

Monterey College of Law

FINAL EXAMINATION
COMMUNITY PROPERTY
PROFESSOR S. CAVASSA
FALL SEMESTER, 2017

This exam consists of 3 essay questions. You will have 3 hours to complete your answers. Each question is of equal weight.

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 1

In 1995, Henry was involved in a horrible automobile accident when he was hit by a UPS truck driven by an intoxicated UPS employee. While in the hospital recovering from his injuries, Henry met Wanda, a nurse. They married in 1997. Henry settled his case against UPS for \$5 million dollars in 1998. He invested ½ of the settlement in mutual funds and used the other ½ to buy an annuity which pays \$10,000 per month for his life. When Henry settled his case he told Wanda that “we are set for life...neither of us will have to work since we have all this money.”

Wanda left her job at the hospital but returned to work 3 years later. As part of her compensation package, Wanda received salary of \$60,000 per year, health insurance at no cost and a 401K program in which the employer matched Wanda’s contributions up to a maximum of \$4,000 per year.

The annuity payments were deposited directly into an account at Union Bank in Henry’s name alone. From that account he transferred about \$7,500 a month to a joint checking account at Wells Fargo Bank from which he paid the parties living expenses. Wanda’s paycheck was deposited into an account at Citi Bank in the name of both parties. Since the parties were able to live off the annuity payments, the account at Citi Bank increased substantially in value.

In 2004, while on a vacation in Colorado, Henry and Wanda decided to purchase a condo in the Rockies. They took title as Tenants in Common. They paid \$250,000 for the condo. Henry paid \$200,000 from his mutual funds and the parties used \$50,000 from the Citi Bank account to complete the purchase. Thereafter, Henry paid from the Union Bank account the HOA dues and property taxes on the condo which averaged \$7,000 a year, combined.

A few months ago, Henry learned about a stock investment opportunity, Surefire, Inc., from his friend, Fred. Fred told Henry there was a good possibility that the investment would see returns of 200-300 percent. Henry did not tell Wanda about the conversation with Fred, but invested \$300,000 from his mutual fund account into stock in Surefire, Inc.

Henry and Wanda have just separated and are now getting a dissolution. The assets consist of the Colorado condo which is now worth \$550,000, Henry’s annuity and mutual fund accounts, and the Citi Bank account which now has \$450,000 on deposit. Henry’s investment in Surefire is now valued at \$800,000. Wanda’s 401K is now worth \$350,000.

How will the California court analyze Henry and Wanda’s rights and liabilities with respect to:

1. Henry’s annuity
2. Henry’s mutual fund accounts
3. The Colorado condo
4. The Surefire Investment
5. The Citi Bank account

Question 2

Harvey and Frances live in Napa, California and married in 2003. Harvey worked as a general contractor who had previously been married to Xandra. He had two children with Xandra, Mike (now 16) and Jane (now 17). In July, 2004, Xandra obtained a child support order against Harvey requiring him to pay \$1,100 a month in child support for each child.

In 2005, Harvey inherited \$200,000 from his uncle and placed the money into an account in his name only at Rabobank. Frances operated a small business selling quilting materials and fabric that she began as a hobby in 2004. Frances and Harvey discussed whether to turn the hobby into a business venture and Frances opened the business, Frannie's Closet, in late 2005. In 2008, Frances opened an online presence for her quilt and fabric company through Amazon and sales tripled each year from 2008 to the present. Beginning in 2010, Frances didn't spend much time at the business letting her assistant run the day to day operations. The business is currently valued at \$250,000.

Harvey began his business, Harvey's Homes, in 1999 after working for his father as a carpenter for several years. Harvey's business consisted of building homes. About half of his work involved high end homes in Napa where he contracted to build houses for clients who came to him with architect developed plans. The other half of his business consisted of building houses for his own account and putting them on the market for sale as "new builds or spec houses." From 2003 when he and Frances married until 2011, Harvey's business increased in value as his reputation in the area increased. Harvey did almost all the construction work himself and only occasionally hired laborers to assist him. He became known as one of the highest quality builders in the Napa area. His annual profits went from \$100,000 per year when he and Frances married, to \$700,000 in 2011. In 2011, devastating fires swept the Napa area. Over 5,000 homes were destroyed and there was a huge demand for construction expertise. Harvey decided to cease the part of the business building "new builds/spec houses" and concentrated on bidding for contracts on high end rebuilds. He hired a manager to coordinate his work crews and began to play more and more golf. From 2011 until 2016, the business profits increased to \$4 million dollars a year because of the demand for construction in Napa.

