

Monterey College of Law – Hybrid

Community Property – Section 1

Final Exam

Fall 2025

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 (100 points)

Henry and Wendy met in January 2015. Henry was from a wealthy pistachio farming family from the Central Valley. Wendy was a foreign exchange student from Barcelona. She was in the middle of her second year as a Sociology major when she met Henry. Catalan was Wendy's first language, but she was just as fluent in Castilian Spanish, Spain's national language. Wendy could read and write fairly well in conversational English.

After a few months of dating, Wendy found out she was pregnant and, since it was May, her student visa was about to expire. To enable Wendy to stay in the United States, the couple got engaged and planned a wedding at Henry's parents' ranch on June 1, 2015. Wendy's parents and two sisters intended on flying from Barcelona to Fresno to attend the wedding.

On May 25, 2015, Henry's mother approached Wendy with her longtime family attorney, Saul Goodman. She presented Wendy with a premarital agreement ("the agreement") and asked her to review and sign it before the wedding. The terms of the premarital agreement in general were as follows:

1. Wendy would not be entitled to any spousal support if the couple divorced within 10 years of June 1, 2015;
2. All of Henry's property would remain his separate property;
3. All of Henry's earnings during marriage would be his separate property as would hers, if any;
4. In the event of a divorce and Wendy returned to Spain with their children, Henry would not have to pay any child support.

Wendy read the document from start to finish and was very confused as she and Henry had never discussed any kind of agreement. She approached Henry on May 30, 2015 about the agreement. He said that it was his mother's idea and that she would not allow the wedding to go forward unless they both signed a premarital agreement. After an hour-long meeting with Mr. Goodman, who explained the basic terms of the agreement to her, Wendy signed on the dotted line.

On June 1, 2015, the wedding went forward as planned and was considered one of the biggest and most extravagant weddings in the history of their small farming community. The couple went on to have three children, and purchase their own ranch, and take over Henry's parents' pistachio operation. Things seemed to be going very well until May 1, 2025 when Henry served Wendy a Summons and Petition for Dissolution. Henry moved out of the family residence that day.

Wendy's current attorney, a civil litigator fresh out of law school, has informed her that she will unfortunately leave this marriage with very little property. She has come to you for a second opinion.

1. Is this an enforceable agreement? Specifically, are some parts enforceable and others not? If so, why?

Answer according to current California Community Property law.

Question 2 (100 points)

Harold and Waverly married on January 1, 2015 and separated on January 1, 2025. This was the second marriage for both.

Harold brought to the marriage a home in Shell Beach he purchased after his first divorce. He purchased this residence on January 1, 2010, for \$200,000.00, leaving \$100,000.00 as a downpayment, and mortgaging the other \$100,000.00. The value of the residence, pursuant to his retained expert, on January 1, 2015, was \$300,000.00 and Harold had paid down the mortgage to \$50,000.00.

During the marriage, the couple lived in this residence, and the community paid the monthly mortgage payments with money from the couple's joint checking account. Each payday, Harold and Waverly would have their checks deposited into this account and all community expenses were paid from it. The value of the residence as of the date closest to trial is \$500,000. Harold and Waverly had paid the mortgage off entirely during the marriage.

Waverly used money from her first divorce to put solar panels on the residence costing her about \$40,000.00. She also paid for their honeymoon with funds from her first divorce, costing her about \$15,000.00. Waverly is asking for her money back for both.

When the couple married, Waverly was self-employed, running a bakery called " Waverly's Pastry Shoppe." At the time of the marriage, the bakery was small, functioning out of a small 1,000 square foot building close to the pier in Pismo Beach. She sold cakes, French pastries and cookies to foot-traffic customers. The building from which she ran her business was paid for with money from her first divorce. Her expert says it was worth about \$500,000 on the date of marriage. At the time of marriage, Waverly employed one night baker and one employee to help her with customers. She worked about 60 hours per week and grossed \$10,000.00 per month on average.

