquired the property by joint title while they were married, there is a presumption that it is CP. Tracing to W's SP inheritance is not permitted to show that the intention was to keep the cabin SP. The intent to preserve its SP nature must be available on the face of the title or in some contemporaneous writing. There are no facts to suggest that any such writing exists, therefore the joint title presumption will control and the cabin will be viewed as CP.

Transmutation

Since 1985, any transmutation--or alteration of character--of CP to SP, SP to CP, or one spouses's SP to the other's SP is required to be made explicitly in writing, stating that the character of the property is being changed, and signed by the spouse whose interests are adversely affected. No extrinsic evidence is admissible and common law exceptions to statute of frauds to not apply.

REMEMBER THAT A DEED FROM
SOLE TO JOINT OWNERSHIP IS
A VALID
TRANS.

H will claim that W validly transmuted the lake cabin from her SP into CP when she signed the new deed conveying it into joint form. However, the deed did not explicitly state that it was transmuting the character of the property. Therefore, even though it is signed by Wendy, it is not a valid transmutation. H cannot introduce any parole evidence to explain that W intended to change the character of her SP into CP. Even if he could, it would likely be rather unconvincing and likely do more damage to his credibility anyways.

Fiduciary Duty: Presumption of Undue Influence

Due to their confidential relationship, spouses have a fiduciary duty of the highest good faith and fair dealing in all their interactions regarding management and control of their CP as well as one another's SP. When there is a change in title that benefits one spouse unequally, it raises a rebuttable presumption of undue influence in favor of the disadvantaged spouse. The spouse who benefits then has the burden to show that no undue influence was exerted.

W's conveyance of the lake cabin changed her SP into CP, giving H a half interest in it that he didn't have before. Therefore, H is advantaged and must prove that no undue influence was exerted over W. However, it is unlikely that he can do that. In 2012, H's law school friend (some serious questions about moral character arise here) helped him gain an interest in the lake cabin by persuading W to convey the property to "Hank and Wendy as joint tenants with right of survivorship," telling her the only purpose of the new deed was to avoid probate. W believed H's assertion that probate avoidance was the only aim

and executed the new deed. Not only does H seem to have no evidence to rebut the presumption of undue influence, the evidence actually points to the fact that H worked a fraud on W, which is a very serious lapse of fiduciary duty indeed.

Remedy for Violation of Fiduciary Duty

A spouse who breaches their fiduciary duty of good faith and fair dealing may be forced to provide an accounting, make disclosures, reconvey titles, pay attorneys fees of the other spouse, or even make an offset against their own share of the CP interest in favor of the spouse whose trust was violated.

If the court finds that H violated his fiduciary duty to W by tricking her into conveying the lake cabin into CP title form, W's remedies may include having the title reconveyed back into SP as well as attorneys fees against H.

Conclusion

Despite the CP presumption set up by the joint title form, it is unlikely that H will be able to overcome the presumption of undue influence since he tricked W into conveying her SP cabin into CP form. W will be able to reform the title and may even be able to pursue additional remedies against H for his serious breach of fiduciary duty.

~~GREAT~~

PAINTING

Separate Property

Property acquired prior to marriage, after separation, and during marriage by lucrative means, that is by gift, bequest, devise, or descent, is SP because it was not acquired through the labor of skill of the spouses during the marriage. Provided that the owner of the SP either keeps it separate or at least is able to trace it within commingled accounts, it

will be treated as SP at divorce and not subjected to equal division requirements. Likewise, any rents or increase in value earned by the SP remain SP.

Wendy inherited the painting in 2011 as SP from her uncle. Because the painting is not titled, even though it is now worth 10 times more, it is not subject to any presumptions or pro tanto division. There are also no facts to suggest that the community acquired any interest in the painting at any point; simply hanging it up in the cabin has no legal significance, regardless of the characterization of the cabin. The increase in value is also SP because the painting is SP.

Conclusion

The painting, along with its increase in value, is SP because Wendy inherited it from her uncle.

BOSTON HOUSE

Quasi-CP

Property acquired in a non CP state, that would have been CP if acquired while domiciled in California, is treated as SP during marriage but divided according to CP rules at divorce or death.

