

MONTEREY COLLEGE OF LAW - HYBRID
COMMUNITY PROPERTY - SECTION 2
FINAL EXAMINATION
FALL 2025
Prof. A. Reyes

Instructions:

Answer All Three Essay Questions.

Total Time Allotted: Three (3) Hours

Presume all facts in all questions take place in California unless otherwise specified.

QUESTION 1

Hunter and Whitney are residents of California. Hunter is a biologist, and Whitney is a software engineer.

In 2013, Hunter and Whitney married. After their wedding, Hunter's mother deeded them a house in Menlo Park as joint tenants. They moved into the house and used their earnings to remodel the yard into a world-class bonsai garden. Whitney oversaw construction, the center of the garden was a 200-year-old juniper bonsai the couple adopted when the former owner passed.

In 2014, Whitney visited her mother in Colorado and purchased an office building. She took title of the office building in her name alone; the purchase was made with funds from the same credit union account where she deposited her earnings.

In 2017, Hunter and Whitney hosted a world-famous biologist for tea. The biologist admired their 200-year-old juniper bonsai and Hunter gave it to him. Whitney cried when she discovered the bonsai was gone but she sent a biologist a long letter with instructions on how to care for it.

In 2020, Hunter moved out, and the couple separated. Hunter told Wendy that she could keep the house as her separate property and she said, "fine."

After the separation, Whitney's income doubled. She remodeled the office building with her increased earnings. Prior to dissolution, Whitney sold the Colorado office building to a third party who did not know she was married. In 2022, Whitney initiated dissolution proceedings.

1. What are Whitney's rights, if any, as to the 200-year-old Juniper bonsai? Discuss.
2. What are Whitney's rights, if any, as to the following:
 - a) The house? Discuss.
 - c) The office building? Discuss.

Answer according to California law.

QUESTION 2:

In 2010, while planning their wedding, Harry and Wesley, a same-sex couple, domiciled in California, spent months discussing their upcoming marriage and how each would control their respective assets. Sometime before their wedding, they signed a premarital agreement. The agreement contained the following terms:

- 1) Each spouse retains income received during marriage from whatever source as their separate property.
- 2) We agree that we do not need a lawyer to create this agreement.
- 3) We agree that custody of any children adopted during marriage will be 50/50.
- 4) Both spouses waive post-dissolution spousal support.

The couple married in December of 2010 and in 2011 the couple adopted an infant, Jenny. In 2012, Jenny was diagnosed with several disabilities and in 2013, Harry and Wesley orally agreed that Wesley would stop working full time to care for Jenny and that Harry would support the family. Wesley quit his job and until 2020, Wesley served as full time care giver for Jenny.

In 2015, Wesley was injured and lost use of a leg in an auto accident. He spent two months in the hospital and had persistent pain from the injuries he suffered. The hospital co-pays for his care were over \$50,000.00 and were paid by Harry. Wesley eventually received a personal injury reward of \$300,000.00, which the lawyers informed the couple would have been greater had he been fully employed when injured.

The couple separated in 2020; during separation, Wesley remained full time caregiver for Jenny and racked up \$60,000.00 in debt paying for housing, food, transportation and healthcare. Wesley wisely invested his \$300,000.00 and grew the amount to over \$700,000.00 before placing all but \$25,000.00 into a special needs trust, which only allows the funds to be used for medical and living expenses.

A petition for dissolution was filed in 2022, and Harry is attempting to enforce all provisions of the Premarital agreement.

1. Will Harry be successful in enforcing the Premarital Agreement? Discuss.
2. Discuss Harry and Wesley's rights and liabilities, if any, regarding:
 - a) Wesley's claim for spousal support.
 - b) The \$50,000.00 medical bill.
 - c) The \$60,000.00 debt
 - d) The remaining Personal Injury funds.

Answer according to California law.

QUESTION 3

In 2017, Hank and Wren married. Wren was an investment banker with over 1 million in investments. Hank worked a construction job and had no assets and no retirement. After marriage, each spouse kept all the wages they received in separate bank accounts. Also in 2017, Wren received an inheritance of \$100,000.00 from her aunt. She deposited the inheritance funds into the same Wells Fargo account where she deposited her monthly earnings.