Over the ten years she was married to Harold, Waverly worked very hard and became skilled at marketing her bakery on social media. People loved her silly TikToks and clever Instagram posts touting the taste and quality of her food. She amassed one million followers and began selling her baked goods all over North America. She grew out of her current shoppe and acquired the space next to it, adding 5,000 square feet to her shop. She hired three bakers, three cashiers, and three full time employees to fulfill her online sales. By the date of separation, the bakery was "practically running itself" as Waverly had automated online order fulfillment and had a competent staff to run the operations. At the date of separation, she was working 20 hours per week.

What are Waverly's and Harold's respective property rights and interests regarding:

- A. The residence
- B. The solar panels and Hawaii trip
- C. Waverly's Pastry Shoppe

Answer according to current California Community Property law.

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Question 3 (100 points)

Heath and Wynona married on February 1, 2015, and separated on February 1, 2025. This was the second marriage for each. Heath has two minor children from his previous marriage of whom he shares custody and pays \$1,000.00 per month in child support to their mother. He is and has always been current on his child support payments.

Wynona brought a residence to the marriage located in Carmel By-the-Sea, California . She bought it after her first divorce, and she and Heath lived in that house throughout their marriage. In June of 2015, to pay off some debt and make some improvements to the residence, Wynona sought to refinance it. Wynona's credit score was low due to some unpaid medical bills, and she did not qualify for the refinance alone. However, Heath had great credit and a good, stable job, so the bank suggested Heath join in to the new mortgage.

Neither party consulted with an attorney prior to this transaction. Wynona was a real estate attorney, and Heath was a paralegal working for a local family law attorney. As a condition of the refinance, and Heath becoming a guarantor of the mortgage, Heath's name was required on the title. They were both named owners and listed as "Joint Tenants with Right of Survivorship" on the deed. At the time of the refinance, Wynona's expert opines the house was worth \$2,000,000.00. The same expert believes the residence is worth \$3,000,000.00 at time of trial.

Heath had about \$200,000.00 left from his first divorce that he always kept in a separate, segregated bank account. He purchased a lady's Rolex for Wynona at the time of the refinance as a token of his affection for her. It is worth \$50,000.00. Wynona wore it religiously throughout the marriage.

It turns out, Heath was a bit of a joker and left Wynona for Naomi on December 31, 2024. He is claiming the residence is half his and wants the Rolex back from Wynona. Wynona wants 100% of the money used for child support payments returned to her.

What are each party's perspective rights and interest in the following:

1. The residence
2. The Rolex
3. The child support payments

Answer according to current California Community Property law.

Answer Key to Question 1 of 3: (105 points possible)

I. Issue, Legal statements: GCPP, PMA's (15)

II. General enforceability issues: (45)

A. W had no atty, hadn't waived right to atty

B. Freely/voluntarily entered

family coming from Spain

she was pregnant, visa expiring

time to review the document before signing

wedding would not go forward unless she signed

C. Terms are promotive of divorce

D. Language in which it is written - English v. Castillian/Catalan

III. Specific Enforceability issues: (40)

A. Enforceability of SS

promotive of divorce

unconscionable at time of signing and/or time of enforcement

B. Property will remain H's SP

C. All earnings dm H's SP

D. No payment of CS

public policy and law - cannot waive CS as it is children's right to receive

IV. Conclusion (5)

A. Some enforceable

B. Some not

Answer key to Question 2 of 3: (110 points possible)

I. Issue (5)

II. Rule - Legal statements: (10)

A. GCPP, SP

III. The residence: (40)

A. Legal statement and formula Moore/Marsden/Aufmuth, SP

B. Application: play with facts, do basic math or explain formula

C. SP downpayment and increase in value pre DOM

D. CP principal paydown only, CP interest

E. Conclusion

IV. Solar Panels (15)

A. Legal statement: 2640 tracing right

B. Application: play with the facts

C. Solar panels - dollar-for-dollar reimbursement

D. Hawaii trip - gift to community, no reimbursement

E. Conclusion

V. Wendy's Pastry Shoppe (40)

A. SP, valuation Pereira v. Van Camp

B. Application: play with the facts

1. Growth - space and employees

2. Increasing business via social media

3. but now "practically running itself"

4. skill, labor and effort v. passive investment

C. Conclusion: likely Pereira valuation, original investment plus fair rate of return.

Answer key to Question 3: (105 possible points)