H and W married while students in 1999. After graduation, H took a job with an engineering firm and W stayed home to raise their child. They used their savings and obtained a loan with a 15-year mortgage to buy a house, with subsequent payments out of H's earnings. The title to the home was taken in H's name alone. Because MA where the home is located is not a CP state, the house is at most quasi-CP. There are no facts to explain whether the savings they used for the downpayment were earned during or before marriage. If during marriage, the earnings themselves are quasi-CP, just like the mortgage

obtained during marriage (marriage of Aufmuth) and subsequent payments from H's quasi-CP earnings, and so the entire house is also quasi-CP. If the downpayment came in part from pre-marital SP savings, then a Moore/Marsden type calculation will need to be employed.

Moore/Marsden

When a SP home is paid for in part with CP, the interests are apportioned pro tanto and both estates share in any increased property value. The calculation of interest is based on the total contribution towards principal made by each estate, divided by the entire purchase price, then multiplied by the current value of the home.

In this case, there are not enough facts to tell where the downpayment came from and how much of an interest in the Boston property may be attributable to either or both spouse's SP.

Title Not Dispositive

QD&AT!

Title in the name of one spouse is not dispositive if the general CP presumption applies.

The fact that H's name alone is on the title the Boston house does not make it SP if it otherwise qualifies as quasi-CP. During the marriage, the Boston house -- and any rents earned from it -- will be treated as H's SP for all practical purposes (with the possible exception of access by W's creditors, though the constitutionality of that is currently unsettled) but at marriage it will be divided as quasi-CP.

Jurisdiction of the Family Court Over Quasi-CP Realty

California courts technically lack jurisdiction over quasi-CP real property in other states. The laws of the situs apply during probate via ancillary administration. At divorce, the

court will attempt to craft a remedy that avoids the issue by requiring the parties to deviate from in-kind division, convey titles between each other, or provide the cash value of the interest.

Because Boston is not a CP state, the California Family Court will need to craft a solution to division of the couple's property that effects a substantially equal division while avoiding the actual in-kind division of the Boston property. There are not enough facts available to suggest what that might be, but possibilities include giving W more of the California property, ordering H to convey a part interest in the Boston property to W, or having H pay W for the value of the interest she is entitled to.

Conclusion

The Boston house is likely all or substantially quasi-CP because it was bought during marriage with all or mostly all marital earnings. If the earnings and house had been acquired in California, they would have been CP. Therefore, at divorce, the Boston house must be divided as though it were CP.

WENDY'S EDUCATION

No CP Interest in Degree

The community does not acquire an interest in the educational degree of a spouse who obtains an education during marriage for the purpose of increasing earning potential.

In 2011, Wendy went back to school. She got a professional degree in interior design, which might seem like something a bored housewife would do, however she then used her degree to open her own interior design business so it clearly increased her earning potential. Her three-years of schooling were entirely paid for by H's CP earnings, regardless the degree and knowledge belong solely to W.

Right to Reimbursement

However, when one spouse is educated in whole or part with CP funds, the community may seek reimbursement for educational expenses (but not general living expenses). If more than 10 years have elapsed, there is a presumption that the community has already benefited and reimbursement may not be available.

Although the community has no interest in W's training which remains unique to her, it may have a right of reimbursement for the costs of putting her through school because her earning potential was increased. W may argue that because she and H were both in school when they married, she does not have to reimburse the community because both spouses benefited from the chance to obtain an education. However W already received the same education opportunity as H back in Boston, so it is likely the court would find she has a duty to reimburse the community for any actual educational expenses, e.g. tuition and fabric swatches.

Because she graduated in 2014 and they are divorcing in 2021, there has not been enough time yet to set up a presumption that the community already benefited. On the other hand, W may argue that her highly successful business has already brought in a great deal of earnings in the 7 years since she graduated, and so the community has already gotten its fair share, especially considering how hard she worked.

Conclusion

The community has no ownership right in Wendy's interior design degree, but it likely has a right to reimbursement for the CP earnings used to put her through school.

WENDY'S INTERIOR DESIGN BUSINESS

CP Business Valuation: Goodwill Included

Great Analysis

A community property business operated primarily by one spouse is still subject to division in dissolution. Its value will include any goodwill that inures due to the efforts of the managing spouse. Courts will either use a Market Rate Valuation that looks at the price the good will would command if sold, or Capitalization of Past Excess Earnings, to determine how much the extra value of the business is responsible to the spouse's good management. In either case, an expert witness is generally needed to help the court and the parties understand the actual value. Buyout agreements will be considered if one is in place, but they are not dispositive.