In 2018, Wren used \$75,000.00 from her Wells Fargo account as a down payment on a home at 452 West Palm St. in Los Angeles which she titled in her name. The full home value was over 2 Million. The remainder of the purchase was funded by a loan she obtained using her investments as collateral. From 2018 to 2024 she continued to make all mortgage payments from the Wells Fargo account. In 2023, Wren took out a whole life insurance policy on which she also made payments from her Wells Fargo Account.

In 2024, Wren suffered a fatal injury while crossing the street. When Hank searched their belongings he found a will which stated: “I leave to my son, Frank, everything I own including my Redwood Credit Union Accounts, and my home at 452 West Palm St. Los Angeles.”

At the time of Wren’s death, there was \$300,000 from her wages in her bank account, she still owned the whole life policy but the beneficiary was listed as Wren’s ex-husband Bob, and the home at 452 West Palm St. was titled in her name alone.

In the probate of Wren’s will, Frank claims to be sole heir to all assets listed in the will.

Discuss what interest (if any) Hank has to the following:

- 1) The Wells Fargo Bank account.
- 2) The Whole Life Insurance Policy
- 3) The Home at 452 West Palm St.

Answer according to California Law.

HYB-Community Property Sec2-F25-Prof. Reyes

QUESTION 1 - OUTLINE

1. The Bonsai

- a. GCPP: The bonsai was acquired DM, presumed to be CP FC 760
- b. Post 1975 spouses have right to equal management and control
- c. Gift to a third party authority under FC1100(a) but voidable:
 - 1. Transaction results in a low-value transfer of community personal property under §1100(b).
 - 2. Alternatively, transaction constitutes a transfer of a home fitting/furnishing under §1100(c).
- d. W's options are:
 - 1. void the transfer [seek return]
 - 2. Seek remedy against spouse's SP estate
 - 3. Ratification: H may argue W ratified the gift by her letter.

2. The house

- a. Gifts are SP generally.
- b. Gift acquired by the spouses during marriage in any joint form title is governed by the special §2581
- c. Joint Title Presumption FC 2581 – took title jointly, presumed CP [would be concurrently SP if held as T in common or Joint T w/o ROS]
 - 1. Presumption can only be rebutted by a statement in the deed or written agreement.
 - 2. *Lucas*: Verbal transmutation is not allowed FC 852
- d. Remodel was from “earnings” CP under FC 760
- e. House is CP, divided equally between the parties

4. Office Building

- a. QCP: acquired by either spouse while domiciled elsewhere which would have been CP if the spouse who acquired had been domiciled CA. FC 125.
- b. Source of funds to purchase office was CP. Property retains character of the source funds. Office is CP regardless of location and regardless of whether title was taken in one name only. [*Valli*]
- c. Remodel:
 - 1. Earnings after dissolution are SP FC770

2. SP contributions to CP asset FC 2640

d. Fiduciary duty: CP funds used to buy CP causes no breach of fiduciary duties but breach of fiduciary duty may have occurred if a) CP purposely used to buy SP only property, or b) CP used when SP was available. FC§721(b),

1. Possible claims of impairment/remedies FC 1101.

QUESTION 2 OUTLINE

1. Enforcement of the PMA:

a. Is the Premarital agreement valid?

- i. Must be in writing signed by both parties, prior to marriage/cannot promote dissolution.
- ii. Must be given counsel or waived the right to representation in *separate* writing FC 1615(c)(1))
- iii. 7 days FC1615(c)(2)(A)
- iv. Cannot install fault divorce FC 1612
- v. Spousal Support
 - 1) Provisions require counsel or are unenforceable.
 - 2) Must not be unconscionable at the time of enforcement.
- vi. Any other factors the court deems relevant.” FC 1615(c)(5)
- vii. Child support provisions are unenforceable 1612(b)

2. What are Harry and Westley’s rights and liabilities, if any, regarding:

a. Westley’s claim for spousal support? Discuss.