I. Issue (5)

II. Legal Statements: GCPP, SP (10)

III. The residence: (60)

A. Transmutation legal statement

B. Analysis - multi-step

1. Her burden

a. all elements and apply facts

2. His burden

a. all elements and apply facts

3. Enforceable or not?

4. 2640 available if enforceable

B. Conclusion

IV. The Rolex (15)

A. 852(c) exception

B. Apply the facts - "lady's Rolex", wore it religiously, expensive given financial
circs of family...

C. Conclusion

V. Child support payments: (10)

A. Rule

B. SP available for each payment

C. Conclusion: Community gets reimbursed - Had \$200,000.00 in segregated,
SP acct.

VI. General conclusion (5)

1)

3 In California, there is a rebuttable presumption that all property (including income) acquired between the date of marriage and the date of separation is community property. Any property acquired before marriage, after the date of separation, or by gift or inheritance is considered separate property, unless an exception applies.

Date of Marriage- the date the two parties got legally married to each other.

Date of Separation- the date where two parties severed their marriage, where at least one party intended the permanent end of the marriage and their actions showed their intentions.

Assuming this was a valid marriage, community property laws of California apply.

2 Issue: Is the prenuptial agreement enforceable between Wendy and Henry?

10 **Rule**: A prenuptial agreement must be (1) made in contemplation of marriage, (2) signed by both parties, (3) be voluntary between the parties, (4) in a language both parties are proficient in, (5) not be against public policy and promote divorce, (6) cannot contain a restriction on child support, (7) if spousal support is restricted the party adversely affected by the spousal support restriction must be represented by counsel and the restriction cannot be unconscionable, (8) the parties must both be informed of their rights, (9) have independent counsel to consult with (unless waived in writing), (10) be given seven days to review the document (unless represented by counsel), and (11) disclose any assets or debts held by either party.

Prenuptial agreements can be void if they are signed under duress, coercion or a signer lacked capacity.

Analysis:

5 (1) Wendy and Henry are currently contemplating marriage. They met in January 2015 and have decided to get married on June 1, 2025. They were in contemplation of marriage at the time of the prenuptial agreement.

(2) After an hour long meeting with Mr. Goodman, Wendy signed the agreement on May 30, 2015. However, our facts do not indicate that Henry signed the agreement. But, because Henry stated that his mother said the wedding could not move forward "unless they both signed a premarital

agreement" we can assume that Henry did in fact sign the agreement, because Wendy and Henry got married.

5 (3) Henry's mother and her attorney approached Wendy with a premarital agreement that Wendy had not seen nor requested prior to the wedding. Wendy was also very confused at the agreement because she and Henry had never discussed any kind of agreement. Henry stated the agreement was his mother's idea and she would not allow the wedding to move forward unless the premarital agreement was signed. Because Wendy nor Henry requested the prenuptial agreement, neither of them would have signed it voluntarily.

10 (4) Wendy speaks Catalan and is fluent in Castilian Spanish, but is able to read and write fairly well in English. Assuming the prenuptial agreement is in English, Wendy may be able to read it fairly well, but if she is not proficient in the language, she may not have completely understood the terms and information it contained. It is questionable as to whether or not she would be considered proficient in English.

10 (5) A prenuptial agreement cannot be against public policy and promote divorce, and although the prenuptial agreement does not explicitly state any exact facts that would promote a divorce, it is enticing for Henry that if he were to get divorced within ten years of marriage, he would not have to pay spousal support. Because there is a timeframe for this term of the agreement, it may have been enticing for Henry to make sure he filed for divorce within ten years of marriage so he could keep more property/assets to himself. This clause would be against public policy.

5 (6) Clause 4 of the premarital agreement restricts Wendy's ability to collect child support if she returned to her home country of Spain with the children. Because prenuptial agreements cannot restrict child support, this clause is also void.

5 (7) The first clause of the agreement states that Wendy would not be entitled to any spousal support if the couple divorced within ten years. Because Wendy was a stay at home mother through the marriage, that may or may not have been anticipated because she was in college at the time of marriage. Neither party would have known what was to come in the future. However, Henry came from a wealthy family and worked for their farm, so it would be unconscionable for someone to give up their entire right to spousal support after marrying a person who has a high income. After divorce, both spouses should be able to maintain similar lifestyles to one another, and without spousal support from Henry, it is unlikely Wendy will be able to sustain a similar lifestyle.