Harvey paid his child support from his salary from the business and never missed a single payment. He is looking forward to the end of his child support obligation for Jane in one year and for Mike in two.

In August, 2017, Harvey and Wanda separated. Please analyze the parties' rights and obligations as to the following:

1. The Rabobank Account
2. The business Frannie's Closet
3. The business Harvey's Homes
4. Harvey's child support payments

Question 3

Hans and Wilma, Illinois residents, married in January, 2002 at a Wedding Chapel in Las Vegas. In February, Hans began working as an aerospace engineer earning \$100,000 per year. In 2003 they purchased a cabin in the California mountains near Lake Tahoe. They took title in Wilma's name alone. They made the down payment from a joint bank account which contained savings from Hans employment and money Wilma had inherited from her mother. In 2004, Hans left Wilma and relocated to Los Angeles. Neither Wilma nor Hans filed for a dissolution. In 2006, Hans met Whitney, a co-worker at Raytheon. Hans told Whitney that he had been previously married but that his first wife, Wilma had died. In early 2005, Hans and Whitney obtained a marriage license and married in Long Beach.

Hans and Whitney were each earning \$125,000 per year. They agreed that they would each open accounts in their own names and deposit their respective paychecks into those accounts. They decided that Hans' account would be used to pay their ordinary living expenses and Whitney's account would be used for long term savings and investments.

In 2007, Hans and Whitney purchased a Duplex in Long Beach. Title was taken as "Hans and Whitney as Joint Tenants." The down payment of \$75,000 was made from Whitney's account containing her wages. Hans and Whitney moved into one half of the Duplex and rented the other half to a friend, Fred. The mortgage payments were made from a combination of rent received from Fred and monies from Hans's account.

In 2011, Hans was encouraged by Raytheon to return to school and obtain an MBA. Raytheon wanted him to become a manager of a large project and promised Hans that if he would get the MBA he would see his salary increase by 30%. Raytheon agreed to pay 25% of the tuition for the Executive MBA program at UCLA. Hans took out a loan for \$100,000 to pay the rest of the tuition and fees. Hans successfully completed the MBA program and obtained his degree in December, 2013. Raytheon immediately promoted him to a Manager's position and increased his salary from \$125,000 to \$165,000 per year. Hans began making monthly payments on the \$100,000 loan in June, 2014 in the amount of \$1,000 per month from his earnings..

In 2017, Whitney was told by a friend of Hans from Illinois that Wilma had not died and that Wilma and Hans were actually still married. She investigated the matter and verified the friend's statements. She learned that Wilma also had moved to California in 2014. Whitney immediately moved out of the duplex and consulted a lawyer after contacting Wilma who filed a Dissolution case in California.

Discuss Wilma, Hans and Whitney's rights and liabilities with respect to:

1. The mountain cabin in Tahoe
2. The duplex in Long Beach
3. The bank accounts in Hans and Whitney's names
4. The student loan

Community Property Final---Outline/Fall 2017

Question 1

1—What is character of Annuity

All property acquired during M is presumed to be CP

But rebuttable by tracing---C/A arose pre M

Where C/A arises during M it is Presumed CP Estate PI Damages, but where C/A arises Pre M it is SP

Settlement proceeds turned into Annuity.... Character is unchanged.. Rents, Issues and Profits and SP traceable to annuity

Annuity payouts remain SP unless commingled at some point and not traceable

Attempted Oral Transmutation “we are set for life...we have all this money”—not valid

Pre Jan 1, 1985---Oral Transmutations acceptable

Post Jan 1, 1985...# Rqts—1) a writing containing an express declaration that the character of property is being changed, and 3) signed by the party being adversely affected—This language meets none of the requirements

2—What is character of Mutual Funds

Same analysis as Annuity

3—What is character of Colorado Condo and related rights and liabilities

Property acquired during M is presumed to be CP

Jt. Title Presumption—not rebuttable by tracing

No evidence of a statement in the deed or separate written agreement that condo is SP despite title

Fam Code 2640 reimbursement claim... Henry used \$200,000 from his SP mutual funds towards the down payment. FC 2640 provides that where SP is used to acquire a CP asset, the party contributing the SP is entitled to dollar for dollar reimbursement up to 100% of the equity in the property. Therefore, Henry will be reimbursed \$200,000. He is not entitled to a share in the appreciation of the condo as his SP nor is he entitled to interest on his contribution.

