

COMMUNITY PROPERTY FINAL EXAM
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GENERAL EXAM INSTRUCTIONS

This is a three hour exam. Part I is an objective test consisting of short answer, multiple choice, and true-false questions. Part I will count for one third (33.33%) of your grade on the exam. In Part II there are two essay questions to be answered. Each essay question will count for one third (33.33%) of your grade on the exam.

Your grade on this final exam will count for 90% your grade for the course.

If you are handwriting this exam, your answers to Part I must be written in the spaces provided on this exam, not in a separate blue book.

If you are typing this exam on a typewriter or computer, your answers to Part IA (short answer) must be attached to this exam and each answer clearly labeled by question number and your exam ID number, and your answers to Parts IB & IC (multiple choice and true-false) must be written in the spaces provided on this exam, not on a separate blue book or paper.

Use only blue or black ink (not pencil) on this exam.

Each blue book and every page of any papers not in a blue book or this exam must be clearly labeled by Part, question number and your exam ID number.

Your Exam ID Number

ESSAY QUESTION NO. 1

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

Henry and Wilma were married in 2003. In 2005, Wilma inherited \$100,000. She deposited it into a savings account which she opened in the joint names of Henry and Wilma. Although the savings account was in joint names, Wilma had the passbook and she was the only one who used the account. From time to time, Wilma would deposit community property funds into the joint savings account. Occasionally, Wilma withdrew funds from the joint savings account for major household purchases or family vacations.

Wilma loves classic cars. During the marriage, she tried to talk Henry into purchasing various classic cars, but Henry always said they couldn't afford it. In 2009, a friend of Wilma's told her about a 1941 Willy Coupe for sale. The seller was desperate for funds, and was offering a great price of \$75,000. Wilma withdrew \$75,000 from the joint savings account and purchased the Coupe, taking title in her sole name. She did not inform Henry of the purchase because she was afraid he would consider it too extravagant, and she did not want to have any arguments. Wilma's friend agreed to keep the Coupe in her garage, so that Henry would not find out about the purchase.

In 2014, Wilma and Henry separated and Henry filed a petition for dissolution of marriage. The dissolution case is now pending. Wilma listed the Coupe as her separate property in her required declaration of disclosure. This was the first Henry knew of the purchase of the Coupe. The Coupe is now worth \$150,000.

What legal claims may both parties raised regarding the classic car? How is the court likely to rule? Discuss.

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ESSAY QUESTION NO. 2

Assume all of the following events took place in California unless otherwise stated. Answer according to California law.

Howard and Wendy were married in the year 2000 in the state of Columbia, where they remained domiciled until 2011. At the time of their marriage, Howard owned a residence, Gold Acre, which had a value of \$300,000. Title to Gold Acre was in Howard's sole name, and Howard owned Gold Acre free and clear with no mortgage at the time of marriage.

In 2005, Howard borrowed \$100,000 and secured it with a mortgage against Gold Acre. The loan and mortgage were in Howard's sole name. Howard was required to fill out a standard loan application listing all of his assets and his income and expenses in order to qualify for the loan.

The entire proceeds of the loan were used to improve Gold Acre, by adding a bathroom and guest room.

In 2010, Howard sold Gold Acre for \$450,000 and deposited the proceeds of sale into a new bank account at Secure Bank in Howard's sole name.

In 2011, Howard and Wendy moved to California where they have resided continuously to this date. In 2015, Howard and Wendy separated and Wendy filed for dissolution of marriage. Howard claims the funds on deposit in the Secure Bank account as his separate property. No funds have been added to or withdrawn from the Secure Bank account since Howard deposited the proceeds of sale of Gold Acre into the account.

What legal claims, if any, may Wendy make regarding the funds in the Secure Bank account? Discuss.

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===== Start of Answer #2 (1727 words) =====

The rights of Henry (H) and Wilma (W) to the classic car will depend on several issues. First, we must determine which presumption the court will apply to the car. Second, we must determine whether either party may rebut said presumption. Third, if the car is determined to be community property, the respective interests of the parties may be different if the court finds that any community property was misappropriated. Lastly, if the car is community property, W may nevertheless have a right to reimbursement for any separate property she contributed to its purchase. Here, the court will likely find that the car is community property unless Wilma successfully traces the purchase to separate property.