Further, a party to a premarital agreement cannot waive their right to counsel if spousal support is at issue. Henry had his family attorney prepare the prenuptial agreement and present it to Wendy. However, Wendy was not represented by independent legal counsel.

5 (8) Wendy should have been informed of her rights to counsel and the right to review or make changes to the prenuptial agreement. Wendy was asked to review and sign the prenuptial agreement, and although she received the agreement and took a few days before signing it, she was not advised of her rights.

5 (9) Wendy attended an hour-long meeting with Mr. Goodman who reviewed the basic terms of the agreement with her. However, Wendy was not advised of her rights from a neutral party or someone who would advocate for her, and she most likely did not know that she had the right to independent counsel to ensure the agreement was favorable to her as well as to Henry. Had Wendy known all of her rights, she could have retained counsel to review the document, put it into terms she could understand, and suggest changes with Mr. Goodman to make the agreement more fair for both parties. There was also no signed waiver of the right to counsel that was signed when the prenuptial agreement was signed by the parties.

5 (10) Wendy should have been given seven days to review the prenuptial agreement after she was presented with it. Wendy was presented with the agreement on May 25, and her wedding was scheduled one week later on June 1. Although she did have a week to review and revise the prenuptial agreement, it was given to her in such haste before the wedding, Wendy could argue she was pressed for time and wanted her wedding to proceed- not be held up because she was still reviewing her prenuptial agreement.

5 (11) The prenuptial agreement is silent on any assets or debts held by Wendy or Henry. In #2 of the agreement, it states that all of Henry's property would remain his separate property, but we are not told what that property is. We also do not know if Wendy has any property to disclose. Neither Wendy nor Henry stated any debts they had at the time of marriage.

Defenses:

5 Duress- a person is under duress when they feel pressured into doing something they would not typically do under normal circumstances. Wendy was approached by Henry's mother and her attorney one week before the wedding, and was told she needed to sign the prenuptial agreement or the wedding would not be happening. Any person who is approached under such circumstances would be

intimidated and would be pressured into signing a document to ensure their dream wedding could proceed the way they planned.

5 Coercion- Wendy can claim she was coerced into signing the document because she did not understand what it was saying and she thought it would be fair for everyone involved. She may have felt pressured and tricked into signing the document days before her wedding. Wendy may have also felt that if she did not marry Henry, she could get deported because her student visa was set to expire. Wendy was also pregnant and could have been pressured by Henry's family to get married so as to not have a baby out of wedlock.

Capacity- Although Wendy did not lack capacity, the argument may be made that because of the language barrier, she did not understand the terms of the agreement.

5 Conclusion: The prenuptial agreement should be found void, because it was not voluntary, it was in a language that Wendy was not proficient in, it promotes divorce to occur within ten years of the date of marriage, Wendy was not informed of her rights, Wendy was also not represented by counsel nor did she sign a waiver of her right to counsel. Wendy can also argue that she was under duress and coerced into signing the document. It is unclear from the facts what separate property Henry or Wendy held at the time of marriage, and the debts either of them had as well.

5 As Wendy's attorney, I would advise her that it is likely the Judge will use community property laws to divide the marital estate 50/50 between Wendy and Henry, however, Henry should still receive his separate property obtained prior to marriage, less any appreciation that may have occurred during marriage. Wendy has an equitable right to any appreciation in the value of the business that amounted to Henry's skill, labor, or knowledge, and because they purchased their ranch, she has a 50% interest in that as well.

5 I would also advise Wendy that because she was in school when she was here, it may be possible that Henry will request a reimbursement of her education costs under 2641, which states that the community is able to claim expenses for schooling that were paid within the last 10 years, with 10% interest. Because Wendy stayed at home with children, there was no increase in her income, so the education cannot have been relied upon for adding to community assets. However, we do not know if Wendy had any student loan debt upon entering the marriage, because the assets and debts were

not disclosed in the premarital agreement.

Wow!

