

Monterey College of Law – Hybrid

Community Property – Sec. 2

Final Exam

Fall 2023

Prof. E. Childs

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

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

Question 1 - 60 Minutes

David and Victoria met in September of 2011 when Victoria was a foreign exchange student from Spain and David was a young, talented soccer player trying to make it to the professional soccer league. Although there was a bit of a language barrier, the two spoke the language of love and fell deeply in it very quickly. Over the next two years, David made it onto the professional soccer team, Inter Cali. He was about to become a very famous and wealthy man.

At the same time, Victoria's student visa was about to expire, and she found out she was pregnant with David's child. David asked for her hand in marriage, and she accepted. The two felt rushed to tie the knot because of Victoria's expiring visa but Victoria came from a very traditional Catholic family and her mother insisted that she have an elaborate, expensive, traditional wedding in her village's cathedral in Segovia, Spain. So, they made big plans, spent big money and invited hundreds of people to their destination wedding scheduled for December 24, 2013. A month later, \$450,000 had been spent on food, a chartered plane to fly 150 friends and family to Spain, hotel rooms for those folks, flowers, photographers, etc. This was going to be the wedding of the century in Victoria's little village.

Before the wedding, one of the soccer team's business attorneys, Slim Shady, pulled David aside and told him that all the players should have a pre-nuptial agreement (PNA). Slim said he would find a good PNA off the internet, explain it to Victoria and take care of everything.

Slim drafted up the agreement which, in a nutshell, set forth the following: 1.) If the parties separated before 10 years, Victoria would waive all right to spousal support; 2.) If either party cheated on the other, the non-cheating party could file for divorce and receive an additional \$500,000 from the division of assets without offset to the cheating party; 3.) If Victoria ever wished to move back to Spain with the parties' children, she waived her right to child support; 4.) All property acquired in David's name alone during marriage would be David's separate property upon dissolution.

On the chartered flight over on December 20, 2013, Slim approached Victoria with the document (written in English). He summarized the provisions and told her that if she didn't sign it, David would not marry her. Victoria could not find an attorney in time to consult with and in a panic, signed the PNA. The couple married on December 24, 2013.

Victoria is now in your office for a consultation. David, an international soccer superstar, model and entrepreneur, filed for divorce on November 1, 2023. Victoria wants to understand the legal repercussions of the PNA. Please give your legal opinion.

Answer according to California law.

Question 2 - 60 Minutes

Karen met Susan in 2011 and the two fell madly in love. In 2013, they married legally in California. This was the second marriage for both and they each brought property to this marriage.

Karen, a retired judge, loved to bake. In 2010 she had purchased a small building in the Village of Arroyo Grande that had a great kitchen for baking. She began baking and selling standard French pastries and celebration cakes out of her little store, aptly named, "Your Guilty Pleasures Bakery." Over time and throughout the marriage, her little shop grew in popularity. Soon, there was a line out the door every morning. Karen couldn't keep products on the shelves. She rented the space adjacent to her, expanded her kitchen, hired more staff, and eventually ran a 24-hour operation, including online sales. Your Guilty Pleasures went from \$20,000 a year net profit, to \$2,000,000 a year net profit by the date of separation.

Susan was a high school teacher. She was also much younger than Karen so she was still on her first career. Susan started teaching at her local high school in 2010 and is still teaching there today. She has a CalSTRS traditional retirement plan and supplemental 401(k) that she started on her date of hire which was August 1, 2010.

Susan brought a home into the marriage. Susan bought this home in the year 2000 for \$500,000 with a \$500,000 mortgage. At the date of this marriage in 2013, the home was worth \$1,000,000 and she owed \$300,000 on it. During this marriage, the parties paid the mortgage down to \$0. The home is now worth \$2,000,000.

Important dates: DOM: 1.1.2013. DOS: 1.1.2023

Karen is in your office for a consultation. Please give your legal opinion as to:

1. The bakery – how it will be characterized, valued and divided.
2. Susan's deferred compensation – how it will be characterized, valued and divided.
3. Susan's home – how it will be characterized, valued and divided.

Answer according to California law.

Question 3 - 60 Minutes

Henry and Wendy were married on 1.1.2010 and separated on 1.1.2022. Henry and Wendy are both teachers. Henry teaches high school and Wendy elementary. Neither had much money to hire an attorney, nor did they wish to fight, so they chose to negotiate and settle their divorce out of court themselves. The judgment has already been entered in this case and Henry is in your office for a consultation. The judgment was entered on December 31, 2022, and the date of the consultation is December 1, 2023. Henry brings up a few issues for your legal opinion.

In 2012, Henry inherited a beautiful home from his grandmother in Morro Bay, California which is located right in front of the iconic Morro Rock. His grandmother lived in that home since 1960 so you can bet that she bought it for the price of a Venti Mocha Frappuccino with whip. The home was paid for. Henry and Wendy wanted to fix it up but needed financing. Because Wendy's credit was so much better than his, the bank required Wendy's name on title. So, Henry put Wendy's name on title as Joint Tenants with Right of Survivorship. They fixed up the house and rented it out as a vacation rental, paying down the loan against the home with the rental profits. This home is worth \$2,000,000.

