

Monterey College of Law
Community Property Examination
Fall 2021
Prof. S. Cavassa

General Instructions:

Answer All Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

Your essay should demonstrate your ability to analyze the facts in the question, to tell the difference between material and immaterial facts, and to discern and understand the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationship to each other.

Your answer should demonstrate your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them. Consider the IRAC method of formulating your answer.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

Question No. 1

Joan and Kelly married on January 1, 2018 and separated on August 15, 2021. Joan is a 4th grade teacher and earns a salary of \$75,000 per year. She struggles with significant health issues, and her out-of-pocket cost for treatment exceeds \$40,000 annually. Kelly started a highly successful private equity firm called "KEF" in 2010. In 2018, Kelly earned over \$3,000,000 from KEF. In 2019, Kelly earned over \$4,000,000. In 2020, KEF grew significantly due to a business connection Kelly nurtured throughout 2019 and 2020, and she earned over \$14,000,000. Kelly purchased Blackacre in 2018 utilizing pre-marital savings, but the parties took title as "Joan and Kelly, spouses." The parties separated when Joan discovered Kelly at a romantic dinner with a business colleague and discovered Kelly had been cheating on her.

Joan is now contesting the premarital agreement she and Kelly signed. The pertinent facts regarding the premarital agreement are as follows:

- The parties discussed amongst themselves on multiple occasions prior to their marriage the possibility of entering into a premarital agreement.
- The final version of the premarital agreement was provided to the parties on November 30, 2017. Both parties' signatures appear on the premarital agreement and are dated December 31, 2017.
- Joan contends that her signature was backdated. Joan states that she did not sign the premarital agreement until after the parties returned from their honeymoon on January 15, 2018.
- Both parties were represented by independent legal counsel in the execution of the agreement.
- Joan's attorney was disbarred on March 1, 2018 after four separate civil judgments against Joan's attorney for professional malpractice resulted in State Bar action.
- The premarital agreement includes a mutual waiver of spousal support, a provision that neither party shall obtain any interest in the other party's business entity, and that if one party has (an) extra-marital affair during the marriage and the other party does not, the faithful party is awarded Blackacre.

Please analyze the following questions applying California law:

1. Is the parties' premarital agreement, or any portion of it, unenforceable?
2. If the premarital agreement, or portions of it, are unenforceable, what are the parties' rights regarding KEF and Blackacre?

Question No. 2

Tony and Jessica married on August 8, 1973. Tony worked as an electrical engineer and Jessica was a stay at home spouse and mother throughout the parties' marriage. They lived in California for their entire marriage. Tony managed the household finances and while he never specifically excluded Jessica from reviewing the bank statements and other financial documents she had little interest in those matters and left them to Tony.

In June of 1974, Tony and Jessica purchased 123 Main Street. Tony owed a civil judgment for \$50,000 in damages at this time and he was trying to avoid recovery, so the parties' took title to the property in Jessica's name alone.

Beginning in 1980, Tony made annual gifts to each of the parties' four children in the amount of \$2,500 (\$10,000 total, annually). This gifting continued through 2019. Jessica did not like the gifting, but she did not say anything to Tony about it.

In February 2020, Tony was on his way home from a drug-fueled trip to Las Vegas where he had lost \$100,000 when he developed road rage at another driver. Jessica had told him she did not approve of gambling and did not want him to go to Las Vegas, and he knew she would be mad when he got home. His anger grew out of control and he intentionally drove his SUV into the other vehicle, causing the other vehicle to swerve off the road and the other driver suffer injuries. Tony was sued by the other driver, and he failed to respond to the lawsuit. His default was taken, and a judgment in the amount of \$500,000 entered against him.

Jessica learned of Tony's behavior in hitting the other driver with the car and the \$500,000 judgment in November 2020 and immediately left him and filed for separation.

