MONTEREY COLLEGE OF LAW

COMMUNITY PROPERTY

FALL 2025

FINAL EXAM

PROFESSOR SARAH A. CAVASSA

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

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

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MCL
Community Property
Prof. Sarah A. Cavassa
Fall 2025

Question No. 1

Kelly, a software engineer at Gaming Company, and Trina, a probation officer for the State of Columbia, are married and are now divorcing. There are several disputed issues in their dissolution and they have consulted with you as a mediator to neutrally advise them regarding the law and the likely outcomes of each of these issues if they were to proceed to court.

Kelly alleges she and Trina separated on June 30, 2024. She states that on June 30, 2024, Kelly and Trina had a huge fight during which Trina yelled "I want a divorce". Starting that night and continuing every night until June 30, 2025, Trina slept in the guest room of their house. Trina moved out of the house on June 30, 2025. Kelly also states that she and Trina filed their taxes with "married filing separately" status for tax year 2024, and that both parties started dating other people shortly after June 30, 2024.

Trina states that she and Kelly separated on June 30, 2025, the day that Trina moved out of their house. Trina states not only had she not moved out of the house until that date, but until she moved out Trina and Kelly were physically intimate about once a week, that they shared meals together approximately three times a week, and that they continued to share a joint checking account.

Kelly started working at Gaming Company on January 1, 2024. A primary component of Kelly's compensation is Restricted Stock Units ("RSUs"). In January of each year she is granted 100 RSUs, which vest in January of the following year. She was granted 100 RSUs in January of 2024, and 100 RSUs in January of 2025.

Trina has a defined benefit retirement plan with the State of Columbia. She has a total of 20 years of service credit. If the parties' date of separation is June 30, 2024, then 9 of her service credit occurred during marriage. If the parties' date of separation is June 30, 2025, then 10 years of her service credit occurred during marriage.

Trina states that her mom gifted her $50,000 for the downpayment on Trina and Kelly's house. Trina has a bank account statement showing that $50,000 was wired from Trina's mom's account to Trina and Kelly's joint account the day the $50,000 down payment was made, and that the parties' joint bank account already had $15,000 on deposit when the wire transfer was made. Trina wants a reimbursement of the $50,000.

1. What do you advise Trina and Kelly regarding Kelly's RSUs?
2. What do you advise Trina and Kelly regarding Trina's State of Columbia retirement plan?
3. What do you advise Trina and Kelly regarding Trina's request for a $50,000 reimbursement from the house?

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Question No. 2

Tony and Julie married in Florida in 2005. Tony started Yo Man, an online home goods company, in 2000. At the time of Tony and Julie's marriage, Tony worked about 50 hours a week as the only employee of Yo Man, which had a value of approximately $40,000. Between 2005 and 2009, Tony paid himself $50,000 a year from Yo Man. In 2010, Tony hired four part-time employees for Yo Man and reduced his hours to 40 a week. Tony continued to manage all of the product selection, marketing, and strategic decision making. As part of a loan process in 2010, Tony had Yo Man appraised and the value of the company was $300,000. In 2020, Yo Man had a massive increase in sales related primarily to the pandemic and people buying more home goods online. At the beginning of the pandemic Yo Man was worth $500,000 and in March 2022 Tony sold Yo Man for $5,000,000. In each year from 2010 to 2022, Tony paid himself $80,000 a year from Yo Man.

In April 2022 Tony and Julie used $1,500,000 of the Yo Man proceeds to buy Blackacre, a vacation home in California. Title was taken in Tony's sole name. The remaining $3,500,000 of the Yo Man proceeds were deposited to a two bank accounts at Big Bank, one in Tony's name containing $2,500,000 and one in Julie's name containing $1,000,000. The parties orally agreed at the time of the deposits that the account in Tony's name would be solely Tony's, and that the account in Julie's name would be solely Julies. No other funds were ever deposited to the two accounts.

In December 2023, Tony and Julie moved from Florida to California to live at Blackacre fulltime.

In December 2024, Tony and Julie separated and Julie filed a petition for dissolution in California.

In the California dissolution action, what are Julie's rights, if any, in

1. Blackacre; and
2. The funds from Yo Man held in the two accounts at Big Bank?

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Question No. 3

Steve and Thomas married in 2018 and separated in 2022. Before they got married, Steve was a barista. During their marriage, Steve went to law school and obtained his JD. He is now a lawyer. The parties spent $35,000 of community property toward Steve's education, and took out another $80,000 in student loans in Steve's name, all of which is still owing.