*Good***CHARACTERIZATION OF THE CAR**

In order to determine the characterization of the car, the court must determine whether there are any presumptions that apply. Here, there are two main presumptions that apply to the car: (1) the form of title presumption, and (2) the general community property presumption. Furthermore, the court may need to use additional presumptions to determine the character of the bank account, since W will attempt to trace the funds used to purchase the car to separate property in the account.

Form of Title Presumption (Evidence Code)

Under the form of title presumption, the character of the property is presumed to be as it is stated in the title. This presumption may be rebutted by an agreement between the spouses to the contrary or by a clear statement in the title as to the character of the property. Here, W will successfully raise the presumption because title to the car is in her name only. H will not be able to rebut this presumption unless the title explicitly states that the car is community property. If the form of title presumption applies, the car will be characterized as W's separate property.

General Community Property Presumption

Under the general community property (CP) presumption, any property acquired by a married person during marriage while domiciled in California is presumed to be community property. This presumption can be rebutted by tracing the acquisition to a separate property source or by a valid agreement that the property is other than community property. Here, H will be able to successfully raise the general CP presumption because W purchased the car from her friend while H and W were married and domiciled in California. W, however, will attempt to trace the funds used to purchase the car to a separate property source. W will claim that the \$75,000.00 used to purchase the car came from her \$100,000.00 inheritance. However, tracing is not that simple (see discussion below). Here, because the funds came from a bank account, we must determine what the character of the bank account is.

Which presumption controls?

Characterization of the bank account

General Community Property Presumption

Here, once again, H will raise the general CP presumption, since the couple acquired the bank account while married and domiciled in California. Again, W will attempt to trace the funds in the account to a separate property source (see discussion below).

Family Law Joint Title (FLJT) Presumption

When in a dissolution proceeding, any asset acquired by a married couple in joint title is presumed to be community property. This applies to a dissolution proceeding ONLY. This presumption may only be rebutted by an agreement to the contrary or by a clear statement in the title that the asset is not community property. Here, H will successfully raise this presumption since the account was opened by the couple during marriage and is in joint names. Unlike the other presumptions, W would NOT be able to rebut the FLJT presumption by tracing the acquisition of this account to separate property.

Probate Code Joint Bank Account Presumption

The California Probate Code contains a statute that provides the following presumption: Any bank account that is held by a married couple in joint names is presumed to be

community property. Although this sounds exactly like the FLJT presumption (in the context of a bank account) the crucial difference is that this presumption may be rebutted by tracing the funds to a separate property source. Although this presumption is in the probate code, there is some case law that holds that this presumption would apply in a divorce context as well. Here, the presumption is raised because it is a bank account acquired by a married couple in joint names. Once again Wanda will attempt to trace the funds used to acquire the car to a separate property source.

which presumption controls

Tracing

When community property funds are mixed with separate property funds in an account, the account is commingled. When tracing funds in a commingled account to a separate property source, a party must use one of two methods: direct tracing or indirect tracing. Indirect tracing is accomplished when the party is able to show that no community property existed in the account **at the time of the disputed purchase**; because no community funds were available, all remaining funds must have been separate property. Direct tracing is accomplished by showing that separate property funds existed at the time of purchase and that the purchasing spouse intended to use available separate property to make the purchase.

Classify the inheritance

Here, the bank account was commingled at the time that Wilma deposited community property funds into the account.

In order to indirectly trace, W will have to show that there was some of her \$100k inheritance left in the account, and that no community funds were in the account, when she purchased the car. When community expenses are paid out of a commingled account, they are presumed to be paid first with available community funds and then with separate property funds; if any separate property funds are spent on community expenses, this is generally presumed to be a gift. The facts state that, in addition to the \$75k spent on the car, W also occasionally withdrew funds from the account for "major" household purchases or family vacations (both of which are community expenses). W will likely need to hire a forensic accountant to determine whether any

community funds were available at the time she purchased the car. It is plausible that no community funds were available, since she she only deposited community funds "from time to time" and paid for "major" community expenses out of the account; however, she has the burden to prove this fact by a preponderance of the evidence.