Henry bought Wendy a lady's Rolex when she graduated from her teaching program in 2021. The Rolex cost \$20,000, and Wendy is the only one who can wear it as it is a lady's band and too small for Henry's wrist.

The parties did everything on their own, using the internet and a book to guide them through the divorce process. They divided the Morro Bay home equally; Wendy got her Rolex.

Henry confides in you that he has a porn addiction. Wendy found him again looking at teenager porn where the actors are all over the age of 18 but dress up to look like they are teens. Henry has a penchant for this type of pornography and watches hours of it a day, every day. No one knows about this issue except Wendy and his treating professionals.

During his negotiations with Wendy, she threatened to expose his sex addiction on social media and to his parents if he didn't "settle this quickly and fairly" and sign the agreement she drafted up.

He has come to you seeking advice about:

1. The Morro Bay home.
2. The Rolex.
3. Post-judgment remedies available to him.

Answer according to California law.

5 Issue: Is this PMA enforceable?

Rule:

- 10 1. **GCPP: Community property:** California is a community property state. There is a **rebuttable presumption** that all property **acquired during the marriage** is community property, while all property acquired **before** marriage, or after **permanent** separation or by gift or **inheritance** is presumed to be separate property. This presumption may be **rebutted** by a **preponderance of the evidence** and the **burden** is on the separatizer. The characterization of an asset has either community property or separate property depends on three factors: (1) the **source** of the asset, (2) any **actions** by the parties that may have altered the character of the asset, and (3) any statutory **presumptions** that apply to the asset.
- 5 2. **Separate property:** All property acquired **before** marriage, after entry of **judgment**, earnings after the **date of separation**, property acquired by **gift, bequest, devise, ~~disent~~ descent**, as well as **rents, issues and profits** of separate property.
- 5 3. **At dissolution:** all CP is equally divided between the parties unless they have otherwise agreed in writing, orally stipulated to an open court, or an exception applies to the general rule of equal division of CP at divorce. A spouse's SP remains his or her SP at divorce. With these general principles in mind, each property will be assessed individually.
4. A premarital agreement (PMA) is an agreement entered by two parties in **contemplation of marriage**, which becomes **effective upon marriage**. The PMA can change the **character** of assets, but there are some requirements that must be met for the PMA to be valid.
 - 10 a. The agreement **must be in writing**,
 - b. **signed** by both parties, and
 - c. must not violate **public policy** (cannot promote divorce or be unconscionable).
 - d. Parties may not contract over rights to **child support** as those are the children's rights and cannot be contracted away.
 - e. PMAs regarding spousal support are enforceable only if:
 - i. (1) the party against whom enforcement is sought was represented by **independent counsel** and
 - ii. (2) the enforcement of the provision would not be **unconscionable** at the time of enforcement.
 - f. California has three broad parameters that apply to PMAs:
 - 10 i. (1) understanding – the parties must understand the rights that are being given up;
 - ii. (2) voluntariness – the parties must be acting voluntarily and not influenced by coercion; and

Plus a general writing/quality assessment.

iii. (3) fairness and full disclosure – the party requesting the PMA must fully disclose their assets.

- 10 {
- g. The **Bonds** case cemented these requirements but added more as well.
 - h. Parties to PMAs must have **independent counsel** (or expressly waive independent counsel in writing);
 - i. be given **7 days to review** (unless represented by independent counsel from the outset of the negotiations and multiple drafts of the PMA are exchanged);
 - j. be fully **informed of the rights** at stake under the agreement; and be
 - k. **proficient in the language** in which the agreement is written.

Application:

- 5 1. Waiver of Spousal Support: Against public policy as this is promotive of divorce and may be unconscionable at the time of enforcement.
- 5 2. Cheating Provision and \$500,000: Against public policy as this provision is promotive of divorce.
- 5 3. Waiver of child support if move to Spain: Against public policy to waive child support as it is the child's right to receive it.
- 5 4. Property acquired in David's name alone DM is his SP: Parties can contract to do this. However, did Victoria receive proper counseling from independent counsel to understand what she was contracting away. Probably not.
- 5 5. No independent counsel for Victoria: She couldn't find an attorney to meet with. Was rushed, on the plane. "in a panic"
- 5 6. Not written in language in which she was proficient: Says that when they met, "Although there was a bit of a language barrier..." so it is unlikely that in two years Victoria became proficient in English to the point where she understood contract law and legalese. The contract should have been written in Castilian Spanish.
- 5 7. 7 days between receipt and signing: Not clear when she signed it, but she only had at most, 4 days to review based on fact pattern.
- 8. Disclosure - David very wealthy man
- 5 **Conclusion**: This PMA is likely not enforceable in court of law.
- 9. Duress: Biggest wedding in Segarra's century

5 **Issue:** How will each of the following assets be characterized, valued and divided?

Rule: (Ok for students to refer these legal statements to all three assets for this question.)