The contribution from the Joint Citibank acct. The Citi acct is CP for two reasons: CAMPAL is first. All money on deposit in a Joint Acct of married persons is presumed to be CP. That presumption is rebuttable by tracing. However, the funds in the Citi account are Wanda’s earnings which are presumed to be CP because compensation for efforts during M are CP. Therefore, The 50,000 contributed to the down from the Citi account is CP.

Henry's payment of taxes and HOA---not subject to FC 2640 reimbursement... 2640 is limited to contributions to acquisition or improvements.

4. Surefire Investment

Fiduciary Duties during M

A party with SP is entitled to invest their SP; however, arguably, Henry had an obligation to tell Wanda about the investment opportunity as the CP in the Citi acct could be used to invest. The parties to a M have a duty of loyalty to the community. Compliance with that duty could involve disclosure of investment opportunities and giving the CP the opportunity to participate.

5. Citibank Acct: For reasons discussed above (CAMPAL and fact that money in acct was Wanda's earnings,) the account is CP

Outline 2

1. What is the character of the business Harvey's Homes? What interest, if any does the CP have in it?

All property acquired prior to M, or received by gift, inheritance, devise or bequest during M, and all property acquired after date of permanent separation (without using CP to acquire) is SP. Harvey had his business in operation four years prior to M. Therefore the business entered the marriage as H SP.

Any increase in the value of an SP business during M must be analyzed to determine whether the increased value of the business is SP or a CP asset.

There are two general methods of evaluating and apportioning the increase in value.

Where the primary reason for the increase in value is due to the owner spouse's personal effort, the Pereira apportionment method is used. Under Pereira, one determines the value of the business at DOM, applies a reasonable rate of return to that SP equity, and all increase in value during M beyond that is CP. The rationale for Pereira is that efforts of a spouse belong to the community during M.

Where the primary reason for the increase in value of the SP business is something other than the owner spouse's personal efforts, the Van Camp method of apportionment is used. Under Van Camp, one determines the reasonable value of the Owner spouse's actual efforts during M. Next one determines how much the community received during M from the business by way of salary, dividends, distributions etc or by direct payment of personal expense by the corporation. If the amount the community received equals or exceeds the reasonable value of the Owner's efforts, the community has NO interest in the business. If the community was under-compensated, the CP is entitled to the difference between what was actually paid to the CP and what total reasonable compensation would have been.

Here, it's a hybrid case----like IRMO Brandes. Apply Pereira from 2003 until 2011. Apply Van Camp after 2011.

Change in primary nature of work is not a basis for claiming that the Harvey Homes existing today is a new business started during M. See Brandes

2. Frannie's Closet

Frannie's Closet was begun during M. General Presumption applies. Students should not discuss Pereira or Van Camp. Because the business was begun during M the entire value of the business is CP irrespective of what efforts or lack of effort Frances put into it.

3. Rabobank Account:

SP is all property acquired before M or after permanent separation (provided CP is not used to acquire it) and all property acquired during M by gift inheritance, devise or bequest. Here, Harvey inherited \$200,000 from his uncle in 2005 and placed the money in an account in his name only at Rabobank. This money is his SP.

4. *Child Support from prior relationship.*

If a party pays child support with CP to satisfy his obligation to pay child support to a child not of this relationship at a time when non exempt SP is available that could have been used to satisfy this SP obligation, the CP is entitled to be reimbursed for the CP so used.

Here, no evidence that Harvey had non exempt SP until 2005, no reimbursement til then. After he received the inheritance he did have non exempt SP available and so the CP is entitled to reimbursement of the child support paid with CP funds.