Jessica and Tony's current assets and obligations are 123 Main Street valued at \$1,400,000 and carrying a mortgage of \$200,000, a bank account containing \$350,000 accumulated during marriage, a 401k from Tony's employment during marriage with a balance of \$900,00, and the \$500,000 judgment referenced above.

Jessica has come to you for advice regarding division of assets and debts, and any other rights she might have. Please provide your analysis under California law.

Question No. 3

Rachel and Joe, Hawaii residents, married in October 2005 in New York City.

In 2007 Rachel and Joe purchased a cabin in the California mountains near Bass Lake. They took title in Joe's name alone. They made the down payment from a joint bank account which contained savings from both parties' employment. Whenever they went to spend time at the cabin, Joe would engage in home improvement projects, like building a new deck or putting in new windows.

In 2008, Joe decided to return to school and obtain an MBA. His employer wanted him to become a manager of a large project and promised Joe that if he would get the MBA he would see his salary increase by 30%. Joe's employer agreed to pay 25% of the tuition for the Executive MBA program through Chapman University online. Joe took out a loan for \$150,000 to pay the rest of the tuition and fees. Joe successfully completed the MBA program and obtained his degree in December, 2009. Joe's employer immediately promoted him to a Manager's position and increased his salary from \$80,000 to \$110,000 per year. Joe began making monthly payments on the \$150,000 loan in June, 2010 in the amount of \$500 per month from his earnings..

In September 2010, Joe and Rachel had a huge fight. Joe said he was leaving Rachel, and he moved from Hawaii to the Bass Lake cabin. Neither Joe nor Rachel filed for dissolution. About three months later, Rachel came to visit Joe at the cabin. They spent a weekend reminiscing together and discussing the fact that they should eventually hire a mediator to assist with their divorce. They had sex during the weekend, but afterwards discussed the fact that they were not getting back together. However, Joe and Rachel then continued to see each other about two to three times a year for the next nine years. Each time they would get nostalgic and talk about the good times, and they would end up having sex. But at the end of each visit they would agree they needed to move forward with a divorce "sooner or later". They continued to share a joint bank and file joint tax returns throughout this time, although they never lived together for longer than five days at a time. Joe started dating in 2015, and had an online dating profile that listed his relationship status as "it's complicated." Joe and Rachel did not tell their families they had separated.

In 2017, Rachel purchased a house in Hawaii and took title in her sole name. She used her bonus from the year end 2016 for the down payment, and made the monthly mortgage payments thereafter with her monthly salary deposited to the parties' joint bank account.

In 2018, the parties had a second huge fight. Rachel called a mediator the next day and the parties set an appointment to proceed with a divorce. Discuss Joe and Rachel's rights and obligations under California law with respect to:

1. The mountain cabin in Bass Lake
2. The house in Hawaii
3. The bank accounts in Joe and Rachel's names
4. The student loan

Community Property Exam Answer Outline

Fall 2021

Professor Sarah A. Cavassa

Question 1

1. Enforceability of Agreement
 - a. If Joan signed after marriage, post-marital agreement carries fiduciary duties.
 - b. 7 day rule not an issue – the 7 days runs from presentation of the agreement to signature, not from signature to marriage.
 - c. Each party had independent legal counsel, but did Joan enter into the agreement knowingly and voluntarily where attorney disbarred six weeks later?
 - d. The spousal support waiver may be unconscionable based on financial means and medical needs.
 - e. The fault provision of the premarital agreement is unenforceable.
2. KEF
 - a. Premarital agreement included waiver of any interest in business entity.
 - b. If invalid, business apportionment is an issue
 - i. Pereira
 - ii. Van Camp
 - iii. Not exclusive
3. Blackacre
 - a. Same regardless of enforceability of agreement.
 - i. Acquired during marriage in joint form = FC 2581 Joint title presumption
 - ii. Joint title presumption is not rebutted by tracing to Kelly's separate property
 - iii. Kelly is entitled to a FC 2640 reimbursement