Steve received a $900,000 inheritance from his grandfather one month after he and Thomas married, which Steve and Thomas used to buy a house at 555 Main Street. They took title as "Steve and Thomas, a married couple". 555 Main Street is now worth $1,100,000.

In 2021, Thomas suffered an injury in the Army Reserves, and now receives VA disability income of $1,000 per month. He has used $20,000 worth of his VA disability for community expenses, for which he now wants a reimbursement.

Please analyze Steve and Thomas' rights and obligations regarding:

1. Steve's law degree, the community's contribution to Steve's legal education, and Steve's student loan;
2. 555 Main Street; and
3. Thomas' VA disability income and the requested reimbursement.

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Community Property

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Exam Answer Outlines

Question No. 1 Answer Outline

1. Date of Separation
    a. Family Code § 70 governs DOS
        i. Communicated intent to permanently terminate marital relationship
            1. "I want a divorce"
        ii. Conduct consistent with that intent
            1. Separate bedrooms, separate taxes, dating v.
            2. Physically intimate, meals together, joint checking
                a. Note: Living separately is not essential to separation
2. RSUs
    a. RSUs are compensation
        i. FC § 760 if earned during marriage - CP
        ii. FC § 771 if earned after separation – SP
    b. Time Rule Analysis
        i. 50 RSUs CP if DOS 6/30/24
        ii. 150 RSUs CP if DOS 6/30/25
3. Defined Benefit Retirement
    a. Retirement earned through employment is compensation
        i. FC § 760 if earned during marriage - CP
        ii. FC § 771 if earned after separation – SP
    b. Time Rule Analysis
        i. 9/20 CP if DOS 6/30/24
        ii. 10/20 CP if DOS 6/30/25
4. Reimbursement
    a. FC § 2640 for SP reimbursement of contribution to CP, if traced by SP claiming spouse
        i. FC § 70 gift = SP, but here is the gift to Trina or to both?
        ii. Tracing

1. Direct Tracing = $50k from Trina's mom to house
2. Exhaustion Tracing = $35k from Trina's mom to house

Question No. 2 Answer Outline

1. Quasi-Community Property
    a. Property that would be community if the parties had been domiciled in CA at the time of acquisition
2. Yo Man Proceeds
    a. Could have community interest in business due to post-marital growth of premarital business
        i. Allocation methods not exclusive or singular
            1. Pereira
                a. Where CP time, skill, talent, effort primarily increased value
                b. SP receives initial investment and reasonable rate of return, all else to CP
                c. Q – 2005 to 2010? 2005 to 2020?
            2. Van Camp
                a. Where factors other than CP primarily increased value
                b. CP receives reasonable compensation for labor, all else to SP
                c. Q – 2020 to 2022?
3. Blackacre
    a. Title does not control
4. Bank Accounts
    a. Title does not control
    b. No oral transmutations after 1/1/85

Question No. 3 Answer Outline

1. Steve's law degree, the community's contribution to Steve's legal education, and Steve's student loan
    a. Degrees do not have CP value
    b. FC § 2641
        i. If contribution significantly increased earning capacity, reimbursement to community for ed costs
        ii. Loan assigned to Steve without offset
2. 555 Main Street
    a. FC § 2581 – Joint Title Presumption = CP
        i. Rebuttable only by contrary statement in deed or written agreement
    b. FC § 2640 – SP contribution to CP reimbursed if traced
        i. FC § 770 inheritance = SP
            1. $900k purchase price to Steve
        ii. Remaining $200k (appreciation) CP
3. Thomas' VA disability income and the requested reimbursement
    a. VA disability is not divisible due to Federal preemption, but
    b. No general reimbursement for SP contribution to community obligations during marriage

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1)

1.Kelly's RSUs

FC-760 - Community Property (General Presumption)

Family code 760 specifies that property acquired by married persons while domiciled in the state of California is community property.

Here, the fact pattern indicates that both parties are married so no further analysis is required. Although the fact pattern is silent as to their state of domicile, the couple presumably lives in California. If the couple lived in the State of Columbia prior to moving to CA, their property may be classified as quasi-community property which is property which would have been classified as community property, but for where it was acquired.

Therefore, all property the couple acquired from their date of marriage to their date of separation is community property unless contradicted by statute (e.g. FC-770)

FC-771

FC-771 dictates that property acquired after the date of separation is the parties own separate property. This has several narrow exceptions such as necessities of life. The analysis of the date of separation and the parties own separate property is expanded on further below.