Community Property /Fall 2017

Question 3 Outline

What is character of cabin in Tahoe?

Hank and Wilma are validly married. General presumption applies. Cabin is presumed to be QCP despite form of title. Since property was acquired while parties were domiciled outside of California it is not CP, but rather QCP. QCP arises when one or both parties change their domicile to California and a Disso, Legal Sep or Nullity proceeding is filed, if the property would have been CP if the parties had acquired it while domiciled in Calif. If these reqts are met, the property will be divided per standard CP rules.

The down payment: The down was made from a commingled account containing both CP (Hans's earnings) and SP (Wilma's inheritance). It was made from a joint account. Because payment was from joint account, under CAMPAL the funds on deposit are presumed to be CP. However, CAMPAL's presumption may be rebutted by tracing.

Payments after Hans left Wilma: Presumably, Wilma continued to make payments on the cabin it appears that the DOS is 2004. The debt on condo while presumably also solely in Wilma's name is a CP debt (incurred during M). Wilma may well be entitled to Epstein credits for payments made after DOS because a spouse who uses their SP (such as earnings after DOS) to pay a CP debt may be entitled to reimbursement from the CP.

What is relationship between Hans and Qhitney?

Hans and Whitney's marriage is void as it is a bigamous marriage and does not fall into the category of absent spouse not known to be alive for five years or more; or is generally presumed to be dead. In a void marriage, one or both spouse's may be a putative spouse. A putative spouse is one who in good faith believed the marriage was valid. Here, Whitney is a putative spouse. She relied on Hans's statement to her that his first wife had died. Hans is not a putative spouse. He had no reason to believe that Wilma had died and knew he was not divorced.

In a case involving a putative spouse, the court has authority to divide the property (QMP) as if it were CP or QCP but only upon request of the party found to be a putative spouse. Here, if Whitney requests the court to divide the property in that manner, the court will follow standard CP/SP/QCP rules. If Whitney does not request that, the court will not divide the property and will leave the parties to their civil remedies. For purposes of analysis, the student should assume Whitney requests division of the property as though it were CP/SP or QCP.

The bank accounts

Hans and Whitney opened accounts in their own names (not jointly). General Presumption applies. Efforts during M are CP and compensation for those efforts is CP. Merely placing CP into an account in name of one party does not transmute the property from CP to SP. Both bank accts are entirely CP.

The Duplex

General presumption applies. Joint Title presumption applies. No evidence of statement in deed or separate written agreement that property is other than CP. Therefore, duplex is CP. The fact that down is made from Whitney's account only is irrelevant. Her account is QMP as it is compensation for her efforts. All rental income received from Fred is QMP as well as it is rents, issues and profits of QMP

The education issue:

Has the education substantially increased Hans earning capacity. It appears that it has. Therefore the question becomes whether the CP has substantially benefited from the education to the extent that no reimbursement is appropriate for CP funds spent on the education. Here, Hans's earnings increased by \$40,000 per year and the community has benefited from that since completion of education in Dec., 2013. Thus the CP has benefited nearly \$160,000 to date. Hans has made monthly payments of \$1,000 per month from June, 2014 to date, a period of 42 months. Students can argue this either way. Should mention 10 year presumption.

Hans to pay existing balance on student loan without any offset. He got the education and will continue to benefit from increased earnings.

1)

1. Henry's annuity

The general presumption states that property acquired during marriage while domicile in CA, is presumed to be community property (CP). To rebut this presumption, the separatizer must show 1) the source of the acquisition of the property (either direct tracing or family expense tracing; or 2) transmutation changing the character of the property. separate property (SP) is property acquired by either gift, bequest, inheritance, pre or post marriage, rent from SP. . (if there are more than one applicable presumption, the more specific one will prevail). After the characterizing all the assets and assigning all the liabilities, the court should confirm the SP assets.

good statement of Rule

Here, Henry (H) acquire the annuity during marriage because he got married in 1997 and he received the settlement for the personal injury in 1998. Thus, the presumption is that the annuity is CP. H may rebut this presumption by either of the following:

1- direct tracing. It is a method to rebut the general presumption. The proponent must demonstrate that the acquisition of the asset was by separate property funds. Here, there must be SP funds available and there must be intent to use SP.