Question 2

1. 123 Main Street
 - a. Married Woman's presumption is triggered because prior to 1/1/75
 - b. But rebutted by evidence on why house was taken in Jessica's name alone
2. Gifting to children
 - a. Breach of fiduciary duty to gift CP without consent
 - b. Jessica can bring claim at time of disso notwithstanding prior knowledge
 - c. Total gift = \$400,000, Tony may be ordered to reimburse her \$200,000
3. Judgment
 - a. Debts incurred during marriage are typically community obligations
 - b. But not where they were incurred for non-community purposes – here the intentional act of driving into another car could be charged to Tony under a misappropriation theory
4. Gambling Loss

- a. Jessica could also potentially recover \$50,000 for the gambling loss under a misappropriation theory.
- 5. Bank account and 401k are community property subject to equal division.

Question 3

1. Location of Marriage/Applicable law
 - a. Joe's residence in CA since 2010 establishes jurisdiction
 - b. Marriage in New York City is not an impediment
 - c. Rachel's residence in Hawaii is not an impediment
 - i. Although CA court has no In Rem Jurisdiction over Hawaii house
2. Date of separation – FC section 70
 - a. Was the parties' behavior consistent with separation, or not?
3. If parties separated in 2010
 - a. Cabin
 - i. Acquired with earnings = CP
 - ii. Title in Joe's name alone does not control
 - iii. Joe's home improvement projects do not create a separate right
 - b. House
 - i. Rachel's separate property as paid for with separate funds and title taken solely post separation
 - c. Bank account
 - i. Divided according to each party's deposits and withdrawals post separation, and any community portion divided equally
 - d. Student Loan
 - i. Joe's separate obligation
4. If parties were not separated until 2018
 - a. Cabin
 - i. Acquired with earnings = CP
 - ii. Title in Joe's name alone does not control
 - iii. Joe's home improvement projects do not create a separate right
 - b. House
 - i. CP as obtained with Rachel's earnings during marriage.
 - ii. Title does not control.
 - c. Bank account
 - i. CP as acquired during marriage
 - d. Student Loan
 - i. Assigned to Joe upon separation.
 - ii. Community may be entitled to reimbursement for payments if community did not substantially benefit during marriage. Here, benefit seen in increased salary.

1)

Joan v. Kelly

1. Premarital / Marital Agreements

Premarital agreements are enforceable if they are (1) in writing, (2) contain lawful terms, (3) terms are clearly explained, (4) there is a 7 day review period, (5) signed before marriage, and (6) the parties have independent legal counsel, waivable in writing only if not waiving spousal support. Premarital agreements can never include terms concerning (1) fault, (2) child custody, or (3) conditions that promote divorce. Marital agreements are signed after marriage and follow the same rules except that there is a marital fiduciary duty that requires more complete financial disclosures, and subjects the agreement to contract defenses such as undue influence, duress, unfair advantage, etc. ✓

Joan will begin by asserting that there was not a valid premarital agreement because she did not sign it until after the marriage. She will argue that it should be considered a marital agreement, and assert that Kelly breached a fiduciary duty by unfair competition. *advantage.* However, the Joan will need more evidence to prove that her signature was actually backdated, and without corroborating evidence, the court will likely find that this agreement was a premarital agreement.

Joan will next assert that the entire premarital agreement be considered void because when the agreement states that "if one party has an extra-marital affair during the marriage and the other party does not, the faithful party is awarded Blackacre," this is a term of fault. Even though this term would benefit Joan, Joan may stand to benefit even more through an interest in Kelly's business and spousal support. However, the court will look for a severability clause in the premarital agreement that would invalidate only

unenforceable provisions. It is unclear how the court would rule on this matter, but the court would at least find that this fault provision is unenforceable. ✓

Joan may further assert that the waiver of spousal support not be enforced because it is unconscionable at the time of trial. This is unique to other terms where unconscionability is analyzed at the time of signing. Joan will argue that by enforcing the waiver of spousal support would be unconscionable because of the extreme wealth of her spouse, her limitations to work due to her significant health issues, that her legal counsel was disbarred for malpractice months after representing her, and the lack of other enforceable compensatory terms in the agreement. Kelly will argue that enforcing the waiver is not unconscionable because the marriage only lasted 4 years, that Joan may receive a 50% CP interest in Blackacre, and that Joan may receive a large Perriera reimbursement for the growth of Kelly's separate property business. The court will likely find that the waiver of spousal support is unconscionable and unenforceable.