2)

General Community Property Presumptions

Community Property:

3

California is a community property state (CA Fam. Code Section 760). All property acquired during marriage by either spouse while domiciled in California and through their labor is presumed to be community property.

Separate Property:

5

Separate property is all property acquired before date of marriage after permanent separation and by gift, inheritance, or bequest as well as the rents, issues, and profits of the separate property. The separate property presumption may be rebutted by a preponderance of the evidence and burden rests on the sepratizer: the party asserting separate character.

Characterization:

Characterization of an asset depend on 1) the **source** of the acquisition 2) any **acts** by the parties that may have changed the character of the asset or 3) and **statutory presumptions** that may apply.

Dissolution:

At dissolution, community property is divided evenly between the parties unless a written agreement, in-court stipulation, or statutory exception applies. Separate property remains the separate party of the individual.

With these general presumptions in mind, each asset will be characterized individually.

Issue A: The Residence

5

Characterization: Moore/Marsden/Aufmuth Calculations: During marriage if community property funds are used towards paying down the principal on a SP real property asset, the community can acquire a pro tanto interest in the property appreciation and be reimbursed for payments made towards the principal paydown of any mortgage. The community cannot receive reimbursement for insurance, taxes, or interest. At dissolution is is necessary to determine the pro tanto share and the SP interest using the Moore/Marsden/Aufmuth calculation.

Step One: Determine the pro tanto share of the community property and the separate property interest

SP: Down Payment + (SP loan proceeds - CP contributions to principal) DIVIDED BY the Historic Purchase Price = SP Interest

CP: CP contributions to principal DIVIDED BY the Historic Purchase Price = CP Interest

Here:

SP: $100K \text{ DP} + 100K - 50K / 200K = 75\%$

CP: $50K / 200K = 25\%$

Step Two: Reimburse the community for the contribution to the mortgage pay down, reimburse the SP for the down payment, PRE-date of marriage appreciation, and principal.

An appraisal at date of marriage is recommended to calculate the appreciation which would be DOM Fair Market Value - HPP. Here, an appraisal took place. $300K - 200K = 100K$ pre-DOM appreciation.

SP: $100 \text{ Down payment} + 100K \text{ appreciation} + 50K \text{ principal} = 250K$

CP: $50K \text{ principal}$

Step Three: Determine the post-DOM appreciation of the property (FMV at DOD - FMV at DOM = Appreciation post DOM)

Allocate the post-DOM appreciation of the property using the pro tanto percentages from Step 1.

Here $500L - 300K = 200L$ Appreciation post DOM

Applying the 75%/25% pro tanto interest shares

SP: 150

CP: 50

5 [Adding it all up: SP gets 400K and CP gets 100K. Of the community property, Harold will receive half and Waverly will receive half.

Conclusion: Harold receives 450K and Waverly will receive 50K

Issue 2a: The Solar Panels

5 [Characterization: Separate property that is used to improve separate or community real property can be reimbursed dollar for dollar using 2640 tracing rights 1:1. Tracing can be accomplished through two ways:

Hicks/Mix Direct Tracing: Using See-Compliant records the separatizer must first show that there was adequate SP to make the purchase on the day of the purchase and that the funds were withdrawn on that date. Then they will also need to show they intended to use SP funds to make the purchase, they put it in writing, and the other spouse had notice.

Indirect/Exhaustion Method: The separatizer will need to use See-compliant records to show that on the date of purchase the community property funds were exhausted and SP funds were then used to make the purchase.

5 [Sees compliant records are contemporaneous records that are character and date specific and include net character deposits, no recapitulative accounting.

Here, if Waverly wrote a check for the solar panels from her bank account that she had kept as her sole and separate property and it was not commingled in an account with CP funds then she has a pretty easy path to getting her money back 1:1 for improving the residence. If she has commingled the funds then she will need to do either a direct or indirect tracing method.

Conclusion: Waverly likely has a good case to get reimbursed for the solar panels.

Issue 2b: The Hawaii Trip

5 [Characterization: Generally, from a public policy perspective spouses have a fiduciary duty to financially support each other in bearing the costs and expenses of the necessities of life. These expenses can be paid for using community property or separate property but are not reimbursable. Necessaries of life are dependent on the circumstances of the couple's station in life and can include going out to eat, going on vacation, getting a specific type of car. There are also expenses that are called common necessities of life and those involve expenses that are necessary to provide for basic

living requirements such as rent, groceries, and gas money for the car.