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1. **GCPP:** **GCPP:** Community property: California is a community property state. There is a **rebuttable presumption** that all property **acquired during the marriage** is community property, while all property acquired **before** marriage, or after **permanent** separation or by gift or **inheritance** is presumed to be separate property. This presumption may be **rebutted** by a **preponderance of the evidence** and the **burden** is on the separator. The characterization of an asset has either community property or separate property depends on three factors: (1) the **source** of the asset, (2) any **actions** by the parties that may have altered the character of the asset, and (3) any statutory **presumptions** that apply to the asset.
 2. **Separate property:** All property acquired **before** marriage, after entry of **judgment**, earnings after the **date of separation**, property acquired by **gift, bequest, devise, dissent**, as well as **rents, issues and profits** of separate property.
 3. **At dissolution:** all CP is equally divided between the parties unless they have otherwise agreed in writing, orally stipulated to an open court, or an exception applies to the general rule of equal division of CP at divorce. A spouse's SP remains his or her SP at divorce. With these general principles in mind, each property will be assessed individually.

4. The Bakery

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- a. **Characterized** – The bakery is a SP asset as it was acquired in 2010, prior to the DOM 2013. However, the business grew in value during marriage through Karen's skill, labor and effort which is a CP asset, meaning the community acquired an ownership interest in the business. Therefore, it is a commingled asset and must be valued and divided if the parties cannot stipulate to the same.
 - b. **Valuation: Pereira/Van Camp:** When a business or asset is acquired as **SP but appreciates in value DM**, the C may have earned an interest in the SP. In order to determine the extent of the C's interest, court will apply either Pereira or Van Camp method of valuation.
 - i. When the **managing spouse's labor, skill, and effort** are the main factor contributing to the increase in value, courts apply the Pereira method: **(FMV of the business at disso - SP contribution + fair rate of return) = CP interest.**
 - ii. When the **nature** of the asset contributes to the increase, then the court will apply the Van Camp method: **(FMV of business at disso - (CP labor - family expenses paid) = SP interest.**
 - iii. Generally, the **Pereira method favors the community**, while the **Van Camp method favors the managing spouse.**
 - iv. The court has **discretion** to apply either method that it believes will result in the most just result.

5 c. **Application:** (Apply facts to law) shop grew in popularity DM. Line out the door, couldn't keep products on shelves, rented space adjacent to her, expanded kitchen, likely was the one who ran the operations. Probably not passive.

5 d. **Conclusion:** So, Pereira is the method the court will likely use.

5. Susan's Deferred Compensation

5 a. **Characterized** – commingled asset as she started earning her retirement before DOM in 2010 and kept working DM.

5 i. **Time Rule:** The courts will use the time rule to apportion CP/SP interests in a pension plan or shares of stock with a formula where the number of years worked DM is divided by the total number of years worked.

5 b. **Divided/Conclusion:** 10/13 = CP % and will be divided. Actuary will value the plan for asset division, or the plan can just be divided by the time rule.

35 6. Susan's Home

5 a. **Characterized:** This home is SP but since the community paid down the mortgage, it will be a commingled asset.

5 b. **Valued: Moore, Marsden, Aufmuth:** When the community pays down a SP asset, the community gains a pro tanto ownership interest in the increased or decreased value of the property to the extent that it reduces the principal debt for payments made towards the principal pay down (no interest, taxes or insurance is included.)

The courts will employ a formula called the **Moore/Marsden/Aufmuth** Calculation in order to quantify the SP interest v. the CP interest as follows:

Step 1: Determine pro tanto shares using the Aufmuth/Moore formula:

$$\frac{\text{SP down payment} + (\text{SP loan proceeds} - \text{CP contributions to purchase})}{\text{Historic Purchase Price}} = \text{SP \% ownership}$$

40%

$$\frac{\text{CP Contributions to purchase}}{\text{Historic Purchase Price}} = \text{CP \% ownership}$$

60%

10 **Step 2:** Reimburse the respective estates for the contributions to the purchase.

Step 3: Apportion marital appreciation. → SP = \$400K

→ CP = \$600K

→ SP = \$200K

→ CP = \$300K

c. **Divided:** plug in #'s to formula (Students know that I do not dock points for mathematical errors. I just want to see the formula and general understanding of the same.)

5 24

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5 Conclusion:

105 pts total & quality assessment.

Outline of Q3[Transmutations/Post-Judgment Remedies]
Childs – CP Fall 2023



5 Issue: What is the enforceability of the MSA?
Rule:

- 10
1. **GCPP**: Community property: California is a community property state. There is a **rebuttable presumption** that all property **acquired during the marriage** is community property, while all property acquired **before** marriage, or after **permanent** separation or by gift or **inheritance** is presumed to be separate property. This presumption may be **rebutted** by a **preponderance of the evidence** and the **burden** is on the separatizer. The characterization of an asset has either community property or separate property depends on three factors: (1) the **source** of the asset, (2) any **actions** by the parties that may have altered the character of the asset, and (3) any statutory **presumptions** that apply to the asset.
 - 5 2. **Separate property**: All property acquired **before** marriage, after entry of **judgment**, earnings after the **date of separation**, property acquired by **gift, bequest, devise, dissent**, as well as **rents, issues and profits** of separate property.
 - 5 3. **At dissolution**: all CP is equally divided between the parties unless they have otherwise agreed in writing, orally stipulated to an open court, or an exception applies to the general rule of equal division of CP at divorce. A spouse's SP remains his or her SP at divorce. With these general principles in mind, each property will be assessed individually.