Joan may finally assert that the premarital agreement is void due to lack of adequate legal representation. Because there is a waiver of spousal support term, legal representation is required. Because of the close proximity of the attorney's disbarment for malpractice and the date the agreement was finalized, and the multitude of basic errors within the agreement, that she did not have adequate legal representation to enforce the premarital agreement. However, the court may require additional evidence to rule on this matter.

2. Rights regarding KEF and Blackacre (Van Camp / Perriera and Family Code 2581)

A. KEF

Family Code 770 states that property acquired by a married person before marriage is presumed to be separate property. The court will likely determine that KEF is Kelly's

separate property because it was acquired in 2010 and Joan and Kelly weren't married until 2018.

Joan may still claim a community property interest under a Perriera analysis, which holds that when a spouses separate property business grows due to the efforts and labor of that spouse and he or she does not take a reasonable salary, then the community develops an interest equal to the business appreciation during marriage minus a reasonable expected return on an average investment. Here, Joan will argue that the entirety of her 4 year marriage should qualify as the duration of the Perriera analysis, because the company grew \$1M in the year 2018-2019 and \$14M in the year 2019-2020 due to the "nurtured" business connection.

Kelly will argue that the business valuation should be determined through a Van Camp analysis, which holds that when a spouses separate property business grows without the efforts and labor of that spouse, the community does not develop any interest in the business. Kelly will argue that the private equity firm does not generate income from active labor but rather lucky investments and the efforts of his business partners. If Kelly took a reasonable salary for her efforts, she would also present that as evidence that the community already benefited from the separate property business. *Not exactly. Q: was reasonable comp.*

The court will make a decision based upon what evidence Joan can provide to clarify how Kelly "nurtured" the business connection, and whether Kelly took a reasonable salary. The two analysis are not mutually exclusive, so the court may decide that between 2018 and 2019 the business grew under a Van Camp anaylsis and in 2019-2020 the community developed a Perriera interest.

B. Blackacre

Family code 2581 states that property acquired during a marriage in joint title is presumed to be community property, effective post-1984. This is rebuttable if there exists a signed statement in the deed or in a separate agreement that explicitly states that the parties are not taking ownership as community property but as something else such as separate property. Joan will argue that because the parties took title as "Joan and Kelly, spouses", that Blackacre should be considered community property. If Blackacre is not located in a community property state, it may be considered quasi-community property depending on the intent of the spouses.

Even if Blackacre is presumed community property, Kelly may still request a reimbursement through Family Code section 2640, which allows for a dollar for dollar reimbursement for separate property contributions to the acquisition of community property. To prevail on this matter, Kelly will have to show either through direct or family expense tracing that her separate property was actually used to make purchase Blackacre. Although Joan may attempt to raise a Family Code 852 transmutation claim, being named on the title is not sufficient by itself to prove transmutation. Depending on what Joan's use of Blackacre is, there is a slight possibility that Joan could prevail on a gift theory, if she can prove that the value of half of Blackacre was not a significant value relative to the entire estate and if her use of Blackacre was reasonably exclusive. Generally, however, the gift exception is reserved for items of a personal nature such as jewelry, etc. The court will likely grant a 2640 reimbursement if Kelly can show a direct tracing.

2)

Jessica v. Tony

I would first characterize each asset as either separate property or community property in chronological order.

1. Tony's initial Judgement in 1974

The facts are unclear as to whether Tony incurred the \$50,000 civil judgement prior to or during the marriage. However, the general rule is that tort liability remains the tortfeasor's separate property debt.