FC -70 - Date of separation

Family code 70 specifies that the parties are separated when:

1. One party makes a communication to the other which expresses the desire to permanently end the marital relationship.
2. The parties conduct themselves in a manner consistent with that request

Here, there is some dispute as to the parties date of separation.

Kelly's claim

Kelly claims that the parties separated on 6/30/2004. Her claim is bolstered by the fact that they had a fight that day with Trina yelling "I want a divorce." This communication would fulfill the first requirement that a party makes a communication to the other which expresses the desire to permanently end the marital relationship. However, Trina did not move out of the house until a year later. Although the parties did start seeing each other shortly after 6/30/2024 and started filing as "married filing separately", we must further examine their conduct in order to determine their true date of separation.

Trina's claim

Trina claims the parties separated on 6/30/2025, the day that Trina moved out of the house. Trina supports her claim by stating that, although the communication was made a year prior, the couples continued to be intimate about once a week. Trina also claims the couples shared meals together multiple times a week and that they continued to share a joint account. Even though the communication to permanently end the marital relationship was made earlier, the couple's conduct was not consistent with that communication.

Therefore, because in Kelly's claim, only one of the two prongs were satisfied, Trina has the better claim for the actual date of separation, as Trina officially moved out of the house and their conduct was now consistent with the earlier declaration. A court would likely find the date of separation to be 6/30/2025.

Good Analysis

Stocks and Restricted Stock Units (RSUs)

Stocks and RSUs which are acquired during a valid marriage in CA are counted amongst community property as defined in FC-760. A court may use any equitable method to divide the units, although the most common is a **Nelson Apportionment** (date to acquisition to date of vesting during marriage divided by date to acquisition to date of vesting.

Here, Kelly started acquiring the stock units as part of her compensation on 1/1/2024. Had Kelly been given the units for another reason such as a gift, they may have been her separate property. However, as they were a part of her compensation package from her time, talent, skill, and labor, they are community property. Kelly was given 100 units during the marriage in 2024 which would all be equally divided as community property. The couple was still not separated until the end of June 2025, before the next group of 100 units had vested.

Using a Nelson Apportionment, the court would likely find it equitable that half of the 100 RSUs for 2025 be Kelly's separate property, as the couple had separated on 6/30/2025. Therefore, 150, RSUs would likely be determined to be community property and would be equally divided upon divorce.

2.Trina's State of Columbia Retirement Plan

FC-760 - *see supra*

FC-771- *see supra*

FC -70 -*see supra*

Retirement Accounts

Retirement accounts can be divided into two different types.

1. Defined Benefit accounts (CALPERS) where the user receives service credit for the amount of time served which is multiplied by a percentage of their annual income.
2. Defined contribution accounts where the user contributes a certain amount towards the account.

Here, Trina's account is a Defined Benefit account as she was a state employee. Because the court is likely to determine that the date of separation is 6/30/2025, we can presume that she had 10 years of service credit. because she has a total of 20 years of service credit, Kelly is entitled to half of that amount as community property, as half of her service credit occurred during the marriage.

Therefore, 10 years of service credit would be Trina's SP. Kelly would be entitled to half of the remaining time as community property, resulting in her obtaining 5 years of service credit. If Trina has the option to delay retirement for any reason, Kelly could elect to receive a Gilmore Election, which would entitle her to receive the money she would have gotten had Trina retired, until she ultimately retires.

3.Trina's Request for a reimbursement from the house.

FC-760 - *see supra*

FC-771- *see supra*

FC -70 -*see supra*

FC-760 Separate Property

Fc 760 specifies that any property received through gift, bequest, or inheritance (not from the time, talent, skill, or labor of the party) as well as the issue and revenue from such separate property, is separate property.

Here, Trina received a gift from her mother for 50,000. The gift was however, deposited into an account with co-mingled funds which already had money in it when the transfer was made. In order for Trina to receive money back, she must be able to trace it.

FC-2460 (Separate property Reimbursement)

Separate property that contributed towards community property may be reimbursed so long as it can be traced. Either direct or exhaustion method can be used to accomplish this tracing.

Here, the property went into a co-mingled account and direct tracing is therefore impossible as the property was not kept separate and used with the express purpose of a separate property purchase. However, Trina can still use **exhaustion method tracing** where the community property is used first, there is no separate property reimbursement for community expenses, and there is no total recapitulation.