1. The Morro Bay home

- 2.5
- a. ~~GCPP (refer to above) acquired DM. Presumed to be CP but...~~
 - b. ~~SP (refer to above) This is inheritance, normally SP but changed title.~~
 - c. **2581 Presumption**: There is a presumption that property titled in joint form at dissolution can only be rebutted with a showing that the parties agreed on title or in writing that they did not intend it to be as set forth in title. But if this clashes with fiduciary duty/transmutation principals, transmutation analysis prevails per public policy.
 - d. **Fiduciary Duty**: Upon marriage, a fiduciary relationship is created between the spouses that imposes the duty of highest good faith and fair dealing in transactions between themselves, and others as well as a duty of disclosure.
 - e. Transmutations:
 - i. Starting January 1, 1985, all transmutations must be in **writing**
 - 2.5 1. contain an **express declaration** acknowledging the **change in character** of the asset meaning a **present intent to change** the **character** of the asset made, joined in, consented to, or accepted by the spouse whose interest in the property was **adversely affected** by the transmutation.
 - ii. **SEQUENCE OF QUESTIONS**:
 1. Was there a valid transmutation as to form? If yes, then...

State: set aside, then relitigate transmutation
issue

2. Adversely affected spouse must show advantage:

- a. Parties in confidential relationship which is presumed to exist;
- b. Spouse benefitted relied on that relationship;
- c. Benefitted spouse participated in transaction;
- d. Advantage gained by bene'd spouse

3. Burden shifts to benefitted spouse to rebut the presumption of undue influence by showing:

- a. Freely and voluntarily entered into agreement
- b. Knew all the facts needed
- c. Knew legal effect of transmutation
- d. Fair and just
- e. Adequate consideration

4. Even if there was a valid transmutation the AA spouse must have waived their 2640 tracing rights in writing

iii. Application: There is not much in the facts that tell us what happened regarding the title. However, they couldn't afford an attorney for their divorce. Nothing says they had an attorney to advise them re the transmutation. Unclear if the title showed express declaration. They were in confidential relationship. W benefitted by acquiring a \$2m property she never had a right to under CA law. She participated in transaction by fixing up property. She gained an advantage. She could not show H knew all the facts when he signed the deed nor did he understand the legal effect of the transmutation. It doesn't seem fair and just at all.

iv. Conclusion: The transmutation is unenforceable and should be set aside.

2. The Rolex:

a. Issue: Is the Rolex Wendy's?

b. Rule: 852c exception to the transmutation rules for clothing, wearing apparel, jewelry or other tangible articles of a **personal nature** that is used entirely or **principally** by spouse, to whom gift is made and that is not of **substantial** in value, taking into account the **circumstances** of the marriage.

c. Application: Definitely personal in nature. Didn't fit his wrist. She wore it. Might escape the need for it to be in writing. But, they were school teachers. Probably not earning a lot of money and on the coast where cost of living is high, a \$20k rolex is substantial considering the circs of their marriage. They couldn't even afford one attorney to help them with their divorce, so \$20k is likely so high as to require a writing. No writing. Therefore, no transmutation.

d. Conclusion: CP.

3. Post-judgment remedies available to Henry:

a. Issue: Can Henry set this MSA aside?

b. Rule:

- i. CCP 473: Mistake, inadvertence, surprise, excusable neglect, -- 6 months
- ii. CFC 2122

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57.5
12.5
70.0

1. Fraud – 1 year after discovered or should have discovered
2. Perjury – 1 year after discovered or should have discovered
- 5 3. Duress – 2 years after date of entry of judgment
4. Mental incapacity – 2 years after date of entry of judgment
5. Mistake (as part of a stipulation) – 1 year after date of entry of judgment

c. Application:

- i. Maybe Fraud if she didn't really mean what she said, definitely duress. Was a high school teacher. Would for sure lose his job, entire career, if that had gotten out. Maybe argue mental incapacity. Hours a day of porn. Addict. Not of right mind. (11 months from entry of judgment. Would need to hurry to file something. 473 not available to him.)

- d. Conclusion: He has remedies to set the judgement aside but he needs to hurry. But he is going to expose his addiction, however. A risk he will have to take?

$$\begin{array}{r} 1 \\ 38 \\ 15 \\ \hline 53 \end{array}$$

$$\begin{array}{r} 1 \\ 88 \\ 15 \\ \hline 103 \end{array}$$

$$\begin{array}{r} 31 \\ 20 \\ 10.5 \\ 7.5 \\ 15.0 \\ 50 \\ 17.0 \\ 10.0 \\ 15.0 \\ \hline 100.0 \end{array}$$

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Exceptional

1)

General Community Property Presumption (GCPP)

10 California is a community property state. There is a rebuttable presumption that all property acquired while married and domiciled in California is community property (CP) with each spouses interest present, existing and equal. The burden falls upon the sepratizer to meet the preponderance of the evidence standard. Property is classified depending on the source to which it was acquired, were separate funds or community funds used; if there was any thing that occurred that would change the characteristic of the asset, such as a pre/post (transmutation) agreement; or are there any statutory presumptions that need to be overcome, such as the joint title presumption. Separate property (SP) is anything that was acquired before marriage, after marriage, by gift or bequest, or any associated rents or appreciations. Any property acquired while married and domiciled in another state to which would be considered community property in California, is considered quasi community property (QCP) Unless otherwise agreed to, upon death or dissolution property community property is divided up evenly between the spouses, with separate property remaining separate property. 5

5 **Issue:** Is the Premarital agreement between Victoria (V) and David (D) valid?