- i. Amendments to a premarital agreement must be in writing. FC 1614
- ii. Unconscionability
- iii. Equitable relief and SOL: statute of limitations, a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party. FC 1617
 - 1) Factors: (i) Child needed home care; (ii) both consented to and encouraged W to quit paying job; (iii) H financially benefited from

decade-long home care; (iv) H did nothing in that decade to amend or otherwise update the original premarital contract.

- b. The \$50,000.00 medical bill Discuss.
 - i. Community may be reimbursed for medical expenses related to PI, FC 781.
- c. The \$60,000.00 debt
 - i. DOS terminates obligation for liability of spouses debts except:
 - 1) Spouses are liable for common necessities of life debts after date of separation FC 913-914
 - 2) CP and SP are may be liable for debts that are *common necessities of life*.
- d. The remaining Personal Injury funds? Discuss.
 - i. Personal Injury: funds are CP during marriage [FC 780] but assigned to injured spouse at dissolution [FC 2603]
 - 1) Unless comingled
 - 2) Unless “interests of justice required other disposition FC 2603(b) non-injured spouse may receive up to ½.
 - ii. PMA provisions application to PI funds may support no assignment.

QUESTION 3 OUTLINE:

- 1. Wells Fargo Bank account.
 - a. Spouses my only gift ½ share of CP FC1100(b).
 - b. CAMPAL sums on deposit held DM are presumed CP regardless of title. PrC 5305
 - i. Rebuttal by tracing or written agreement PrC 5305(b)
 - ii. Burden on separatizer to demonstrate SP PrC 5305(a)
 - c. Source: Funds in account are comingled.
 - i. Earnings are CP during marriage
 - ii. Inheritance is SP [FC 760, 770]
 - d. H's options are:
 - i. void the transfer of his share of CP [1/2 CP in bank account]
 - ii. Seek remedy against spouse's SP estate [reimbursement of ½ of CP funds]

- iii. Ratification: F would have to show that H ratified the will, there are no facts supporting this.

2. Whole Life Insurance Policy

- a. GCPP: title does not determine ownership.
- b. Whole life Policy includes insurance + Cash surrender value [savings]
 - i. Trace source to WF comingled account.
 - ii. Savings are apportioned by Tracing formula.
 - iii. CP % percentage is calculated by dividing the savings that trace back to CP premium payments by the total savings. Each spouse owns a 1/2 interest in the CP savings component of the policy at dissolution.
- c. Spouses my only gift 1/2 share of CP FC1100(b).
- d. H's options are:
 - i. void the transfer of his share of CP [1/2 CP in bank account]
 - ii. Seek remedy against spouse's SP estate [reimbursement of 1/2 of CP funds]
 - iii. Ratification: there are no facts supporting this.

3. Home at 452 West Palm St.

- a. Frank will argue it was an SP purchase
 - i. CAMPAL bank accounts held DM are presumed CP regardless of title. PrC 5305
 - ii. Rebut Presumption by Tracing (burden is on separatizer): Tracing to prove down payment was SP – *Sees compliant records must demonstrate contemporaneous track of:*
 - 1) character of deposits, as they are made.
 - 2) character of withdrawals, as they are made.
 - 3) net character deposits [SP and CP funds after family expenses withdrawn]
 - iii. Lender Intent Test applied to prove mortgage was SP loan.
- b. H will argue that the community earned a % by payment of principle: Mortgage payments from CP in Wells Fargo Account – Apply *Moore/Marsden*.
- c. Will is not determinative: Spouses my only gift 1/2 share of CP FC1100(b).
- d. H's options are:
 - i. void the transfer of his share of CP [1/2 CP in bank account]
 - ii. Seek remedy against spouse's SP estate [reimbursement of 1/2 of CP funds]
 - iii. Ratification: there are no facts supporting this.