Kelly would likely succeed in her claim that she would be able to trace the gift from her mother's account, into their joint account, and then used to make the downpayment. Assuming Kelly is able to retrieve this information and prove with clear and convincing evidence that the gift was traced, she would likely be able to recover the 50,000 gift.

2)

1.Julie's rights in Blackacre

FC-760 - Community Property (General Presumption)

Family code 760 specifies that property acquired by married persons while domiciled in the state of California is community property.

Here, the fact pattern indicates that both parties were in a valid marriage but acquired all of their property (including Blackacre) in Florida. Although the property is a vacation home in California, at the time of purchase, the couple was domiciled in Florida and were not living at Blackacre.

Therefore, because the property was not acquired in California during a valid marriage, it is not classified as community property. ✓

Quasi-community property

quasi-community property is property which would have been classified as community property, but for where ~~it was acquired.~~ the parties were living when it was acquired

Here, Tony and Julie moved from Florida to CA to live at Blackacre full time in 12/2023 and began filed a petition for dissolution in 12/2024.

Therefore, because the couple is getting divorced in California, The state will treat Blackacre as quasi-community property which is no different than that of regular community property. ✓

The Acquisition of Blackacre

Business Apportionment

Business Apportionment is conducted when both separate and community property contributed towards the growth of a business. As Tony started the business in in 2000 and was married and still continuing the business in 2005, the business was expanded using both community and separate funds. about

The court may use any equitable method to apportion a business however the most common is a Perrera / Vancamp apportionment.

Perrera

A Perrera apportionment is more appropriate when the time, talent, skill, or labor of a partner is what primarily contributed towards the growth of a business. In this apportionment, the business owner is entitled to the separate property acquired at the start of the marriage, plus a reasonable rate of return (10%) for each year the business continued to grow. All else is community property. sometimes

Here, Tony was active in the growth of his business, paying himself a small salary, and was acting as the only employee and working excessive hours. The value of the business at this time (**40,000**) is Tony's separate property as this was acquired before marriage. Between 2005-2009, Tony continued working and the business grew. In 2010, Tony hired employees but continued to work a regular work week and continued to manage all of the product selection, marketing, and decision making. Ton continued to work all the way until 2020 when the business was valued at 500,000. The court could portentially switch to a Vancamp apportionment for Tony's work period after 2020 which will be expanded upon later.

Using a Perrera apportionment for this section of Tony's work history, the court will look at his separate property before marriage (40,000), add a reasonable rate of return for the years he worked after getting married, and subtract that from the valuation of the business

at the end of this period (500,000). That amount would be Tony's separate property and all else would be community property.

Vancamp

A Vancamp apportionment is appropriate when the value of the business increased due to other factors besides the time, talent, skill, and labor of the partner. The community is entitled to reasonable compensation.

Here, the value of the business began to sharply increase in 2020 following online sales during the pandemic. Tony will argue that the value of the business during the period of 2020-2022 should be treated with a Vancamp apportionment and that Julie should only be entitled to his annual salary of 80,000 per year which he was taking during this time. However, Tony would likely be unsuccessful in his claim.

Although the company hit a surge of good luck in 2020, it was still due to the skill and good decision making of Tony, who up until that point was active in the overall strategy of the company, that the company was poised to take advantage of the surge of online shopping during the pandemic. The fact pattern does not indicate that Tony took a backseat on leadership during this period of rapid growth. Tony had been working at his company for approximately 15 years and only in the last 2 years did profits explode. Julie will argue that the court should use a Perrera apportionment for the entire duration of the marriage and that she should be entitled to the higher valuation as community property.

Therefore, because of the limited time it took for the business valuation to increase along with Tony's leadership, the court will likely decide for a Vancamp apportionment of the business.

Tony acquired Blackacre using community property funds earned from selling his business.

Title of Blackacre

The evidence code specifies that beneficial possession of real property follows the title however this presumption can be overcome by a more specific presumption. Here, Tony took title in his name alone so the initial presumption is that it belongs to him.

Hierarchy of presumptions

When there is a conflict between presumptions, the more specific presumption will win. Here, there are more specific presumptions which will determine Julie's rights to Blackacre.

FC-760 - Community Property (General Presumption) - *see supra*

Quasi-community property *- see supra*

Here, The property was acquired by a married couple and, although it was acquired outside of California, the state will treat it as quasi-marital property as the dissolution action is in California, and there is no premarital agreement dictating which states laws will rule.

