

San Luis Obispo College of Law
Community Property Final Exam

Fall 2022

Prof. R. Lomeli

GENERAL INSTRUCTIONS

ESSAY QUESTIONS: Answer three (3) Essay Questions.

Total Time Allotted : Three (3) Hours

Recommended Allocation of Time: One (1) Hour per Question

SLOCL
Community Property
Fall 2022
Prof. R. Lomeli

Question One

Hank and Wendy married in 2001 when both were students at Florida State University in Florida. Florida is an equitable distribution state. Shortly after marriage, Hank graduated and obtained employment with a New York law firm. Soon after, Wendy gave birth to a child, and the couple agreed Wendy would quit her job and remain home to care for their child. Hank and Wendy bought a loft in New York using their savings for the down payment and obtained a loan secured by a 30-year mortgage for the balance of the purchase price. Mortgage payments were subsequently paid from Hank's earnings. Title to the home in New York was taken in Hank's name alone.

In 2011, Hank accepted a job offer from a California law firm. The couple moved to California with their child and rented out the New York loft.

In 2013, Wendy's uncle died and left her an autographed baseball bat with an appraised value of \$5,000 and a luxurious cabin located on the water on Lake Tahoe, California. Wendy took the autographed baseball bat to the cabin and placed it on the fireplace mantle.

In 2015, after speaking with a coworker at the law firm about ways in which to ensure Hank would gain an interest in the cabin, Hank persuaded Wendy to execute and record a deed conveying the lake cabin to "Hank and Wendy, as joint tenants with right of survivorship" under the auspice that the action was necessary to avoid probate. Wendy did so, believing Hank's explanation that the only effect of the conveyance would be to avoid probate.

In 2016, after three years of study paid for out of Hank's earnings, Wendy obtained a professional degree and opened her IT business. Her business has become quite successful because of her enthusiasm, skill, and willingness to work long hours. Hank continued to work for the law firm.

In 2023, Hank and Wendy separated and filed for dissolution of marriage. Wendy had the autographed baseball bat reappraised. The autograph was determined to belong to Babe Ruth and the baseball bat is now worth \$5,000,000.

Upon dissolution, what are Hank's and Wendy's respective rights in:

1. The Lake Tahoe cabin? Discuss.
2. The autographed baseball bat? Discuss.
3. The New York loft? Discuss.
4. Wendy's education? Discuss
5. Wendy's IT business? Discuss.

Answer according to California law.

SLOCL
Community Property
Fall 2022
Prof. R. Lomeli

Question Two

Shortly after he graduated from Ohio State University in 2011, Hubert took a job at an accounting firm in California, subsequently purchasing a home near work for \$500,000 and taking title in his name. Hubert's father gave him the \$100,000 down payment, and Hubert borrowed the balance of the purchase price on a note secured by a 30-year mortgage for the remainder.

Hubert and Whitney, who met during a business retreat, married in California in 2008. Whitney was an avid computer programmer who hoped to turn her hobby into a profitable business. Prior to marriage, Hubert and Whitney entered into a written and signed prenuptial agreement providing that each spouse's wages would be his or her separate property and that any business created using separate property funds, including subsequent earnings and goodwill generated therefrom, would remain that spouses separate property.

During the prenuptial agreement discussions, Hubert was represented by counsel. Whitney implicitly trusted Hubert and decided she did not need an attorney. After verbally telling Hubert and his counsel that she did not need an attorney, Hubert's counsel provided Whitney with a written explanation of the basic effects of the agreement. The agreement was provided to Whitney 3 days prior to the wedding day and Hubert's counsel failed to disclose any of Hubert's financial and economic assets. Whitney signed the agreement just prior to her wedding ceremony before a group of 75 close friends and family.

At the time of Hubert and Whitney's marriage, the outstanding balance on the home was \$250,000. After marriage, Hubert continued to make mortgage payments solely out of his salary. Whitney took a job as an IT specialist and deposited all of her wages into a separate account in her name alone.

In 2018, a woman who claimed Hubert was the father of her ten-year-old child filed a paternity suit against Hubert in California. The court determined that Hubert was the child's father and ordered him to pay \$1,000 per month as child support.

In 2020, Whitney filed for dissolution of marriage. Whitney moved out of the couple's home while Hubert continued living in the home and making mortgage payments. During marriage, the principal amount on the loan had been reduced by 100,000. At the date of separation, the house was worth \$1 million. At trial, the home is worth \$1.2 million.

1. What are Hubert's and Whitney's respective rights in the home purchased by Hubert? Discuss.
2. Which of the property set forth in the facts can be reached to satisfy the obligation to pay child support? Discuss.

Answer according to California law.

SLOCL
Community Property
Fall 2022
Prof. R. Lomeli

Question Three

Huey and Wilma married in 2006 while attending college at Cal Poly in San Luis Obispo, California. Shortly after getting married and graduating from college, Huey took a job with an internet-based company with offices in the city. Huey was making \$225,000 while working with the company. Wilma took a job as a barista at Nautical Bean Coffee Shop and Bistro (“Nautical Bean”). The couple had a child in 2008.