1)

QUESTION 1

(1) Whitney's rights to the 200-year-old Juniper bonsai

California Community Property Presumption (CFC 760; 770)

California is a community property state. There is a presumption that all property acquired during marriage is community property (CP), while property acquired before marriage or after date of separation, or by gift or inheritance is separate property (SP). The rents and issues of SP are similarly SP. The CP presumption can be rebutted by a preponderance of the evidence, and the burden is on the separator. The characterization of an asset is determined by (1) its source; (2) an action or agreement by the parties; or (3) a special statutory presumption. Courts will divide CP equally unless circumstances require otherwise (e.g., reimbursement or debts).

Tracing

The CP presumption can be rebutted through direct or indirect tracing. Direct tracing requires showing (1) a direct link between the purchased asset and the SP funds; (2) showing that SP funds were available; and (3) the purchaser intended to use SP to purchase the property. Indirect tracing (i.e., the exhaustion method) requires maintaining sufficient records demonstrating that community funds were exhausted at the time the purchase was made such that only SP were used (must use *See's*-compliant, contemporaneous records).

Here, the bonsai is likely CP because the facts suggest the parties acquired the tree after their marriage in 2013. The facts do not indicate precisely when the couple acquired the

bonsai tree, but the facts do suggest that they purchased the tree after getting married: "They moved into the house and used their earnings to remodel the yard into a world-class bonsai garden." Further, the facts note that the couple "adopted" the tree "when the former owner passed," but the facts do not indicate any other details regarding time of acquisition. Assuming the bonsai was indeed acquired after the parties married, then the bonsai would be CP, and H and W would have equal management and control over the tree. In any case, it is unlikely that either H or W could rebut the CP presumption or trace the bonsai to SP absent supporting facts.

Therefore, the bonsai is likely CP.

Management and Control

Spouses have equal rights to the management and control of CP; however, one spouse cannot gift CP property (e.g., furnishings or the clothing of the other spouse or children) without the written consent of the other spouse. A spouse also cannot sell CP for less than its fair market value (FMV); doing so constitutes a gift requiring the other spouse's consent. Spouses owe one another fiduciary duties in the management and control of CP, such as the duty of good faith and fair dealing.

Here, Hunter (H) and Whitney (W) shared management and control over the bonsai because they acquired the tree after their marriage in 2013, thus rendering it CP (as discussed above). Thus, because H and W shared management and control over the bonsai, W could argue that H breached his duty by gifting the bonsai to the biologist. W certainly did not consent to the gift because she "cried when she discovered the bonsai was gone." The bonsai was the center of the couple's "world-class bonsai garden," and, being 200-years-old, likely quite valuable.

Therefore, H and W shared equal management and control rights over the bonsai and H breached his duty of good faith and fair dealing by gifting the bonsai to the biologist.

Recapture

When one spouse gifts or sells CP property without the other spouse's consent, the other spouse may recapture the CP during the donor spouse's lifetime. The other spouse may ^{void} reclaim the property from the donee or claim funds from the donor spouse. However, the other spouse can accept the gift through a subsequent writing (*Spreckels v. Spreckels*, 1916). ^{ratify} If the donor spouse dies, then the surviving spouse can only recover their one-half interest in CP.

Here, H will argue that W ratified the gift because she confirmed the gift in her letter to the biologist in which she provided "instructions on how to care for it." H will also stress that W did not attempt to recapture the bonsai or create any other evidence of her rejection of the gift. Instead, H will argue that W's letter accepted the gift, similar to how the surviving spouse in *Spreckels v. Spreckels* (1916) ratified her husband's sale of CP in her will. However, W will argue that her letter was not a ratification, but instructions to ensure the bonsai survived under the biologist's care. W could stress that the bonsai's health took precedence over recapturing it, and that W intended to get the bonsai returned. The court, however, will likely find H's argument more persuasive due to precedence, particularly since the facts are fairly similar to those in *Spreckels*.

Therefore, W likely no longer has rights to the 200-year-old Juniper bonsai, but she can likely pursue damages for H's breach of his fiduciary duties.

(2) Whitney's rights to

(a) The House

California Community Property Presumption

See rule above.

Joint Title Presumption (CFC 2581)

There is a statutory presumption that assets acquired during marriage where both spouses are on the title are CP. This presumption applies at dissolution only, and rebuttal is limited to a written agreement indicating the property was intended to be one spouse's SP.