FANTASTIC

Because Wendy started the business during marriage and there are no facts to suggest she used SP to do so, it is a wholly CP business. In valuing the business for division during divorce, the court will also take Wendy's goodwill into account. Because it is the type of business that relies primarily on the skill and reputation of the operator, the court will likely look more towards the Capitalization of Past Excess Earnings method, which does a better job of estimating the value of the business in the hands of the managing spouse. ↙ ↗
The calculations include projecting a reasonable rate of interest on the assets of the business as well as any earnings beyond what a typical professional might have been paid.

Conclusion

Wendy's business is entirely CP and will be included in the equal division of property. It will be valued in part based on the good will generated by W's hard work, enthusiasm, and skill.

END OF EXAM

2)

GCPP: California is a community property state. Any property obtained during marriage has a rebuttable presumption that it is community property. Any property obtained before marriage, after the date of separation or by gift bequest inheritance is considered separate property. The rebuttable presumption can be over come by a preponderance of evidence with the burden on the seperatizer. The characterization of property as community or separate property asset depends on three factors 1. The source of the property 2. Any actions that the couple took to change the characterization of the property. 3. Any statutory presumptions that may follow the asset

Division in Kind:

Unless stated in a writing or orally to the court, all community property assets will be divided evenly at divorce. In Kind division calls for the division of each asset, and not the total estate.

Marital Economic Community-

The Marital Economic Community begins at Marriage and ends at the date of separation. The date of separation occurs when the a member of the MEC has the intent to end the marriage and their actions are consistent with that intent.

Here, as a likley Putative Spouse (discussed later) the MEC would begin in 2016 when Wanda began her good faith belief that the couple was married. In a putative spouse scenario, the MEC ends as soon as the putative spouse discovers that their marriage is not legitimate.

Therefore, the MEC begins in 2016 and ends in January 2020 upon Wanda finding out the marriage was void.

GOOD

Putative Spouse-

A Putative Spouse is someone who has a subjective good faith belief they are married, when in reality the marriage is void. A Putative spouse is given the option to opt in to the community property system in order to ensure and protect the assets accrued over the void marriage.

Here, Wanda is likely to be determined a Putative spouse. Her husband is a lawyer (superior education, training in the law) and it is reasonable she would take him at his word, she has no reason not to believe him. We don't get any back round facts on Wanda, but the subjectiveness of the test will depend on her education and background, and ultimately her good faith belief in the validity of the Marriage. Hal would have to provide factors that would show Wanda does not have a good faith belief in the marriage and should know the marriage is void. No such facts appear in the fact pattern. Ultimately, it will be Wanda's decision to opt in or out of the community property system. In this scenario she may want to opt out as she likely has a separate property and she could avoid her assets liability to the child support claim in the community property system.

Therefore, Wanda is likely a Putative Spouse.

GREAT ANALYSIS

Common Law Marriage-

California does not recognize common law marriages, but will recognize valid common law marriages from other states.

Here, the Alabama Common law marriage is invalid. California will recognize Wanda's putative spouse status but not the common law marriage as it is void.

Therefore, California will not recognize the common law marriage.

Quasi Community Property (QCP)-

Is property obtained while domiciled outside of California but would have been community property if domiciled inside of California. The court treats this essentially the same as community property.

Here, the Alabama property will not be considered QCP as it was obtained while being domiciled inside of California.

Therefore, the Alabama property would be considered CP and not QCP

Rights to the Parcel of Land-

GCPP: Defined Above, Community Property, Separate property defined above

Here, earnings during marriage are considered community property. Even though Wanda has deposited her earning in a separate bank account the funds maintain their community property characterization. If Wanda opts into the community property system through her putative spouse status the property will likely be community property. If she decides to opt out and the marriage is void, those two years of earnings are her separate property, easily tracible (separate bank account) and she can prove that the property was intended to be separate property as she took title alone. However, under the GCPP her taking title alone will not overcome the presumption of community property, and the property being purchased by CP funds will maintain the property as CP.

Therefore, Under Community property principles the parcel of land is community property.

GOOD DISCUSSION

The Sculpture -

SP - defined above

Here, the Wanda "Inherited" an expensive sculpture. Inheritance will make the initial characterization of the property to be separate property.

Therefore, the Sculpture will initially be considered separate property.

Transmutations-

Starting January 1 1985, all transmutations of property must be in writing. The writing must be an express declaration by the adversely effect spouse acknowledging or consenting to the change in the characterization of the asset. The adversely affected spouse must know its being changed from SP to CP.

Here, the fact patterns earliest date is in 2015. All actions taken in the fact pattern will take a writing to change their characterization. The verbal terms such as "our collectors prize" are not enough to change the character of the asset" No such writing occurs in the fact pattern, therefore the sculpture will maintain it's original characterization.