In order for W to directly trace the funds used to purchase the car to a separate property source, W first needs to demonstrate that some of her \$100k inheritance was not spent at the time. Second, she will need to prove that she had the intent to use the available separate property funds to purchase the car. Here, the facts state that between Wilma paid for major expenses from this account and that she only deposited community funds from time to time. Therefore, it is possible that, over time, W spent all of her inheritance before purchasing the car. However, it is likely that she will be able to show that at least some of the inheritance was left. The more difficult task will be for W to prove that she intended to use separate property funds to buy the car. W will argue that she expressed this intent by taking the car in her own name and by never disclosing the purchase to H. Furthermore, she will argue that she intended to use her inheritance because H refused to consent to using community funds Essentially, she would be arguing that she intended use only her own separate property because she did not want to upset H by using community funds. On the other hand, H will argue that W intended to use CP funds because she asked for permission before the purchase. Furthermore, H will argue that the secrecy evidences guilt and that W was guilty about using CP funds without H's permission. Here, the court will likely find that if any SP funds were available that W intended to use those funds to purchase the car.

These would be better understood above

Conflicting Presumptions

When more than one presumption applies, and the presumptions result in conflicting results, the court will use whichever presumption is the most specific.

With regard to the bank account, the general presumption is the least specific presumption, since the other presumptions deal with title and the bank account has title. Furthermore, W will likely successfully argue that the Probate Code Bank Account

presumption is the most specific presumption since it specifically addresses bank accounts owned by married couples in joint title.

With regard to the acquisition of the car, the court will likely find that the general CP presumption is the most specific since we are dealing with property acquired by a married couple.

Conclusion

Ultimately, the court will likely find that the general CP presumption applies to the car, and that W may be able to trace at least some of the purchase price to her inheritance, which is separate property. If W can successfully trace the full purchase amount to her inheritance, then the car is her SP and the analysis ends here. However, if she is unable to trace the full amount to SP, it will be characterized as CP.

MANAGEMENT AND CONTROL OF COMMUNITY PROPERTY

Both spouses enjoy the right to equal management and control of all community property. Additionally, both spouses have the right to dispose of community personal property or funds without consent from the other spouse (unless the disposition is via gift). Here, W had the right to use any community funds to purchase the car. H may argue that W misappropriated CP funds because she did not disclose the purchase to H. However, since the parties still had the car at the time of dissolution, and because the car gained in value, if any CP was used to acquire the car, H will not have any remedy against W for misappropriation.

REIMBURSEMENT

A spouse has the right to reimbursement for SP used to purchase a CP asset unless the reimbursement is waived in writing. Here, if the car is determined to be CP and W is able to demonstrate that part of the purchase price came from her inheritance, she will be entitled to be reimbursed that amount, without interest, since she did not waive the right to reimbursement.

=====**End of Answer #2**=====

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===== Start of Answer #3 (1243 words) =====

The main issues that will determine the rights of Howard (H) and Wendy (W) with regard to the Secure Bank account are: (1) the character of the funds acquired in the 2005 loan, and (2) which presumption the court will apply to the account itself.

Community property (CP) is any property acquired by a married person during marriage while domiciled in California, other than separate property. Separate property (SP) is any property acquired prior to marriage, or by gift or inheritance. Quasi-community property (QCP) is any property acquired by a married person while domiciled outside California if the property would have been classified as CP if the person would have been domiciled in California. Here, since the Secure Bank account was acquired while H was domiciled outside of California, it cannot be CP; however, it can potentially be QCP if it would have been CP had H been domiciled in California at the time of acquisition.

CHARACTERIZATION OF THE SECURE BANK ACCOUNT

In order to determine the characterization of the account, the court must determine whether there are any presumptions that apply. Here, there are two presumptions that could possibly apply to the account: (1) the general community property presumption and (2) the form of title presumption.

Form of Title Presumption (Evidence Code)

Under the form of title presumption, the character of the property is presumed to be as it is stated in the title. This presumption may only be rebutted by an agreement between the spouses to the contrary or by a clear statement in the title as to the character of the property. Here, H will successfully raise the presumption because title to the Secure Bank account is in his name only. W will not be able to rebut this presumption unless the title explicitly states that the account is community property. If the form of title presumption applies, the account will be characterized as H's separate property.