Here, the house is W and H's CP because it was acquired during marriage and both are named on the deed. The facts indicate that the parties acquired the house "after their wedding," and that H's mother "deeded them a house...as joint tenants." H may argue that the house is his SP because his mother gifted the property to him (CFC 770). However, W can counter by arguing the special joint title presumption supersedes the general CP presumption. Further, W can argue that no writing exists indicating an intent for the house to remain either party's SP. As such, H cannot rebut the special presumption. ✓

Therefore, the house was CP.

Transmutation / Rebuttal of 2581

Parties can change the characterization of an asset from SP to CP (or vice versa) through a transmutation. A valid transmutation requires: (1) a writing; (2) intent to transfer interest; and (3) that it was accepted, consented to, joined by the adversely affected party. Nominal gifts are the statutory exception to the writing requirement: clothing, jewelry, or other personal asset that is used solely by the spouse to whom the gift is made that is not of substantial value taking into consideration the circumstances of their marriage). There is also a presumption of undue influence in dealings between a husband and wife which can be rebutted by showing the arrangement was made fairly, voluntarily, and with full disclosure. ✓

Here, there was likely no valid transmutation changing the house's characterization from CP to W's SP because there was no writing and the statutory exception does not apply absent facts indicating otherwise. W will likely argue that a valid transmutation occurred because "Hunter told Wendy that she could keep the house as her separate property and she said, 'fine.'" However, this agreement was entirely oral, and thus could not be a valid transmutation. W may alternatively argue that the statutory exception applies because the house was a nominal gift, that she would be the only one using it, and that it was not of substantial value given the circumstances of their marriage. W will point to the couples' respective lucrative jobs, the Colorado property, and the world-class bonsai garden as evidence of their wealthy lifestyle. As such, W will argue, the house was not of substantial value. However, H will likely argue that the house was not a nominal gift because it was certainly of substantial value given the circumstances of their marriage. H was a biologist and W was a software engineer, neither position indicating incredible wealth. Further, the parties did not own an expanse of properties, and even the house itself was gifted to them. Additionally, the incredible funds used to remodel the yard into a world-class bonsai garden indicate that the house itself is of considerable value. Although W's income increased after separation, H will argue that the house was not a nominal gift, and thus subject to the writing requirement of the transmutation rule.

Therefore, no valid transmutation likely occurred.

(b) The Office Building

Quasi-community Property

Property that would have been CP if it had been acquired in California is quasi-community property (QCP). QCP is treated as SP during marriage and CP at dissolution and death.

Here, the office building is QCP because W purchased it after marriage in Colorado while she was domiciled in California. Further, W used community funds to make the purchase because she used funds from the same account "where she deposited her earnings" (i.e., community funds). That W's name alone is on the title is not determinative of the asset's characterization, and not enough to rebut the CP presumption.

Therefore, the office is QCP and each party is owed their one-half share in it.

Fiduciary Duties (CFC 721)

At marriage, a fiduciary relationship begins between spouses in which each owes the other fiduciary duties of the highest good faith and fair dealing, and to not treat the other unfairly. Such duties include the duty of disclosure, support, and accounting. Some duties extend beyond the date of separation until the date of judgment, such as the duty of disclosure.

Here, W likely breached her fiduciary duty of disclosure and possibly misappropriated the office building by selling the Colorado office "to a third party." Because QCP is treated like CP at dissolution, H was entitled to his one-half interest in the property. The facts do not indicate that W informed H of the sale, and that W "initiated dissolution proceedings" after the sale could suggest that she did not plan to disclose the proceeds from the sale, of which H is entitled to his one-half share. Given the misappropriation -- a violation of her fiduciary duties -- the court might offset W's portion or deny W her share entirely (as was the case in *Rossi* when she hid the proceeds from her winning lotto ticket from her husband prior to divorce).

Therefore, W likely has, at best, a one-half interest in the office building provided the court does not divide her share or give the property entirely to H.