Rule:

Premarital Agreement (PMA)

9 A premarital agreement is an agreement in contemplation of marriage. A valid PMA requires that the parties enter it voluntarily, it be in writing, signed by both parties, and there be violations of public policy. California adds that both parties understand the rights they will be giving up, there be a full and fair disclosure of assets, and they enter the

(you just forgot the bit about child support...)

34

10 contract willingly. The Bonds case adds that the parties be represented by independent council or expressly waive their right to counsel, there be seven days to review the agreement or there be multiple drafts, the parties be proficient in the language, and there be a full understanding of the rights.

Analysis:

The facts state that Slim Shady(SS), an attorney for the soccer team D works for, drafted and had V sign a PMA. Therefore it is known there is a PMA.

Voluntarily

5 The night before V and D were scheduled to fly to Spain, SS approached V with the PMA and said the wedding would not proceed unless she signed the agreement. V felt very stressed as they were on a time crunch, had a lot of money out for the wedding, was pregnant, her student visa was experiencing and this stress influenced her hasty decision to sign the PMA. V could claim she was coerced into signing the PMA and thus making it a non-voluntary. However, D could claim that she still signed the agreement and had the option not to. The court would likely find that V signed the agreement voluntarily as she did not have a gun to her head.

In Writing

5 It can be assumed the agreement presented to V was in writing, as the facts state she was presented with a document in English and ultimately signed it.

Signed by both parties

The facts state that V signed the agreement but do not specifically state that D did. We can assume that D also signed the agreement for argument sake.

No violation of public policy

5 There appears to be a few violations of public policy contained within SS PMA. The are stipulations that mention child support, which is not a item that can be negotiated as it does not belong to either party and belongs solely to the child.

CA Specific Additions

Understand the rights they will be giving up

5 In this case the facts tell us that V did not have time to consult independent counsel, had a limited understanding of the language it was written in and was very briefly given the highlights of the document by a bias party, SS. Therefore it can be assumed that V did not understand what she was signing.

Full and fair disclosure of assets

5 There is not details in the facts to indicate if the PMA that SS had drafted included a disclosure of both parties assets. The document would need to include these items in order to be considered valid in form.

Enter the contract Willingly

5 SUPRA

Bonds Additional Requirements:

Represented by independent counsel or expressly waive their right to counsel.

5 The facts in this case tell us that V did not have time to consult with independent counsel as she to fly to Spain the next day to get married. The facts also do no specifically mention SS addressing Vs waving counsel nor did she sign anything stating it. D may

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claim that V waived her right to counsel by agreeing to see SS and have him explain everything. However, V could simply show that she was coerced/ forced into signing with out being given the time or option given her situation. Therefore we can determine that V neither sought independent counsel nor did she expressly wavier her right to counsel.

Seven days to review the agreement or there be multiple drafts

5 The facts state that V signed the PMA after SS presented it to her between December 20-24, means she only could have had 4 days to review it; assuming she didnt sign it on the spot being she had to travel from California to Spain. There also does not appear to be any evidence in the facts that indicate that V or SS prepared multiple drafts. Therefore we can assume that V did not have the proper amount of time to review the document, nor did she review multiple drafts.

The parties be proficient in the language

5 The facts state that V was a foreign exchange student from Spain and didn't speak the language well-she spoke the language of love well but not English. The facts also tell us that SS presented her with a PMA written in English. V could also make the claim that she is not proficient in the language and was not given a draft in her native language to review. This would mean that D, a California native and assumably a product of the k-12 system spoke English fluently and considering was given an unfair advantage over V as he was proficient in the language the PMA was given. Therefore we can determine that V was not proficient in the language but D was.

5 *Full understanding of the rights*

As stated SUPRA, V is not proficient in the language and was never given the opportunity to review a copy in a language she was proficient in so she didn't understand the document. Even if SS did explain the gist of the PMA to her she would more then likely

not have had the time fully understand the reason behind the document do to the cohesive pressure she was feeling. Therefore, there is no way that V had a full understanding of the rights she was giving up. Additionally, the facts do not indicate that D knew what SS was drafting nor that he reviewed it, so there is a chance that D did not have a full understanding of the rights he was giving up either.

Conclusion:

5 The PMA appears to have some flaws that would render it invalid. Therefore the GCPP as stated above applies to V and Ds marriage.

END OF EXAM

+5 for writing an exceptional essay. Very well done!

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100
Excellent

2)

Issue(s): Good!

5 How will Karen and Susan's assets (the bakery, retirement benefits, and home) be characterized, valued, and divided according to CA law? What is each party's interest in dissolution.

Community Property (CP):

10 CA is a community property state, meaning all property acquired from the date of marriage until the date of separation is considered to be equally shared in a 1/2 interest each between spouses. Property acquired during the marriage will be assumed to be CP and can be rebutted by the separatizer (the spouse who wants out of the partnership/marriage) by a preponderance of the evidence. Property is characterized as either community property or separate property by its source, the parties actions, or statutory presumption.