H may trace the source of the annuity to show that it is his separate property (SP). H received his 5 million for his personal injury (PI). PI awards are determined based on when the injury took place and not on when the settlement money was received. H was injured before marriage in 1995. Thus, the PI award is his SP. H used half of that money to buy annuity. H can successfully show that the source of the annuity is SP.

In sun, H will prevail if he uses direct tracing because the source of the money is SP.

good

2- Family expense tracing

To the extent the CP income has been exhausted by the family expense, then the Property must necessarily be acquired with SP funds. Here, H do not need to use this method because he can directly trace the source of the annuity.

Wanda (W) may argue that the annuity was transmuted because H said to her that they will be set for life and neither of them will have to work. However, after 1985, transmutation (family code 852) must be in writing expressly transmuting the property (P) or changing the form of the p from CP to SP or from SP to CP. This writing must be signed by the party against whom enforcement is sought. There must be no conditional or future transmutation. W will lose this argument because H said his statement well after 1985. Thus, there is no oral transmutation. *good analysis*

W may have another argument under family code 721. She may contend that H owed her fiduciary duty (FD) and that he inquire with the community before making the investment based on the community opportunity doctrine. This doctrine state that a spouse should give the opportunity of investment to the to the community if there were community funds available. Here, it does not seem that the community had two and a half million dollars because the W stopped working at that time and when she returned to work she made 60k a year which is not enough to accumulate 2.5 M. *good analysis*

H transferred money from his Union bank account to a joint checking account. H may argue that he is entitled to reimbursement under 2640. However, since the money went to the parties living expenses, H will not get any reimbursement. If however, H with that money acquired CP or help W acquire a P, then he would be entitled. Otherwise, no reimbursement.

In sum, the annuity is H SP.

2. H mutual funds accounts

✓ Same rule for direct tracing as above. H may successfully show the source of the funds to be his own SP because he received that money for his PI.

3. The Colorado Condo (CC)

Quasi community property (QCP) is property acquired during marriage outside the state of CA. If the property had been purchased in CA, it would have been considered CP. The court will treat this type of P as CP.

Joint title presumption 2581. When a married couple acquire property in whatever title form, ^{jointly} it is presumed to be CP. Unless, there is a writing on the title itself saying that it is not CP or there is a subsequent agreement subject to the spousal FD.

Here, the property acquired in 2014, H and W were still married and they took title as Tenants in Common. Thus, the above presumption applies. There is no writing here on the title nor there is any subsequent agreement stating that the CC is SP. H, however, may get reimbursed based on 2640. When a spouse contributes from his SP to the

acquisition of CP or other spouse SP, the spouse that contributed the money is entitled to reimbursement (reim) unless there is a waiver in writing. ✓ The contributing spouse is entitled to reim as long as there is equity in the P acquired. ✓ Here, H may be entitled to 200K reim because this money came from his SP PI award. W contributed 50K from her account. ✓ She deposited her salary into that account and never used that account.

Therefore, the money in Citi bank is all CP.

H is not entitled to recover the money paid for the his SP account toward the HOA because this is party of the "acquisition of the P". HOA, and taxes are not reimbursable. ✓

In sum, H may get reim as long as there is equity in the CC.

while parties are domiciled

joint

need to more analysis here

4. The Surefire Investment.

Here the General presumption apply because H invested during marriage. However, H may show that the source of the investment came from SP.

However,, W may make several argument arguments such as 1) breach of FD; and 2) violation of the community opportunity doctrine.

H concealed this investment from W. If the court finds that H concealment was done in bad faith, it may award 100 % of investment to W.

H may argue that there is no need to tell W since there is no community fund available. So, she could not have joined in this investment. H may also argue that this is a risky investment because the return is so high, it must necessarily be really really risky to get 200 - 300 percent. H may contend that his concealment of this investment was done in good faith because W may have talked him out of this investment.

In sum, this may go either way. Either everything to W if H acted in bad faith or it is H SP.

5. the Citi bank

✓ W deposited her salary into this account. she never reach into that account to make any payment because she was able to live off her H annuity. W labor during marriage is CP. Thus, the above general presumption apply. It is CP.