Therefore, the sculpture will be separate property unless an exception applies

Gift Exception- There is a gift exception for items of personal tangible property (jewelry, clothing, wearing apparel) that are used primarily or exclusively by one spouse and of relatively non substantial value.

Here, Wanda will argue that this is not a gift. She will argue that a statute is not something of personal tangible nature such as jewelry or wearing apparel. Hal will argue that it is. The courts will likely find that its an acceptable form of a gift, but may fail on the other merits. Both spouses are enjoying the property so its not being principally or exclusively enjoyed by one spouse. The sculpture is also stated to be expensive. While value is relative

to wealth, if the value of the sculpture is relatively substantial to the couples wealth it is likely not a gift. Wanda only had 60,000 dollars in her bank account and Hal was behind on Child support so it is likely that an expensive sculpture is not considered a gift as its of substantial value.

Therefore, the sculpture is not a gift and is Wanda's seperate property.

*GREAT
DISCUSSION*

Child Support-

Community property funds are liable for child support, however they must be first paid by available separate property. The CP earnings are not reachable as long as they are in a separate bank account and not commingled.

Here, the child support claim can likely can reach the CP, and Hal's SP. However, they will not be able to reach Wanda's SP, or her CP from earning kept in the separate bank account. The community may seek reimbursement if any CP payments were made with SP available. At divorce, Hal will take his child support debt with him.

Therefore, the CP and Hal's SP will be liable for the child support payments.

END OF EXAM

3)

California is a community property state. All property acquired during marriage is presumed to be community property. All property acquired before marriage or after permanent separation is presumed to be separate property. In addition, any property acquired by gift, devise or bequest is presumed to be separate property. To determine the character of an asset, the court will trace the source of funds used to acquire the asset. At divorce, community assets are divided equally in kind unless a special rule requires deviation from the equal division requirement or the spouses agree otherwise in writing or by oral stipulation in open court.

Marital Economic Community

The marital economic community begins on the date of marriage and ends by the death of one spouse or on the date of separation. To terminate the marital economic community, there must be a complete and final break in the marital relationship that is (1) communicated expressly by one spouse that their intent is to end the marriage and (2) conduct that is consistent with that intent.

Here, the marital economic community began in 2004 when Henry (H) and Wilma (W) married. The marital economic community ended in 2016 when W fell in love with her Yoga instructor and filed for dissolution of marriage. Falling in love with someone else and communicating that to your spouse is express intent to end the marriage and the filing for dissolution is conduct consistent with that intent

GOOD

Thus, the marital economic community existed from 2004-2016.

1. The Clever Swans

Characterization of the Business

The characterization of an asset is determined by three different factors: (1) the source of the funds used to acquire the asset (2) any conduct either spouse took to change the character of the asset and (3) and statutory presumptions that regarding the asset.

Here, the business was acquired in 2008. The source of funds used to acquire the business came from a \$100k inheritance that W received after her parents died in a car accident. With those funds, W started the business.

Since the business was started using SP funds, the business is SP.

GOOD

Transmutation

During marriage, a couple may change the character of an asset from community to, separate to community, or separate property to another separate property. For a transmutation to be valid, a spouse must expressly state in writing the clear intent to change the character of the property and the party adversely affected demonstrates acceptance of the change of character of the asset. There is a presumption of undue influence if a party is disadvantaged by the transmutation. The party who gains the advantage carries the burden to demonstrate that the disadvantaged party willingly and knowingly agreed to the transmutation.

GOOD

Here, there are no facts to indicate that W or H attempted to transmute the character of the business from W's SP to the couple's CP.

Thus, no transmutation applies.

Allocation of Business Profits

If a SP business increases in value due to the contribution of community labor, the community is entitled to a pro tanto share of the increased value of the business. A court

can determine the SP & CP value by application of the Van Camp Method or the Peirera method. Courts are not required to apply either but will apply what they find is best in the interest of justice.

COURT

Here, W opened her SP business in 2009, after marriage. The business increased due to the contribution of her labor, giving the community a share in the increased value in her business.

Thus, the court will apply either method to determine what value of the business is CP.

Van Camp Method

The Van Camp Method is used to allocate business profits. The method determines the reasonable value of the spouses services based on fair market value and deducts family expenses from that amount to determine the CP portion. The remainder is the SP portion. Applies when economic circumstances are responsible fore the increase in business value. This method is more favorable to the SP owner.