Separate Property (SP):

5 SP is all property held by one spouse before marriage or after the date of separation. The date of separation occurs when one spouse tells the other they no longer wish to be in a relationship as husband and wife and their conduct also speaks to this. SP is also property that is gifted to a one spouse, something they inherited, and any issues, rents, and profits they have as separate property before marriage.

At Divorce:

5 At the dissolution/divorce the Court will assess all property to determine what is separate and community. A spouse maintains their SP interest throughout divorce proceedings; however, this being said, the Court will assess property on an individual basis. CA courts have jurisdiction over community property, not separate property, but can state which property is CP and which is SP.

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The Bakery: ✓

Yes!
5 The facts tell us that Karen purchased a small building before the marriage in 2010 and started a bakery. The facts also tell us overtime THROUGHOUT THE MARRIAGE that her shop grew, she had a line out the door, and eventually rented more space, hired more staff, ran the business 24 hours/day plus online, and her profit soared from \$20K/year to \$2Million/year. The facts show us that her labor while married is what really started to take this bakery in a successful direction. This is important, because in CA when there is a separate property business and its value increases during marriage, the Community now has an interest in this business and at divorce the Court needs to decide what portion is the community's and what is the for the spouse who started the business.

5 There are two methods the court uses to make this decision: Pereira (P) and Van Camp (VC). Though the Court has discretion in the interest of justice as to which method they use, P traditionally benefits the Community (so Susan would want this method used) and VC benefits the managing spouse who started the business and is considered when the it is the nature of the business that increases the value of it not the hard work and sweat.

5 The formula for Pereira is: The Fair Market Value of the Business at Dissolution - (the Separate Property Contribution + the Fair Rate of Return) = the Community Property Portion or Interest.

5 The formula for Van Camp is: The Fair Market Value of the Business at Dissolution - (the Community Property Labor - Family Expensive Paid) = the Separate Property Portion or Interest.

Now, when the business is bought with community property and it increases in value after the date of separation methods known as Reverse Pereira and Van Camp are used and their formulas are as follows:

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Reverse Pereira: Fair Market Value of Business at Dissolution - (the Community Property Contribution + Fair Rate of Return) = the Separate Property Interest.

Reverse Van Camp: Fair Market Value of Business at Dissolution -(Separate Property Contribution - Family Expenses Paid) = the Community Property Interest.

*exactly
bonus
5
5* In this fact pattern, the reverse methods are not applicable. Though Karen may advocate for the Court to use Van Camp because it would be advantageous to her, the Court will most likely employ the Pereira calculation because we are told that overtime and THROUGHOUT the MARRIAGE that her (Karen's) hard work, literally 24 hours a day is what grew the profits of the business. A spouses skill, labor, hard work, etc. is considered the community and it is this sweat and perspiration doing the hard work of a baker (talking EARLY hours) and running a business that grew it, not just the nature of the asset/business which is what Van Camp considers.

Susan's Deferred Compensation:

*Good
5* Retirement benefits can be divided between divorcing spouses in several ways: they can be paid out, their can be a monthly payment arrangement, they can be carved out to mimic that the spouse collecting from the spouse with the retirement benefits acts as though they worked during this time, or an ex-spouse can wait until their former spouse starts drawing from their retirement to also receive benefits.

5 The facts tell us that Susan is a teacher and has CalSTRS. She starts teaching in 2010 and they divorce in 2023 so she has not been working too long to build up much of a retirement, nonetheless, Karen will be entitled to a portion of these funds for while they were married. CalStrs is an earned benefits plan so you earn while you work, after a certain number of year you are vested (we are not told what that number is via the fact pattern). This type of retirement pays out when you are eligible to retire and it becomes yours to keep even if you quit teaching once it is vested.

The calculation to determine the pay out to the other spouse (the one who did not work your job and get the pension but is a beneficiary of it by being your spouse is):

5 The #s of years worked divided by the # of years worked while married multiple by the value of the pension. So: # Years Worked/#s of years worked while married * value of pension.

$$\frac{120 \text{ mos}}{149 \text{ mos}} = 80.5\% \text{ CP}$$
$$\frac{\# \text{ years worked while married}}{\# \text{ years worked}} = \text{CP value}$$

This calculation will determine how Susan's deferred compensation (retirement both CalStrs and 401(k)) are characterized, valued, and divided.

Susan's Home:

5 CA recognizes when community property funds have been used to pay down a separate property asset, like a home. Determining the reimbursement to the community goes beyond 2640 dollar for dollar tracing because the community is now a partner in the home, they have an ownership interest in the home.

5 To assess the separate property interest and the community property interest of the asset, in this case Susan's home, the Court will use the Moore/Mardsen Calculation. At one time this was Moore/Aufmuth/Mardsen, but I believe now it is just referred to as a Moore/Mardsen Calculation. What the court will do under this method is: (1) assess the pro tanto interest each party has in the home; (2) they will then reimburse each estate; and (3) apportion the funds accordingly. yes

To determine the separate property interest the court will employ the following formulas:

Down Payment
5 (A) The Separate Property ~~Pay Down~~ + (Separate Property Loan Proceeds - the Community Property Pay down DIVIDED by the Historic Purchase Price = The Separate Property Interest

(B) The Community Property Pay Down DIVIDED by the Historic Purchase Price = the Community Property Interest.