Here, going on a honeymoon to Hawaii would be considered within the necessities of life category. This is a couple that lives in Pismo in the Shell Beach neighborhood. Going to Hawaii would likely be considered something many other couples in a similar station in life would do for a honeymoon.

Conclusion: This is not an expense that she can be reimbursed for because it falls under a necessary of life.

Issue C: Waverly's Pastry Shoppe

5 Characterization: **Apportionment:** When a separate property asset such as a business or investment portfolio grows in value during the marriage a judge must apportion the community property and separate property interest in the asset. There are two ways in which the judge can accomplish this and the judge has the discretion to choose which one is the best fit in the interest of fairness to the estates.

Pereira:

5 The first method is the Pereira method which is generally applied when the SP asset increases in value during marriage due to the skill, labor, and effort of a spouse. The skill, labor, and effort of the spouse is community property according to the community property presumption above.

5 **Pereira Formula: Fair market value of business at dissolution - (SP initial investment + fair rate of return) = CP Interest**

The Pereira method essentially gives the separate estate a return on its initial investment calculated as 10 percent annual simple interest and gives the remainder to the community. This tends to favor the community estate.

Van Camp:

5 The second method a judge will consider is the Van Camp method which essentially states that the reason the asset appreciated during marriage was because of the underlying nature of the asset and not through the skill, labor, and effort of the spouse.

5 **Van Camp Formula: Fair Market Value of Business at Dissolution - (SP labor - living expenses) = SP Interest**

10 [The idea is the Van Camp method gives the community property a fair wage reimbursement and the rest remains separate property. The Van Camp formula tends to favor the separate property estate.

If, after date of separation the spouse continued to work at the business then the judge will calculate out a formula using Pereira or Van Camp but in reverse.

Here, the facts tell us that Waverly invested money from her first divorce into a bakery at the Pismo Beach Pier valued at about 500K according to the expert on the date of marriage to Harold.

Therefore, the bakery was a SP asset that came into the marriage.

5 Waverly continued to work very hard during the ten years she was married to Harold. If she continued at the pace she was working at when she got married that meant about 60 hours a week and grossing 10K on month on average. She amassed 1 million followers on social media, began selling her baked goods all over North America, and added 5,000 square feet to her shop. At date of separation she was still working 20 hours a week and had a crew of three bakers, three cashiers, and three full time employees to fulfill her online sales. While there is not a dollar evaluation of the business at DOS in the facts as given it would be easy to infer that the business grew in value over the lifetime of the marriage due to her skill, labor, and effort.

5 Waverly might try to claim that at DOS she was only working part time, the business practically ran itself, and online orders were automated and operations of the bakery were run by a competent staff. However, this is not like a stock portfolio that grows over time while the owner is out golfing at the country club. There are serious facts to suggest that Waverly's Pastry Shoppe grew because of Waverly's skill, labor, effort.

5 Conclusion: Because the facts suggest the pastry shoppe grew over time because of Waverly's effort, skill, and labor and not simply because of the underlying nature of the asset, the judge should use the Pereira method in apportioning CP/SP interests in the bakery.

3)

Issue: What are each party right and interest, regarding the residence?

Rule

CCCP: Ca 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, or after date of dissolution, or earning after date of separation, along with gifts, inheritance is considered separate property. The presumption may be rebutted by the preponderance of the evidence by the separator. The three factors to determine the characterization of the asset are: 1) Source of the asset, 2) Any actions by the parties to change or alter the character of the asset, 3) statutory presumption.

SP: All property acquired before, or after date of dissolution, or earning after date of separation, along with gifts, devise, inheritance, and any profits from separate property, is considered separate property.

At Dissolution: All the CP is divided equally between the parties, in-kind. Unless, agreed otherwise by written agreement, open stipulation in court, or statutory exception that applies. All separate property remains separate property. With these guidelines, each asset is determined individually.

Date of Separation: is the complete and final break, it is when one spouse conveys to the other that they no longer wish to be married - evident through their conduct and behavior.