In 2008, Wilma received an inheritance in the amount of \$1 million after her parents died in an automobile accident. Realizing she was no longer happy working as a barista, Wilma decided that she wanted to buy Nautical Bean. Henry agreed that he would quit his job and care for the couple’s child to allow for Wilma to put all of her energy and focus into creating and running her new business.

In 2011, Wilma purchased Nautical Bean for \$1 million, using only the inheritance she received when her parents died. The business grew substantially over time due to Wilma’s hard work and effort in hiring only the best baristas and single source coffee for her business. Wilma was also able to substantially grow her business due to a patent she had received for a special espresso machine technology she developed in 2012. A similarly situated business owner would have been making \$100,000 a year in wages; however, Wilma would routinely spend \$450,000 a year on community expenses.

In 2013, Henry’s grandmother died and left him a home in San Luis Obispo. The home was worth \$2 million at the time that Henry received it. Both Henry and Wilma used the residence as their primary home and openly held out the home as belonging to both of them. In 2014, using income from her business, Wilma paid for the installation of a pool, patio, and outdoor dining area as upgrades to the home. The cost for the upgrades was \$250,000. In addition to the upgrades, Wilma also purchased a \$25,000 Rolex for Henry on his birthday. The watch had an inscription that read, “To my dearest husband Henry on this special day, a gift from your wife forever!”

In 2018, Wilma fell madly in love with her neighbor and filed for dissolution of marriage. At the time of trial, Nautical Bean had appreciated in value to \$5 million. At the time of separation, the home inherited by Henry had appreciated in value to \$3.5 million.

What are Henry and Wilma’s rights and liabilities in:

1. Nautical Bean? Discuss.
2. The San Luis Obispo Residence? Discuss.
3. The Rolex Watch? Discuss

Answer according to California law.

SLO

Community Property-Fall 2022-Prof. R. Lomeli

Question One Outline

General Characterization Rules

1. Define CP, SP and QCP.
 - a. All property acquired during the course of a marriage is presumed to be CP;
 - b. All property acquired before marriage or after separation is presumed to be SP;
 - c. Property acquired by gift, devise, or bequest is presumed to be SP; and
 - d. QCP is property acquired by either spouse that would have been CP if the spouse had been domiciled in California at the time of acquisition.
2. Define Division at Divorce
 - a. At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise;
 - b. A spouses SP remains their SP at divorce; and
 - c. QCP is treated as CP at divorce.

Lake Tahoe Cabin

1. Issue
 - a. What is the characterization of a home acquired by inheritance when conveyed by the inheriting spouse to the community as JT with right of survivorship.
2. Transmutation
 - a. During marriage, spouses may change the status of their property.
 - i. Must be made in writing;
 - ii. Must expressly declare that a change in ownership is being made; and
 - iii. Must be consented to or accepted by the spouse whose interest is adversely affected.
 1. Lake cabin was initially SP because acquired through inheritance;
 2. W's conveyance ineffective because no change of ownership declared.
 3. If written title to purchased property is taken in a form that is inconsistent with character of funds used to purchase, an intent to change the character of the property to the form evidence by the written title is inferred.
 4. If a court extends this reasoning to SP conveyed by one spouse into a joint tenancy, W's conveyance would presumably transmute the cabin from SP to CP.
3. GCPP
 - a. The presumption that property is CP at divorce can be overcome only by a written agreement or statement within title that the property is SP.
 - i. If there is no writing to the contrary, at divorce any SP contributions to the acquisition of CP are reimbursed to the SP contributor.
 1. If W's conveyance is valid, upon disso, JT presumed to be CP since now writing that property is SP.
 2. W to be reimbursed for her SP contributions;

3. Any appreciation to be divided equally between H and W.

4. **Fiduciary Duty**

- a. Spouses owe each other fiduciary duties with respect to management of CP;
- b. Rebuttable presumption of undue influence when one spouse gains an advantage over the other in a property transaction;
- c. Spouse who obtained the advantage bears burden of rebuttal
 - i. W can contest transfer as violative of fiduciary duty;
 - ii. Rebuttable presumption of undue influence;
 - iii. H will fail to rebut presumption due to his intent and intentionally misleading statements to W about the purpose of the transfer.
 - iv. Lake cabin will be W's SP.

New York Loft

1. Issue
 - a. Proper distribution of non-CP state property.
2. QCP
 - a. New York loft is QCP;
 - b. It was purchased with what would have been CP if spouses had been domiciled in CA at time of acquisition.
3. Transmutation (rule above)
 - a. Title in H's name alone does not change character of property
 - b. No evidence that W intended the community down payment or mortgage payments to be a gift, or that the home would be H's SP.
 - c. No written evidence to transmute property.
 - d. H and W have a one-half interest in value of the home.