5 Note the parties can be reimbursed for principal pay downs, improvements, but ~~not pro~~
~~pr~~ interest or insurance.

When the funds are finally apportioned, Susan will get \$200K that she paid towards the mortgage plus the SP value it gained before the marriage. The community may be reimbursed for the \$300 it paid down towards the mortgage and then it doubles in value again from \$1M to \$2M so this may split between S & K.

Conclusion:

5 The bakery will be evaluated under Pereira since it was Karen's community labor that really accelerated its success during her marriage to Susan. Susan's deferred compensation will be split with Karen based on how many years she was married to her, which is ten and it will be based on whether Susan is vested (which she probably is), and the Moore/Marsden method will be used by the Court to determine how Susan's home will be split and how the community and hence Karen will be compensated since the community helped to pay down this asset and it increased in value while SP and then CP.

Great!

END OF EXAM

3)

100
Superb

GCPP: General Community Property Presumption

Community Property:

10 California is a community property state. In California property acquired during marriage is community property. There is a rebut table presumption while domicile in California and property is acquired during marriage that there is a rebut table presumption that it is community property. The community property may be rebut table with a preponderance of evidence that it is not community property. The rebut-table presumption is usually rebut table by two method direct or indirect that fall under CFC 2640. The characterization of separate and community property depends on three factors: 1. the source of the asset, 2. the actions of the parties to alter the property, 3. any statutory presumptions in the state.

Separate Property:

5 In California, separate property is property before marriage that was gifted, bequest, dive, or descended and its rents, issues, and profits. Separate property is also property that was acquire after final judgment of dissolution. The earning and accumulations are also separate property if acquires after date of separation.

At divorce or upon death

5 At divorce all community property is divided equally by the court unless otherwise agree upon by a written agreement, or if orally stipulated in an open court. All separate property will remain separate property of either spouse. The court will analogize each assets

individually and make a fair and just ruling upon all the assets, and circumstances of the court.

MSA

25 Mutual separation agreements are valid if full disclosure of all assets where provided even if the agreement seems unfair or advantageous to one party over the other. However, there is a fiduciary duty of fair dealing and good faith. In these duties confidentiality is not a fiduciary duty. A court will validate the msa if both parties sign, there was no mistake, fraud, duress or undue influence or omitted assets.

Set-aside/ post judgment

3 A party may ask a court to set aside a judgment if there has been omitted assets, mistakes, fraud, undue influence. The court will treat the parties as joint tenants and the court will still have jurisdiction over the parties. However, the party seeking the set-aside judgement must show or demonstrate of the causes and it must occur before the statue of limitation runs out in order for the court to hear the case, some issues have 6 months whereas others have 2 years.

Transmutations

5 A party may alter the characterization of property if the adversely affected party makes it in writing, understands the impact, make and intent to alter the property. There is a presume undue influence applied with transmutation. The party adversely affected must show there is a relationship which is presume through marriage, the party benefitted was present and ackonlegde, the nefetted person recieved an advatange which is the altering of the property chaning the charizertization. The party who benefitted can rebutt the presumption by showing it was clear and fair, there was no undue influence, the adversely affected party sign and was aware of the impact and intent of the charization change.

2.5 However, even if there is a valid transmuation, the party if they did not waive there 2640 tracing rights may still recive dollar for dollar by showing direct or indirect tracing.

852 code states that personaly property such as gifts, cothers, shoes does not to be in a written agreement.

1. The morro bay home

5 Did the morro bay home go through a valid change of charizertion from sp to cp?

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852 code states that personaly property such as gifts, cothers, shoes does not to be in a written agreement.

Here, the Morro bay home is sp becuase it was inherit by Henry grandmother. Inherit property is sp unless it goes through transmuation. Here, Henry would have to sign the written agreement, make a express declartion to alter the sp to cp and have intened to change the sp to cp and have the beffitted spouse sign the agreement. A deed is valid in

form. here, the facts state that grandmother gave property to henry so that is sp. The facts state that the home was paid for completely. Henry would have to show that he is in a relationship or in confidentially with wendy which is presumed because they are married, that Wendy was present during the transmutation process, that Wendy benefitted from the title change which he can show because it is now worth 2,000,000 according to the facts.

The courts look at transmutation with speculation and there is a rebuttable presumption ^{yes} that there is undue influence that the befitted person can rebut. Here, Wendy would have to show that Henry changed the sp to cp on his own will because he wanted them to share the property. Wendy must show it was clear and understanding. here, it may be difficult for wendy to show because the facts state there was no attorney involve to help explain the process. Wendy would have to show that Henry made an express statement such as I change or give this sp to you or change to cp. Wendy would have difficulty showing that an express statement was made. Wendy must also show that Henry's intention was to change the sp to cp. However, the facts state that Henry only wanted to fix the house up but since his credit was not good they use Wendy. This shows that Henry's intent was not to change the sp to cp but only to fix the home. The court may also look at other factors that it seems needed. Here, Wendy must show that there was no undue influence. Wendy will have a hard time showing that this did not occur because the facts clearly state that Henry had a porno addiction to sex videos online and she unduly influence henry to negotiate the msa. wendy threatened to expose his sex addiction on social media and to his parents and told him to settle quickly and fairly and sign the agreement. The court will see this as undue influence . *I agree*

5 Therefore, the court will rule this an invalid transmutation. however, if for some reason a judge did say it was valid, Henry can still trace his dollar per dollar through 2640 tracing .

rights if he did not waive his rights. The judge would not even entertain the lender intent rule nor the title presumption which the facts mention above.