IN sum, this bank account is CP

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END OF EXAM

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2)

In a Dissolution action the court will look to the Characterization of the Community Property that was acquired before and during marriage to allow it to distribute the community equally but equitably. There are four different types of characterizations available to the court based on the facts of the case. Property can be Characterized as Community Property, Separate Property, Quasi Community Property, and Quasi Martial Property. The court will then look to any presumptions that may apply.

A presumption benefits the person that is using it. Presumptions are rebuttable, but require the other party to disprove them.

1. RaboBank Account - Separate Property (SP)

Separate Property is any property that is acquired prior to marriage or post separation *to include* any Gifts, inheritance, bequests, or Rents and profits from the listed property.

Here, the facts indicate that Harvey inherited \$200,000 from his uncle and placed the money into an account in his name only at Rabobank.

As it was inheritance...

2. Business Frannie's Closet - Community Property

Community Property General Presumption

The General presumption is that any property acquired during marriage while domiciled in California is presumed to be Community Property. This presumption is rebuttable by a tracing. The burden is the the spouse claiming the SP interest.

In 2004 Frances operated a small business selling quilting materials and fabric that she began as a hobby. Harvey and Frances were married in 2003, so this CP presumption would likely control. After both spouses discussed whether to turn Frances small hobby into a business, she opened up Frannie's Closet in late 2005. In 2008 Frances opened an online presence for her quilt and fabric company through Amazon and sales tripled each year from 2008 to present. This business is currently valued at \$250,000 and would likely be 100% Community Property, since it was started as a "hobbie" during marriage and turned into a Frannie's Closet in 2005. ✓ *yes*

3. Business Harvey's Homes - Pereria / Van Camp

In a dissolution action the court has great discretion to apportion property in a Equal but equitable manner. Apportionment is done by the courts in many ways. The most commonly used methods to Apportion a business that is started before marriage and has a SP interest and continues into the marriage and increases in value, is the Pereria / Van Camp Method. Based on the facts these methods are not exclusive, and can be used in conjunction based on how the value of the business increased during the marriage. The Pereria method is primarily used when a business increases because of the skill, labor, blood sweat and tears of one spouse, and the Van Camp method is used when a business increases in value based on underlying capital or general investment. Here, the court would likely use both methods based on the follow facts. *good*

Pereria Method

Harvey began his business in 1999 and in 2003 he married Frances. In 2003 Harvey had been making \$100,000 per year. In 2003, because of Harvey's skill and labor, he continued to work in the business and the community gained an interest in the business. In 2003 until 2011, Harvey's business increased in value as his reputation in the area increased.

Harvey did almost all the construction work himself and only occasionally hired laborers to assist him. Harvey became known as one of the highest quality builders in the Napa area. His Annual profits went from \$100,000 per year to \$700,000 in 2011. Because the business increase in value solely due to the labor of Harvey the court would likely use Pereria to Apportion this business from 2003 to 2011. To do this, the court would use a conservative investment rate ~~(3-6%)~~ or use a government bond to calculate the increase in value every year. Harvey would have the 100k value (start of marriage) multiplied by the percentage rate used by the court. Once the court has this amount it would add it to the 100k value and then multiply it aging for the next year. This would continue for the 8 year time period. The total would be considered Harvey's separate property. from his initial business value. Separate Property is any property / business that is owned or acquired prior to marriage or post separation to include any Gifts, inheritance bequests, or Rents and profits from the listed property.

Van Camp Method

Van Camp method is used when a business increases in value based on underlying capital or general investment. Here, the facts indicate that primary market conditions controlled Harvey's business, starting in 2011. The facts indicate that devastating fires swept the Napa area, and over 5,000 homes were destroyed causing a huge demand for construction expertise. At that time, Harvey decided to cease the part of the business building "new builds /spec houses" and concentrated on bidding for contracts on high end rebuilds. Harvey hired a manager to coordinate his work crews and began to play more and more golf. This increase was not due to the skill and labor of Harvey, but because of the market being the driving factor in the value going up from 2011 until 2016, the profits increased to \$4 million dollars a year because of the demand in Nape. For a Van Camp, the court would look to see what Harvey's compensation was during that time period. If he was bring home a "Just" compensation during the time period then the community would

have been getting its fair share and the difference would be Harvey's SP. If Harvey was not taking home reasonable compensation, then the community would still be owed that income.