2)

California Community Property Presumption (CFC 760; 770)

California is a community property state. There is a presumption that all property acquired during marriage is community property (CP), while property acquired before marriage or after date of separation, or by gift or inheritance is separate property (SP). The rents and issues of SP are similarly SP. The CP presumption can be rebutted by a preponderance of the evidence, and the burden is on the separatizer. The characterization of an asset is determined by (1) its source; (2) an action or agreement by the parties; or (3) a special statutory presumption. Courts will divide CP equally unless circumstances require otherwise (e.g., reimbursement or debts).

(1) The Premarital Agreement

Spouses may agree to the characterization of property acquired, as with premarital agreements (PMA). A PMA is an agreement made in contemplation of marriage that becomes effective at marriage. A PMA is valid if it is (1) voluntary and (2) not unconscionable. A PMA is voluntary if it is (1) signed by both parties; (2) represented by counsel (or waived in a separate writing); (3) 7 days have elapsed from receipt; (4) fully informed of terms and assets (unless represented by counsel); (5) in a language both parties are proficient in; (6) no duress, undue influence, or fraud; and (7) any other facts the courts deem relevant. A PMA is not unconscionable if it does not violate public policy (i.e., does not promote divorce, contract child custody). Although parties cannot contract over child custody, parties can agree to spousal support terms if (1) the parties are represented by counsel and (2) the terms are not unconscionable at the time of dissolution. PMAs may be modified or revoked in a subsequent writing signed by both parties.

Here, Harry (H) will likely not be successful in enforcing the PMA because it is neither voluntary nor not unconscionable. Although the parties "signed a premarital agreement," the parties were neither represented by counsel nor did they waive their right to counsel in a separate writing. As such, the couple's agreed term that "We agree that we do not need a lawyer to create this agreement" is insufficient waiver. Additionally, the parties contracted that "custody of any children adopted during marriage will be 50/50." Because this term contracts over child custody, the PMA violates public policy and is unconscionable. Further, the final term contracts over spousal support, yet there was no counsel representing them and the terms might be unconscionable at the time of dissolution (depending on arguments made by the parties). Taken together, the PMA H and W signed is likely invalid and unenforceable.

Therefore, H will likely not be successful in enforcing the PMA.

(2) H's and W's rights and liabilities regarding:

(a) W's claim for spousal support

Spousal Support

- ✓ Spousal support may be contracted over when the parties are represented by counsel and the terms are not unconscionable at the time of dissolution.

Here, W's claim for spousal support may succeed given the fact that he may have difficulty finding work due to his disability. Further, although the facts do not indicate how child custody will be arranged, W can argue that he will need additional support to provide appropriate care for Jenny because she requires full-time care. Additionally, W can argue that his PI proceeds are not reachable because he created a special needs trust "which only allows the funds to be used for medical and living expenses." W may also

argue that H is in a position to pay support because he is gainfully employed. However, H will likely argue that W's PI proceeds are sufficient to support him.

Therefore, W may be successful in his claim for spousal support.

(b) The \$50,000 medical bill

Personal Injury (CFC 2603)

Proceeds from a personal injury (PI) claim are treated as CP if the cause of action occurred during marriage. At dissolution, the court will assign the proceeds to the injured spouse without offset unless justice requires otherwise (e.g., where the non-injured spouse needs financial support) or where the PI proceeds have become commingled with CP funds to the extent that it is no longer possible to distinguish the assets (per the doctrine of confusion).

Here, H will likely argue that he is entitled to reimbursement for the \$50,000 medical bills paid by H while awaiting W's settlement proceeds. H will stress that not allowing an offset would not be just or fair given the circumstances, particularly since W "eventually received a personal injury reward of \$300,000" that would certainly be capable of reimbursement. W might counter that no reimbursement is required because H owed W a duty of support.

Therefore, H will likely be entitled to reimbursement for \$50,000 expenses paid while waiting for the PI proceeds.

(c) The \$60,000 debt

Fiduciary Duties

At marriage, a fiduciary relationship begins between spouses in which each owes the other fiduciary duties of the highest good faith and fair dealing, and to not treat the other unfairly. Such duties include the duty of disclosure, support, and accounting. Some duties extend beyond the date of separation until the date of judgment, such as the duties of disclosure and support.