GCPP: General Community Property Presumption

Community Property:

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At divorce or upon death

At divorce all community property is divided equally by the court unless otherwise agreed upon by a written agreement, or if orally stipulated in an open court. All separate property

will remain separate property of either spouse. The court will analogize each assets individually and make a fair and just ruling upon all the assets, and circumstances of the court.

MSA

Mutual separation agreements are valid if full disclosure of all assets where provided even if the agreement seems unfair or advantageous to one party over the other. However, there is a fiduciary duty of fair dealing and good faith. In these duties confidentially is not a fiduciary duty. A court will validate the msa if both parties sign, there was no mistake, fraud, duress or undue influence or omitted assets.

Set-aside/ post judgment

A party may ask a court to set aside a judgment if there has been omitted assets, mistakes, fraud, undue influence. The court will treat the parties as joint tenants and the court will still have jurisdiction over the parties. However, the party seeking the set-aside judgement must show or demonstrate of the causes and it must occur before the statue of limitation runs out in order for the court to hear the case, some issues have 6 months whereas others have 2 years.

Transmutations

2. The rolex

Does the rolex need to be in writing?

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show there is a relationship which is presume through marriage, the party benefitted was present and ackonlegde, the nefetted person recieved an advatange which is the altering of the property chaning the charizertization. The party who benefitted can rebutt the presumption by showing it was clear and fair, there was no undue influence, the adversely affected party sign and was aware of the impact and intent of the charization change. However, even if there is a valid transmuation, the party if they did not waive there 2640 tracing rights may still recive dollar for dollar by showing direct or indirect tracing.

2 852 code states that personally property such as gifts, cothers, shoes does not to be in a written agreement. However, here, you have to look at all the facts, type of income, retire, mony in bank, cost or rolex, gift, who can wear it? *Given the circumstances of the marriage.*

10 Traditionally, per 852 personal gifts and personal property does not need to be in writing. Wendy may state that the watch was a gift and since the watch is not unisex and only for her it is a gift and does not reuire an agreement in writin that the gift was begifted to her. She would contend that the gift was given during a birthday, or annivarsay and that it shouldnt have to go through the writing componet of 852 code. The facts do not infer that henry wants it back or gave it to her becuase she said she would threaten to expose his sex addiction. The facts dont say when the watch was given. Foe example, lets say H gace watch to w durning their second year of marriage and W had yet to diuscover h had a sex addiction so we can conclude that he would have given it to her out of love. however, if the watch was given to w perhaps in the last 6 months before disoltuioon then it probaly was a undue infleunce.

5 Ultimately, the court would look at all the facts and make a fair and just decision. the judge may even divide it equally or just say it is a gift. although, the 20,000 does raise an eyebrow especially since she did threaten to expose his sex addiction. the court if it grants the set asidde motion will reevaulate all the assets including the watch.

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A party may ask a court to set aside a judgment if there has been omitted assets, mistakes, fraud, undue influence. The court will treat the parties as joint tenants and the court will still have jurisdiction over the parties. However, the party seeking the set-aside judgment must show or demonstrate the causes and it must occur before the statute of limitation runs out in order for the court to hear the case, some issues have 6 months whereas others have 2 years.

Transmutations

3. Post-judgment remedies available to Henry.

5 Is Henry afforded post judgment remedies and did he meet the statute of limitations?

5 A party may ask a court to set aside a judgment if there has been omitted assets, mistakes, fraud, undue influence. The court will treat the parties as joint tenants and the court will still have jurisdiction over the parties. However, the party seeking the set-aside judgment must show or demonstrate the causes and it must occur before the statute of limitation runs out in order for the court to hear the case, some issues have 6 months whereas others have 2 years.

10 Here, Henry can not argue a mistake because the SOL is only 6 months as well as an omitted asset. Here, the facts can imply a mistake however it is not a strong argument since SOL ran out. Henry's best odds of having the judgment set aside is to show that there was coercion and undue influence by Wendy. He would have to say that during the negotiations of the MSA, Wendy threatened to expose his sex addiction on social media and to his parents and told him to settle quickly and fairly and sign the agreement. He can ask the court to set aside the prior judgment and the court can reevaluate the facts herein and make a more informed decision. The facts state that this judgment occurred on December 31, 2022 and H entered the office on December 1, 2021. This means that the SOL has yet to run out with less than 1 month left for an undue influence set aside judgment. H entered the office at the right time.

5 Therefore, the court will grant H a post judgment remedy due to the undue influence by W and the threat of the sex addiction on social media. The judge may now divide the CP more evenly and may even sanction W for her undue influence. H will be relieved after the judge remedies the wrong caused by W.

END OF EXAM