The **title form rule** states that: 1) the title is determines the ownership as separate property, 2) an agreement from the other party that it is separate property.

Creditor/Loan - Any loans obtained during the marriage are considered CP debt. To rebut the spouse claiming SP debt, may rebut with the lender's intent rule. The lender's intent rule review to see how the lender provided the loan: 1) signature of the loan, 2) wealth of parties, 3) Identity of who lender worked with, 4) prior loans, and 5) whether a property secured the loan.

Transmutation, to change the character of an asset requires that the parties sign, an expressed declaration of present intent to change the characteristic of an asset, that no consideration required, and no parol evidence admitted, it must have been made, joined, and consented by the spouse whose interest is adversely affected.

To analyze a valid transmutation: 1) Is a valid transmutation? 2) Burden on the Adverse to prove

5 that: there was a confidential relationship, the benefitted party relied on that relationship, the benefitted party participated in the transaction, and that the benefitted party gained. 3) The benefitted party would then have burden to prove: freely and voluntarily, knew legal effect, knew all legal facts, adequate consideration, and fair and just. 4) even if valid transmutation, would have to prove that spouse did not waive their 2640 tracing rights.

Analysis

5 Here, W and H sought a refinancing of the house to pay off some debt and make improvements on their residence at Carmel. W brought the residence into the marriage as her SP, and wanted to get the refinancing, but unable to because of her low credit score due to unpaid medical bills. She had H obtain the loan because he had good credit, stable job, and she couldn't get the loan alone. The bank/lender invited H to join in a mortgage program, but as a condition of the refinance, H's name was required on title. The change included H and W as "Joint Tenants w/Right of Survivorship" on the deed. The value of the house between refinancing and trial increased \$1million, which is a substantial amount of money.

5 Here, W's residence at Carmel was changed in character from SP to CP, which the deed adding H as "JT w/right of survivorship" status. Here, W may argue that she and H signed the agreement, it was in writing, and it did change the character of the asset, that W made, joined and consented to it by signing the refinance documents. Here, W's interest is adversely affected, and to determine if it was a valid transmutation we must review the requirements.

Is a valid transmutation?

5 2) Burden on the Adverse to prove that: there was a confidential relationship, the benefitted party relied on that relationship, the benefitted party participated in the transaction, and that the benefitted party gained.

5 Here, W will argue that H and W were in a confidential relationship, and that he relied on that to obtain knowledge and ability to negotiate the refinancing, that he participated in the transaction, and that he gained around \$1million in this refinancing of her SP home, which is now in his equal ownership.

5 3) The benefitted party would then have burden to prove: freely and voluntarily, knew legal effect, knew all legal facts, adequate consideration, and fair and just.

5 Here, H has the burden to prove that: W freely and voluntarily signed, which she did because she agreed he had the better credit and job to be able to get the refinance loan, that she knew the legal effect b/c she worked as a real estate attorney, and therefore also knew all the facts as well, that adequate consideration was given by way of his credit score and income to obtain a refinance offer, and that it was fair and just b/c he was also signing an agreement to commit to paying the refinance loan obligation/debt.

10 4) even if valid transmutation, would have to prove that spouse did not waive their 2640 tracing rights.

Here, W did not sign away her 2640 tracing rights, so she does still have this avenue for some form of reimbursement or recovery.

Lender Creditor

Any loans obtained during the marriage are considered CP debt. To rebut the spouse claiming SP debt, may rebut with the lender's intent rule. The lender's intent rule review to see how the lender provided the loan: 1) signature of the loan, 2) wealth of parties, 3) Identity of who lender worked with, 4) prior loans, and 5) whether a property secured the loan.

Here, the refinance loan will most likely be a CP, and not SP. H has a stronger argument that the lender creditor assigned the debt to both H and W, as a community.

1) signature of the loan - Both H and W signed the refinance loan, deed changing it to "JT w/right of survivorship", they both signed - therefore CP debt.

2) wealth of parties - The lender offered a refinance loan to W, as the existing name/titled owner of the property - located in a prime and expensive location in Carmel. Although she had bad credit, due to medical bills, he still offered the loan based on her equity in the house and H's income and good credit. - therefore CP debt.