Duty of Support for Common/Necessaries of Life

Spouses owe one another a duty of support for necessities of life during marriage. After the date of separation, spouses owe one another a duty of support only for common necessities of life. Common necessities of life are basic necessities, such as healthcare, housing, insurance, and food. Common necessities of life do not include, as necessities of life do, expenses that maintain one's "station in life" (e.g., if the spouses are accustomed to having housekeepers or gardeners). As such, one spouse can be reached by creditors for the debt of the other spouse for common necessities of life after separation.

Here, H will likely be responsible for W's \$60,000 debt because it was made for common necessities of life. W will argue that the debt was incurred solely for "housing, food, transportation, and healthcare," and that W did not accrue debt beyond basic necessities. W will likely counter that the PI proceeds, being in a special needs trust, "which only allows the funds to be used for medical and living expenses," prevents him from repaying the debt. However, H will likely argue that W had sufficient SP through his PI proceeds to cover the debt, and thus H should not be responsible for it. Indeed, H will stress that W's original PI settlement had expanded to \$700,000 through W's investments, and that W is in a position to settle his own debts. The court will likely assign the debt to H based on his relative ability to pay as compared to W, who seemingly remains unemployed and whose disability may make it difficult for him to find work). This decision would also protect creditors' rights.

Therefore, H will likely be assigned the \$60,000 debt.

(d) The remaining Personal Injury funds

Personal Injury (CFC 2603)

Proceeds from a personal injury (PI) claim are treated as CP if the cause of action occurred during marriage. At dissolution, the court will assign the proceeds to the injured spouse without offset unless justice requires otherwise (e.g., where the non-injured spouse needs financial support) or where the PI proceeds have become commingled with CP funds to the extent that it is no longer possible to distinguish the assets (per the doctrine of confusion).

Here, the PI proceeds will be treated as CP during the marriage because the cause of action arose during marriage. Indeed, the couple "married in December of 2010," "In 2015, [W] was injured and lost use of a leg in an auto accident," and "the couple separated in 2020." However, at dissolution, the remaining proceeds will be assigned to W, likely without offset other than to reimburse H (as discussed above). W will argue that the proceeds were not commingled, as evidenced by his lucrative investment. Further, W will argue that H should not receive a cut because H is employed and able to support himself.

Therefore, the remaining PI funds will be assigned to W without offset (other than to reimburse H, as discussed above).

3)

California Community Property Presumption (CFC 760; 770)

California is a community property state. There is a presumption that all property acquired during marriage is community property (CP), while property acquired before marriage or after date of separation, or by gift or inheritance is separate property (SP). The rents and issues of SP are similarly SP. The CP presumption can be rebutted by a preponderance of the evidence, and the burden is on the separator. The characterization of an asset is determined by (1) its source; (2) an action or agreement by the parties; or (3) a special statutory presumption. Courts will divide CP equally unless circumstances require otherwise (e.g., reimbursement or debts).

Tracing

The CP presumption can be rebutted through direct or indirect tracing. Direct tracing requires showing (1) a direct link between the purchased asset and the SP funds; (2) showing that SP funds were available; and (3) the purchaser intended to use SP to purchase the property. Indirect tracing (i.e., the exhaustion method) requires maintaining sufficient records demonstrating that community funds were exhausted at the time the purchase was made such that only SP were used (must use *See's*-compliant, contemporaneous records).

Property Distribution at Death

Spouses only have testamentary rights to their one-half CP interest. However, spouses may distribute SP as they choose.

Hank's (H) interest in

(1) The Wells Fargo Bank account

Sums on Deposit (CAMPAL; CPC 5303)

Sums on deposit in the bank accounts of married people are presumed CP even if only one name is on the account. This presumption can be rebutted through tracing or written agreement. An account becomes commingled when it contains CP and SP funds and it is impossible to discern one from the other (per the doctrine of confusion). The first spouse to commingle an account has the legal responsibility of keeping *Sees*-compliant (i.e., contemporaneous) records. Purchases made from a commingled account are presumed CP, but this presumption can be rebutted with direct or indirect tracing.