Quasi

Therefore, because a more specific presumption applies, Blackacre is community property even though title was taken in Tony's sole name.

Julie is entitled to half of the value of Blackacre in the dissolution action.

subject to possible 2040 via Yo Man proceeds

2.Julie's rights to the funds in Yo Man held in the two accounts

FC-760 - Community Property (General Presumption)

Quasi-community property

Business Apportionment

see supra

Transmutation

A transmutation is the change in the characterization of property during a marriage. Prior to 1/1/85, this could have been done orally. However, this was changed by **FC-852** which stipulates that a transmutation after this date must be in writing, a specific declaration of intent must have been made, and it must be signed by the party against whom enforcement was sought.

Here, there is no transmutation as the parties do not fulfill any of the aforementioned requirements. There is no writing, no specific intention of declaration was ever made, and nothing was signed. Their oral agreement that the deposits in the accounts belonging to both parties would be solely theirs is invalid.

Therefore, Julie has an equal right to the community property value of both of the contents of both of the bank accounts.

3)

1. Steve's law degree, CP contribution, and student loan

FC-760 - Community Property (General Presumption)

Family code 760 specifies that property acquired by married persons while domiciled in the state of California is community property. It is of no consequence that both parties are male.

Here, the fact pattern indicates that the parties were married. Typically, debts incurred during the marriage are also community property debts with several exceptions. FC-2641 is a more specific presumption that will rebut the general presumption of Steve's law degree and community debt.

FC-2461

This family code section stipulates that student loans which lead to an increased in earning potential for one of the partners benefit that partner specifically. The rule stipulates that the debts incurred during that expense apply to the benefiting partner alone unless the community had a lengthy time to recoup its investment (approximately 10 years or more)

Here, the parties were married in 2018 and separated in 2022. The community did not have adequate chance to benefit from the investment into Steve's education. Therefore, because Steve gets the benefit of his degree moving forward, he must take on the debt alone. Steve will therefore take the debt as separate debt.

The community property contribution towards Steve's education.

Here, the community is unlikely to be reimbursed for its contribution to Steve's degree as it is a community expense. However, the court may reimburse the community post-separation for its contribution if it finds that it is equitable and in the interest of justice.

2.Rights regarding 555 Main Street

FC-760 Separate Property

Fc 760 specifies that any property received through gift, bequest, or inheritance (not from the time, talent, skill, or labor of the party) as well as the issue and revenue from such separate property, is separate property.

Here, Steve received a large inheritance from his grandfather. Although he received it after the couple was married, it is still separate property as it was given to him and it did not involve his labor. Therefore, the inheritance is Steve's separate property.

FC-2581 - Joint Title Presumption

The joint title presumption dictates that joint title is community property. This cannot be overcome through tracing. The only way to rebut this presumption is through a statement in the deed itself or a signed document indicating otherwise (a prenup or transmutation)

Here, although Steve made the purchase using SP, he took title as "Steve and Thomas, a married couple." The fact pattern does not indicate there was a prenup, a transmutation, or a statement in the deed itself which would indicate that the house remain the SP of Steve.

Therefore, because there is not a writing indicating otherwise, the house is community property.

FC-2460 (Separate property Reimbursement)

Separate property that contributed towards community property may be reimbursed so long as it can be traced. Either direct or exhaustion method can be used to accomplish this tracing.

Here, Steve used his inheritance to purchase the property. As long as Steve is able to property trace his purchase, he will be able to recover the value of his inheritance.

Therefore, Steve will receive his 900,000 back in addition to half of the remaining value of the community property value of the house. Thomas will receive the other half as his portion of the community property.

3.VA disability and reimbursement

Federal Preemption

Certain federal schemes are federally protected against being divisible during a dissolution of marriage. VA disability is federally protected and falls within this protection.

Here, Thomas suffered an injury in the Reserves and receives VA disability of 1000 a month. This income is preempted and therefore cannot be distributed during a dissolution.

FC-2460 (Separate property Reimbursement) - see supra

Here, Steve can only recover separate property contributions which can be traced either through direct or exhaustion tracing. This does not apply however to purchases made towards general community expenses. General community expenses are the shared responsibility of the community and are therefore not subject to reimbursement.

Although VA disability is preempted, general community expenses are non-reimbursable. Therefore, Steve would be unable to be reimbursed for the 20,000. However, a court may be able to provide relief for his disability if his injury is so severe that he is unable to work and it is equitable and in the interest of justice.

END OF EXAM