Good.

4. Child Support Payments

Child support payments from a prior relationship is not a community obligation. If there are SP funds available then the person required to pay support is required to pay the support from the separate funds. If there were no SP funds available then the community would have to pay the support. If there were no SP funds available originally, then SP was acquired, the support would have to be paid from the SP. If support was paid from the community funds, when SP was available then the community would be entitled to a reimbursement.

Here, Child support was ordered for Harvey to pay 2200 a month in July 2004. In 2005, Harvey inherited \$200,000 from his uncle, and placed it into a separate account. The facts indicate that Harvey paid his support payment from his Salary from the business and never missed a single payment. From July 2004 through the time period in 2005 that Harvey received his inheritance there was no SP available, so support payments from his salary would have been appropriate. Once Harvey received his inheritance, he would have been required to pay support from his available SP. Any payment that has been made since 2005, the community would be entitled to a reimbursement.

good

END OF EXAM

3)

1.

General Presumption

FC 802 general presumption says that property acquired during marriage while domiciled in CA is community property. That presumption can be rebutted by tracing the source of the funds to a separate property source. Community property is defined as any property acquired by married persons while domiciled in CA. Separate property is any premarital property and inheritance, bequest, gift, or the rents and profits from separate property are separate property.

Here, the facts state that the parties married in Vegas, and that later moved to CA, so we will assume that the parties lived outside of CA. This would require discussion of quasi community property.

Quasi Community Property is property that is acquired by married people, during marriage, while domiciled outside of CA that would have been community property if purchased while domiciled in CA.

Here, Hans (H) and Wilma (W) were assumed to be domiciled in Nevada when married and when they purchased the cabin. Since they were married when the purchase occurred, and the purchase would have otherwise been presumed to be CP under the general presumption in CA, then the property will be characterized as Quasi Community Property (QCP). Once property is characterized as QCP it is treated as CP for all intents and purposes of dissolution in CA.

EC 662

EC 662 says that it is presumed that the benefit of title follows the title of the property. Here, since the cabin was taken in W's name alone she will argue that it is her separate property and that EC 662 rebuts the presumption of CP. However, since EC 662 is from the evidence code, it is the least controlling presumption. The fact that the property was

acquired during marriage and that the down payment was made with funds from a JT account will likely make the cabin a CP asset.

Separate property.

Separate property is any premarital property and inheritance, bequest, gift, or the rents and profits from separate property are separate property.

W may argue that the funds used from the JT account were from the portion of the account that contained the funds she had inherited from her mother. She will argue that this claim makes the cabin a SP asset.

*Tracing
burden
on W*

Joint title presumption §2581

Property held in JT by married person's is presumed to be community property during marriage.

Here, since the account that paid for the down payment on the cabin was a JT account, it will be presumed to be community property.

Because the account has both wages and inheritance in it, W will need to trace the SP funds to claim that the cabin is an SP asset. In order to do this she would need to do a family expense tracing.

*ok
good*

Family Expense Tracing

When CP and SP funds are commingled, and a party is claiming to have made a purchase out of that account with SP, the separator will need to show that the SP funds were available to make that purchase. The party will also have to show that there was intent to use SP and that they offered the opportunity to the community.

Here, W would need to do a family expense tracing and look at the expenses from the JT account on a day by day basis, expense by expense. If she wants to claim that the down payment was actually from SP then she will need to show that on the day that the purchase was made that there all of the CP in the account was exhausted and that she was

then able to and intended to use SP to make the purchase. She would also have to show that she offered the opportunity to the community. W might be able to make some good arguments, given that she had been married only one year at the time of purchase and H had only been working and contributing his 100k salary into that account for about a year...

If the Funds were determined to be SP, and the property were determined to be CP, W could request a 2640 reimbursement for the \$ for \$ acquisition of the CP property. ✓

Because the property was purchased during marriage, with funds from a JT account, unless W can rebut the presumptions it is likely that the cabin will be a CP asset. ✓

2.