2. Married Woman's Presumption of 1975

The Married Woman's Presumption states that property acquired by a married woman in her sole name prior to 1975 is presumed to be her separate property. Here, 123 Main Street was acquired in 1974 and Jessica took title in her name alone, so the presumption applies. However, the rule is rebuttable and is only meant to facilitate litigation when a husband gifted property to his wife. Tony would argue that his actual intent was only to "avoid recovery" for his civil judgement, and both parties had full knowledge of this intent. The court will likely find that the Married Woman's Presumption does not apply and 123 Main St is community property. *good.*

3. Family Code 1100 Equal Management and Control of CP

Family Code 1100 states that each spouse has equal management and control over personal community property. Even though Tony primarily managed the household finances, because he never specifically excluded Jessica from reviewing the bank

statements and other financial documents, he is not breaching a fiduciary duty at this time.

When Tony made annual gifts to each of the parties' four children equal to \$10,000 annually, this is likely a breach of fiduciary duty ~~and he may be in violation of the Statute of Frauds~~. Family Code 1100 states that a spouse may not make a gift of community property to a third party without the knowledge and consent of the other spouse. Here, Jessica may argue that she did not consent to the gift. However, Tony may argue that there was implied consent, and mere disapproval of an expense is not sufficient to prove breach of fiduciary duty. Furthermore, because the gifts were to their children, this may not qualify as a breach of fiduciary duty, unless any of the children were from a prior marriage. Since this may qualify as a reasonable family expense, it is unlikely that this would amount to a breach of fiduciary duty.

4. \$100,000 Vegas trip

Family code 1101 allows a spouse to recover for damages for instances of breach of fiduciary duty such as concealment, gross mismanagement of CP funds, or unfair competition. The spouse may only file suit within three years of actual knowledge of the event or at dissolution or death. Recovery is generally limited to the 50% CP interest in the assets + sanctions + attorney's fees. However, Civil Code 3294 states that if the breach involves elements of fraud, oppression, or malice, then recovery is equal to 100% of the value of the assets. Here, Jessica may assert that when Tony lost \$100,000 in Las Vegas, that this was gross mismanagement of community property. Since she has told him that she did not approve of gambling and did not want him to go to Las Vegas, she may argue that Tony's actions were retaliatory and malicious. Jessica will almost certainly recover a 50% interest in the assets, and is likely to recover the entire \$100,000 for malicious breach of fiduciary duty.

5. \$500,000 Default Judgement

The general rule again is that tort liability is the tortfeasor's separate property debt. The facts suggest that Tony was personally liable for the accident. However, since the court did not rule based on the merits, there may be CP liability as a general debt incurred during marriage. Jessica would therefore need to prepare to argue in court to have the \$500,000 judgement be satisfied through Tony's share of community property.

6. 123 Market Street value and other assets

Family Code 760 states that property acquired by a married person domiciled in California during the marriage is presumed to be community property. Assuming that the Married Women's Presumption is not upheld, Jessica would have a 50% interest in the house, bank account, and Tony's retirement account by the time rule (years married/years accumulated) as they were acquired during the marriage. *401K does not require timeline*

7. \$200,000 Mortgage

Jessica's interest in the mortgage depends on a few factors. The lender intent rule states that the creditor may hold the community liable for a loan during marriage unless the lender primarily relied on a party's separate property when granting the loan, regardless of who signed it. Because Jessica is a stay at home spouse and doesn't appear to have any income, Jessica may argue that the lender did not rely on her assets and she should not be responsible for future mortgage payments. However, since Tony does not appear to have any separate property either, the community is likely responsible for the mortgage.

The assets Jessica is likely to walk away with is \$100,000 + attorneys fees for the gambling + \$700,000 for the house - \$100,000 mortgage + \$450k for the retirement interest.