Here, the sums in Wren's bank account are likely CP because "she deposited the inheritance funds into the same Wells Fargo account where she deposited her monthly earnings." As such, W commingled her account with proceeds from CP labor and her own SP. Hank (H) will likely argue that the account has become fully commingled and that it is impossible to discern the SP from the CP. Further, H will stress the lack of documentation accompanying the commingling. Indeed, the facts do not indicate any records were maintained when W deposited her SP inheritance into her account containing CP funds. Additionally, no recipulative records are permitted. However, Frank (F) will likely argue that it is possible to trace the \$100,000 SP, and separate that from the \$300,000 remaining in W's bank account. As such, the account was not commingled, and F is entitled to his inheritance of W's SP: the \$100,000. However, the courts will likely find H's argument more persuasive because the facts do not indicate any records were kept. Further, general bank account statements alone are insufficient to trace funds.

Therefore, the Wells Fargo Bank is CP and H and F are entitled to their respective one-half interests.

(2) The Whole Life Insurance Policy

Deferred Compensation (The Time Rule)

Courts will use the time rule to apportion deferred compensation, as with life insurance. The time rule formula is as follows: [# of years worked during marriage] / [total # of years worked]. There are two types of life insurance (1) term and (2) whole term. Term insurance does not have cash value, and its characterization is determined by the final premium rule: the character of the assets last paid to the premium determines the characterization. Whole term insurance does have cash value and also receives payments to the premium, which are determined by the final premium rule.

Here, W "took out a whole life insurance policy on which she also made payments from her Wells Fargo Account." W, then, had a Whole Term insurance plan, and thus had cash value and proceeds to devise. F will likely argue that the entire insurance proceeds should go to him as W's "sole heir," particularly since Bob -- the listed beneficiary -- is W's ex-husband. H, for his part, will likely argue that he is entitled to a cut because the last payment to the premium was made using commingled (and thus CP) funds. However, the court will likely determine that W had time to change her beneficiary if she so chose in the year before her death. Further, W took out her insurance policy in 2023, several years into her marriage with H and after F was born. The court will likely reason that W's choice of beneficiary was intentional and honor the choice. Further, case law supports the decision to honor the listed beneficiary. The funds other than the proceeds will likely be split between H and F in their respective one-half interests.

Therefore, Bob will likely receive the life insurance proceeds.

(3) The Home at 452 West Palm St.

Sums on Deposit (CAMPAL; CPC 5303)

See rule above.

Here, H will likely argue that the house is CP because the down payment was made using funds from a commingled account. Indeed, the facts indicate that W "used \$75,000 from her Wells Fargo account as a down payment." As discussed above, H will argue that W's account was commingled to the extent that it was no longer possible to distinguish her SP from the CP. H will stress that the facts do not provide evidence of *Sees*-compliant documentation such that it can be proved that CP funds were exhausted and that only SP was used to purchase the home. Further, H will argue that it is impossible to prove direct tracing without any documentation to establish a direct link between the SP and the purchase, that sufficient SP funds were available, and that W intended to use SP funds. Indeed, W is not able to now indicate her intent when making the purchase.

Loan Proceeds (Lender Intent Rule)

Loan proceeds are presumed CP unless the separatizer can show the lender (1) intended to and (2) did in fact rely on the separatizer's SP in extending the loan. The separatizer may also need to show evidence that the SP nature of the loan was disclosed to the other spouse.

Here, F will likely argue that W's loan was SP because "she obtained" it "using her investments as collateral"; that is, using her SP. F will likely stress that, because H "had no assets" in his name, the lender relied entirely on W's SP when extending the loan. However, H will likely argue that W never intimated the SP nature of the loan to him, and that the lender may have looked at the couple's CP when extending the loan. However, the courts will likely find F's argument more persuasive because the facts indicate W used her investments as collateral specifically, suggesting the lender only looked to these assets when making the ultimate decision.

Therefore, the loan proceeds are likely SP.

END OF EXAM