Putative Spouse

Where a spouse marries under the good faith believe that the marriage is valid, but is in fact a void or voidable marriage, that spouse will be considered to be a putative spouse. Here, Whitney (WH) married H believing that his prior wife was dead. Considering that as soon as WH learned that W was alive she moved out and consulted an attorney, it is likely that she had previously had a good faith belief that she was in a valid marriage and would be a putative spouse.

Quasi Marital Property (QMP)

QMP applies where would otherwise be Community Property, but one of the spouses in a Putative spouse instead of a legal spouse. Here, since H and WH were married in CA and acquired property in CA, QMP will apply. Once QMP applies, rules of CP will be used.

If Whitney Requests .

General Presumption

Rule supra

Here, since the property was purchased during the good faith marriage, and it was taken in JT, it is likely to be presumed as QMP. The fact that it was purchased from WH's account in her sole name will not be able to rebut this presumption because the funds in that account came from WH's wages during marriage, and are also presumed to be CP. ✓

JT 2581 presumption

When property is acquired in JT it is presumed to be community property during marriage. ✓

Here, the duplex was taken in JT and will be presumed to be JT during the good faith belief in the marriage.

3.

UPAA

A premarital agreement must be in writing, and also has several other elements that are required. ✓

Here, although H and WH both made agreements for their wages to be in separate accounts and for separate purposes, they will not be able to negate the presumption that those wages are CP because their agreement was not in writing. Had the agreement been in writing, and each party been represented by independent counsel, and they each had the agreement for 7 days prior to signing, and the agreement was not against public policy, they may have been able to show that each of their wages were to be used for a specific purpose and or to be SP. Wages will likely be CP.

EC 662

Rule Supra

Here the parties might claim that the funds in the accounts are SP because the accounts are titled in their respective names, however, because the funds in them are from a CP

source, and the general presumption is not likely rebutted here, EC 662 will create SP accounts. However, H's account may be CP because of the general presumption and that fact that WH is a putative spouse, but H does not have putative spouse status and may not be able to claim any interest in W's account. ✓

General presumption

Equal division

The court is tasked with dividing the estate equally, in an equitable manner. Here, although the accounts are separate, the court would divide them equally as they would both likely be CP.

4.

2641 educational reimbursements

Expenses for education, that increases the earning potential of a spouse, can be reimbursed. Here, the expense for the tuition and fees could be reimbursed to the community if they were paid from the community and not from the loan or by the employer. Here, the education increased the earning potential from 125K to 165K annually.

Educational Loans

Educational loans are considered to be community obligation during marriage but a separate obligation at dissolution.

Here, any payments made by the community during the marriage would be community obligation, but any outstanding loan balance would be assigned to H at dissolution.

Spousal support provisions

Only educational expenses are reimbursable under 2641, but reimbursements or the lack thereof may also affect the calculation of spousal support provisions.

Need discussion of Reimb. for student loan payments during MPT, a benefit of education to community during MPT

WH W and H *mess*

Since we have W and WH, who both have rights to CP and QMP respectively, the court will be tasked with trying to find an equitable solution to the situation. The court will likely look at the situation of each W and WH and their earning potential to make an equitable distribution in this case.

Since W filed for dissolution in CA, and is now a resident of CA, she will also claim that all of H's activity during the time of the marriage needs to be evaluated as to her portion of CP. *When was separation?*

However, H would likely claim he evidence his subjective intent to end the marriage, and his objective intent by moving to CA and remarrying. *yes* He would ask for the date of separation to be determined as of the 2004 when he left W and moved to CA. He would claim that there was no longer a community interest between him and W as of that date and that she has no Community interest in anything other than the cabin.

Any claims that H might make as to assets that WH has would likely not be considered, because H would not have status as a putative spouse because he knew he was still married and did not therefore have a good faith belief that he was in a valid marriage.

Epstein and Watts

Epstein allows for post marriage reimbursement of Community debt and Watts allows for credits for the fair market value of use of a community asset post marriage.

Here, since WH moved out and H continued to live in the duplex, she may ask for Watts credits of the rental value. She would want half of the rent from Fred and half of the value of what H is paying.

However, H might claim that WH is obligated to pay half the community obligation on the mortgage. The Epstiens could be somewhat offset the the watts credits.

END OF EXAM