3)

1. Bass Lake Cabin

FC 760: Provides the General Presumption that was acquired during marriage, while domiciled in CA carries a rebuttable presumption of community property.

Joint title
Joint Title Presumption: Property acquired in joint title, as husband or wife, as spouses, ~~or in one spouse's name is to be presumed community property unless it can be rebutted using direct tracing from SP or transmutation with clear and direct terms to be separate property or has a written waiver by the spouse whose interest are affected.~~

Joe and Rachel are Hawaii residents who were married in the state of New York. They purchased the cabin in California while married, using joint funds as a down payment. Joe will argue that despite community property, the cabin was intended to be his separate property because the title was in his name only. Unfortunately for Joe that does not pass the transmutation requirements for transferring community property to separate property such as the down payment made with community employment funds an instrument of writing was necessary from Rachel acknowledging that the property was Joe's separate property and it needed to be clearly stated in the deed which is not currently supported by the facts. *Not in joint title.* Thus the joint title presumption will prevail. Joe may try to argue that while at the cabin he made capital improvements like a new deck or windows. He would need to show that those improvements actually contributed to the appreciation of the cabin to possibly be reimbursed but even if he did, labor for a community asset is not *complet'* reimbursable.

The property will be considered community property and both Joe and Rachel have a right to their share of the community.

2. Hawaii House

Quasi Community Property: treated as if the couple were married, domiciled in California, and if they were actually domiciled in CA at the time of acquisition community property rights would have been the presumed governing statute.

Rachel's Hawaii house will be considered community property in California, because if it had been acquired while the couple was domiciled in California it would fall under that presumption. The Hawaii house may also fall under the joint title presumption as well (see above) because she used her earnings from her year end bonus and made payments to the mortgage from her employment income but paid from the couples joint account. Since the parties had not only not financially separated but they also did not intimately separate until Rachael called a mediator in 2018. Rachael cannot set up the defense that she was using separate funds for the purchase and payments to her house. Based on the general presumption that any employment income is considered community property during marriage, Rachael will fail this because she will be unable to prove that she used only separate property funds when the funds used were all a result of her employment.

3. Bank Accounts

Date of Separation is determined by the clear and communicated intent and conduct that reinforces the intent to no longer continue the marriage. ✓

Using the general presumption, the court will need to determine whether the joint accounts are to be considered community property or the commingled separate property of each party. Using the general presumption and the rule regarding date of separation, the court need only divide the funds in the joint account in 2018 as community property since the funds in the account were savings and income from their current employment. Even though the spouses physically separated states in 2010, they continued

in conduct that did not resemble or align with the intent that they did not want to continue the marriage. They continued to use, deposit, and pay out of the joint account, they filed joint taxes, and continued an intimate sexual relationship multiple times a year, they also did not communicate their separation to family or friends outside of their marriage. The couple enjoyed the financial benefits of marriage through the 9 years they lived apart but now wish to not be held to the community property provisions upon dissolution. All of these facts combined support the idea that they did not intend to dissolve their marriage until the 2nd big fight and any property or income acquired from 2010 to 2018 should be considered community property. *good analysis.*

4. Student Loan

FC 2641 allows for the community to be reimbursed for the payment of student loan expenses when the community has not substantially benefited from the advanced degree. Upon dissolution the loan is considered the separate property of the degree holder. There is a presumption of community benefit after 10 years.

Joe will argue that the community benefitted from his degree because his income increased 30% like his boss promised. Rachael will argue that the community did not benefit because the loan that was taken out was greater than the income he is now receiving because of the degree. Rachael will also argue that the increase was not substantial to the community because her end of year bonus is greater than what Joe makes in a whole year with his increase. The court will likely rule that the increase in earning potential was not as substantial to the community and he also did not meet the 10 year presumption of benefit rule because the couple's date of separation was two years shy of the 10 years needed for the presumption. The community will be reimbursed for all payments made to the loan with community funds since Joe began making payments in June of 2010. ✓

END OF EXAM