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General Community Property Presumption

Under the general community property (CP) presumption, any property acquired by a married person during marriage while domiciled in California is presumed to be community property. This presumption can be rebutted by tracing the acquisition to a separate property source or by a valid agreement that the property is other than community property. Again, since we are dealing with an asset acquired outside of California, we will analyze whether the account *would have been* CP if the parties were domiciled in California. Here, W will successfully raise the presumption because the account was acquired during the marriage. However, H will then try to trace the funds to his separate property (see discussion below).

Conflicting Presumptions

When more than one presumption applies, and the presumptions result in conflicting results, the court will use whichever presumption is the most specific.

With regard to the bank account, the general presumption would likely be the most specific presumption, since we are in a dissolution context and because we are dealing with property acquired by a married person during marriage. Therefore, the court will likely apply the general CP presumption. The Secure Bank account will be presumptively QCP unless H can successfully trace to a SP source.

TRACING

In order for H to completely trace the funds to SP, he must show that both Gold Acre and the loan proceeds were SP. Here, since H acquired Gold Acre prior to marriage, it is clearly separate property. However, if the loan proceeds acquired in 2005 were QCP, then the community may have acquired some interest in Gold Acre.

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because the 40 million

Characterization of the 2005 Loan

Here, since the loan was acquired during marriage, the loan would be considered QCP

proceeds presumed

(under the general CP presumption) unless H can trace the loan proceeds to a separate property source. A married person may trace loan proceeds acquired during marriage to a SP source if he or she can prove that the lender intended to be repaid from a SP source. There is currently a split of authority: the rule is either that (1) the lender must have *solely* relied on the SP source; or (2) the lender must have intended to rely *primarily* on the SP source. Here, H would like to argue that the loan was solely and primarily based on securing the mortgage to the house (which was entirely SP at that point). However, W will argue that the lender did not *solely* rely on the security interest in the house, since H still needed to "qualify" for the loan based on his other assets and future income. Since H's future income would have been QCP, W would successfully be able to prove that the lender did not rely solely on SP. However, H will argue that the lender primarily relied on SP since the loan was secured mortgage and H had plenty of equity in Green Acre at the time (H owned Green Acre free and clear at the time of the loan). H would likely prevail if the court applied the "primarily" rule rather than the "solely" rule. *(Questionable, since repayment would have come from earnings probably, unless CA was a rental)*

If the court holds that the loan proceeds were SP (based on the intent of the lender), then the community would have zero interest in Gold Acre. Therefore, H would have successfully traced ALL of the funds in the Secure Bank account to SP, and W would have no interest in the account. *But what about loan repayments? (QCP used to repay CP loan)*

If the court finds that the loan proceeds were QCP (based on the intent of the lender rule), then the community would potentially have some interest in Gold Acre.

CP Improvements to SP

When CP or QCP is used to improve SP, the community will either acquire a pro tanto interest in the SP, or will be entitled to reimbursement, whichever is greater. Here, assuming that the loan proceeds were QCP, W will argue that the community either acquired a pro tanto interest in Gold Acre or that the community is entitled to reimbursement for the loan proceeds. However, in order for the court to make any type of determination here, it would need to know the value of Gold Acre at the time that the

loan proceeds were used to improve Gold Acre. If the improvements did not actually add more than \$100k in equity to the house, then the community would simply be entitled to a reimbursement. If the improvements added more than \$100k in equity to Gold Acre, then the community would have acquired a QCP interest in the property; the interest would have been equal to the percentage of equity that the improvement added to the property.

CONCLUSION

The court will likely apply the general CP presumption to the Secure Bank account since it was acquired during the marriage. However, H will definitely be able to trace some of the funds to a SP source since he had \$300k of SP equity in Gold Acre at the time of marriage. The proportion of funds traceable to the loan proceeds will depend on which "intent of the lender" rule the court applies. If the court decides that the loan proceeds were SP, then ALL of the funds in Gold Acre would be traceable to SP and W would have zero interest in the account. If, however, the court decides that the loan proceeds were QCP, then the community would either have acquired a pro tanto interest in Gold Acre (and therefore some interest in the account), or the community would be entitled to reimbursement for the loan proceeds (whichever is greater).

===== End of Answer #3 =====

END OF EXAM