Here, the reasonable value of W's services is \$100,000 annually. W spends \$450,000 on family expenses annually, making \$350,000 the CP portion. Since the CP would be divided equally, H would be given \$175,000 value in the business and the remainder would be SP.

THIS WOULD MEAN THAT THE CP PORTION WAS \$0.
SP = 1.5 million.

Peirera Method

The Peirera method is also used to allocate business profits. This method takes the value of the business at marriage and multiples it by the interest rate of return, currently 10%, which determines the SP portion. Applies when personal skill, long hours, and hard work is responsible for the increase in business value. The CP portion is the remainder. This method is favorable to the community.

→ THE VALUE WAS \$100,000

Here, the facts do not indicate the value of the business at marriage. However, that value would be multiplied by 10 to determine the SP. The CP portion would be the difference in that amount. This number is likely to be higher, which is what H would request. W will prefer that the court go with this method.

Thus, the court is likely to choose the method that applies in the best interest of justice. H made raising their daughter his career, allowing W to flourish in her own business. The court may rule for the Peirera method, finding that W may have not succeeded as well as she did had her husband not been their to raise their daughter. However, this is speculative but possible

MORE ANALYSIS PULLING FACTS FROM HYPO NEEDED TO ADVISE FOR WHICH METHOD WOULD BE USED.

2. The SLO Residence

Characterization of the Home

The characterization of an asset is determined by three different factors: (1) the source of the funds used to acquire the asset (2) any conduct either spouse took to change the character of the asset and (3) and statutory presumptions that regarding the asset.

Here, the home in SLO was acquired in 2011, after marriage. The source the home was inherited from H's grandmother, making the home H's SP. W may claim that the home is CP because it was acquired during marriage, the home was the primary hoe for the family, and the couple openly held the home belonged to both of them. However, without a valid transmutation in writing, the home presumably was H's SP.

GOOD

Thus, the court is likely to find the home is H's SP.

SP Funds used to improve the SP Property of the other spouse

When a spouse owns a SP property and the other spouse uses their SP funds to make improvements of the house, the improvements become part of the realty. However, the improvements do not grant the SP contributor to any ownership interest in the home. At divorce, the SP contributor may seek reimbursement for the upgrades or the value of appreciation of the realty, whichever is greater. At death, Lucas applies, making the contributions a gift of CP.

good

THIS IS CP.

Here, the home is presumably H's SP. W used her SP funds (income from her business) to install a pool, patio, and outdoor dining area in the home. Since W used her funds to improve on H's SP, at divorce, she can either claim reimbursement for the upgrades, which was \$25,000 or see the value of appreciation, which the home appreciated, which was \$500,000 at the time of separation.

Thus, W will be entitled to be reimbursed in the amount of \$500k for the value of the upgrades to the home.

3. The Rolex Watch

Characterization of the Watch

The characterization of an asset is determined by three different factors: (1) the source of the funds used to acquire the asset (2) any conduct either spouse took to change the character of the asset and (3) and statutory presumptions that regarding the asset.

good

Here, the watch was acquired by H in 2011. The source of the funds is unclear but possibly from CP. Since the watch was a birthday gift, H will claim the watch is SP. W may claim it's CP because it was acquired during marriage using CP funds, making it CP.

Thus, the court will apply the CP presumption, making the watch CP unless H can prove otherwise.

Transmutation

During marriage, a couple may change the character of an asset from community to, separate to community, or separate property to another separate property. For a transmutation to be valid, a spouse must expressly state in writing the clear intent to change the character of the property and the party adversely affected demonstrates acceptance of the change of character of the asset. There is a presumption of undue influence if a party is disadvantaged by the transmutation. The party who gains the advantage carries the burden to demonstrate that the disadvantaged party willingly and knowingly agreed to the transmutation.

Here, there are no facts of a writing that took place to change the character of the watch.

Thus, no valid transmutation exists.

Inter-spousal Gift Exception

The transmutation writing requirement does not apply for inter-spousal gifts personal in nature, that will be used primarily by the receiving spouse, and the gift is substantial in value when taking the finances of the marriage into consideration

Here, H will argue that the transmutation writing requirement does not apply because the watch was a gift. He will claim the gift was personal in nature because the watch had a personal inscription that said "to my dearest husband Henry", the watch would only be worn by him because they both can't enjoy it at the same time and the watch was substantial in value when compared to the finances of the parties. Additionally, the watch states that it is a gift (a gift from your wife), making it clear that W intended the watch to be a gift.

Thus, the court is likely to find the interspousal gift exception applies and find the watch is H's SP.

END OF EXAM

CBAT 203!