3) Identity of who lender worked with - The facts state that lender was aware of both H and W, as "owners" and debtors to the loan. - therefore CP debt.

4) prior loans - the facts do not state whether this particular bank offered W's initial loan, or had prior financial dealings with either.

5) whether a property secured the loan - the Carmel residence, currently owned by W, and now

changed to title to both H and W, was used as security to obtain the refinance loan. - therefore CP debt.

Conclusion: There is most likely a valid transmutation through the refinancing that changed the title, and the refinance loan is CP debt.

Issue: What are each party right and interest, regarding the rolex?

Rule

5 Transmutation, to change the character of an asset requires that the parties sign, an expressed declaration of present intent to change the characteristic of an asset, that no consideration required, and no parol evidence admitted, it must have been made, joined, and consented by the spouse whose interest is adversely affected.

To analyze a transmutation: 1) Is a valid transmutation? 2) Burden on the Adverse to prove that: there was a confidential relationship, the benefitted party relied on that relationship, the benefitted party participated in the transaction, and that the benefitted party gained. 3) The benefitted party would then have burden to prove: freely and voluntarily, knew legal effect, knew all legal facts, adequate consideration, and fair and just. 4) even if valid transmutation, would have to prove that spouse did not waive their 2640 tracing rights.

5 Transmutation exception, rule 852 (c) states that: Any clothing, jewelry, or other tangible item, of a personal nature, primarily and exclusively worn by the spouse to whom the gift was given to, that is not of substantial value, given the circumstances of the marriage.

Analysis

Here, although the GCCP states that all property acquired during the marriage is considered CP.; one factor to consider is whether there is a statutory exception the characterization of the asset.

5 W will argue that the transmutation exception to the rolex, as her own separate property and she is entitled to ownership. W's argument will be that the rolex is a tangible items, some might say that it's a jewelry item, that is of personal nature because it was given to her by H as a "token" of his affection, and that that she was the one that primarily and exclusively, wore it religiously throughout the marriage; that it was a gift given to her by H. She may argue that it was not of substantial value

because they own property valued at 3million, and that the rolex of \$50k is small amount given the circumstances of the marriage.

5 However, H will argue that rolex came from his SP funds, from his first divorce that he kept in a SP and segregated account. He will argue that the rolex is indeed of substantial value because purchasing a \$50k watch, with \$200k funds in a bank account is an expensive purchase; especially since he could only afford to give such a gift after refinancing and his current income as a paralegal is "very small" in comparison to W's income as a real estate attorney. Therefore, the exception should not apply.

5 H will further argue that in analyzing whether there was a transmutation between H and W of a \$50k rolex, that it fails all the requirements. He will state that nothing was signed stating a present intent to change the character of the rolex from CP to SP, it was a "token" of their marriage; that he never joined or consented to a character change, and is the spouse adversely affected because is at risk of losing a \$50k investment.

5 **Conclusion:** Therefore, the court will most likely review the overall CP assets, to determine whether the watch is of substantial value. Here, the court will most likely have it returned to H.

Issue: What are each party right and interest, regarding child support payments?

Rule

5 The community is entitled to a reimbursement of child support and spousal support that a community made, in obligation payments of a previous marriage. The spouse may demand a reimbursement of the funds by demonstrating that the SP had sufficient funds to fulfill their cc/sp obligations.

Analysis

5 Here, H has two minor children from a previous marriage, and is paying \$1k in child support. The facts inform us that H had his own separate and segregated bank account, with \$200k, that he always kept in this account from his first divorce. W will argue that he paid the child support obligation from their CP funds, but he could and should have been paying from his own SP account.

H may argue that W wanted to support his efforts in supporting his children and being able to also have a family to build on in this 2nd marriage. However, W will argue that he left on 12/31/2024, which is the date of separation that the court should use in calculating their official and final break

5 from the marriage. H left W to live with Naomi at that time, and left W with the financial obligations towards the house and child support bills. She will argue that she is entitled to a full 100% reimbursement because it was his SP debt and obligation, for which he had the funds to fulfill.

5 Conclusion: Therefore, the court will most likely award W 100% of the funds she used to pay towards the child support.

END OF EXAM

You knocked
this one out
of the park!