W's Education

1. Is the community entitled to reimbursement?
2. Reimbursement
 - a. At divorce, community has a right to reimbursement when CP funds are:
 - i. Used to pay for education or loans incurred or training of a spouse; and
 - ii. The education substantially enhances the earning capacity of the educated party.
 1. W's education was paid for out of H's earnings, which are CP;
 2. W's earning capacity substantially increased;
 3. The community is entitled to reimbursement with interest, with a possibility of reduction or medication.
3. Reimbursement Reduction
 - a. The education or training is offset by community funded education of other spouse;
 - b. Education or training enables recipient to engage in gainful employment substantially reducing the need for SS;
 - c. The community has already benefited from education or training.

- d. *Rebuttable presumption community benefited (10 year presumption)*
 - i. *H did not receive community funded education;*
 - ii. *Fewer than 10 years have elapsed;*
 - iii. *W's education enabled her to reduce need for SS*

IT Business

- 1. *Issue*
 - a. *What is proper distribution of business?*
- 2. *GCPP*
 - a. *Business is a community asset*
 - b. *Pereira and VC do not apply*
- 3. *Valuation of business*
 - a. *Value of business including goodwill.*
 - i. *Market valuation;*
 - ii. *Capitalization of excess earnings*
 - 1. *H and W have a right to one-half of the value of the business;*
 - 2. *If court awards business to W, she will need to provide compensation/buyout.*

Question Two Outline

General Characterization Rules

- 1. *Define CP, SP and QCP.*
 - a. *All property acquired during the course of a marriage is presumed to be CP;*
 - b. *All property acquired before marriage or after separation is presumed to be SP;*
 - c. *Property acquired by gift, devise, or bequest is presumed to be SP; and*
 - d. *QCP is property acquired by either spouse that would have been CP if the spouse had been domiciled in California at the time of acquisition.*
- 2. *Define Division at Divorce*
 - a. *At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise;*
 - b. *A spouses SP remains their SP at divorce; and*
 - c. *QCP is treated as CP at divorce.*
- 3. *Define Termination of Marital Economic Community*
 - a. *The marital economic community begins at marriage and ends: (i) at one spouse's death, or (ii) when the spouses effect a permanent physical separation (an actual separation and an intent not to resume the marital relationship).*
 - b. *One spouse's unilateral intent not to resume the relationship is sufficient as long as it has been communicated to the other spouse.*

- c. *(i) That Whitney filed for dissolution of marriage evidences an intent not to return to the marriage. (ii) This constitutes permanent physical separation, terminating the marital economic community.*

Hubert's Premarital Home

1. **Premarital Agreement – Validity/Choice of Enforcement**
 - a. *Parties may make a premarital agreement specifying that after marriage each party's earning will remain her SP.*
 - b. *To be valid, a premarital agreement must: (i) be in writing, (ii) have been entered into voluntarily, and (iii) not be unconscionable.*
 - c. *An agreement is involuntary if the party against whom enforcement is sought was not represented by counsel, unless that party: (ii) was advised to consult an attorney and expressly waived that right, (iii) had seven days to examine the agreement, and (iv) was fully informed of the basic effects of the agreement and signed a separate writing.*
 - d. *Factors to consider in determining whether the premarital agreement was voluntary include: (i) Whitney was not represented by independent counsel and was not advised to seek independent counsel; (ii) Whitney did not expressly waive her right to an attorney in writing; (iii) Whitney did not have seven days to examine the agreement; and (iv) Whitney was not informed of the effects of the agreement in a signed and separate writing.*
 - e. *(i) An agreement is unconscionable if a judge finds that it is unfair and: (ii) the objecting party was not fully advised of the financial status of the other party, (iii) did not waive such disclosure, and (iv) could not reasonably have obtained the information on his own.*
 - f. *Factors to consider in determining whether the premarital agreement was unconscionable include: (i) that the agreement at the time did not appear unfair based on the assets that each possessed at the time of marriage; (ii) that Whitney was not fully advised of the financial status of the other party; and (iii) Whitney did not waive disclosure.*
 - g. *If premarital agreement is found to be invalid, the residence must be apportioned between Hubert's SP initial capital investment plus paydown of principal and his community labor.*
 - h. *If invalid, the residence will be 20% CP and 80% SP; principal debt reduction attributable to CP \$100,000/ purchase price \$500,000, equals 1/5 (20%).*
 - i. *Hubert was SP owner who continued to live in home after separation and made payments, valuation date is DOS not date closest to trial.*
 - j. *CP is \$200,000 and SP is \$800,000.*
2. **Commingling Account/Valid Premarital Agreement**
 - a. *If PMA valid, Hubert will be able to show that reduction in principal was SP and therefore no CP interest in home.*
 - b. *Discuss direct tracing method/See compliant records and exhaustion method with no recapitulative accounting.*
3. **Election to Choose**
 - a. *Whitney can choose to keep the PMA which would allow Hubert to demonstrate SP payments (wages during marriage and PMA) or she can invalidate and eliminate the ability of Hubert to avoid the CP interest in the home.*
4. **Conclusion**
 - a. *PMA likely invalidated and CP will have a 20% interest equal to \$200,000.*

Property that can be reached to satisfy debts

1. A spouses CS obligation from a prior relationship is treated as debt incurred before marriage.
 - a. All CP, QMP and debtor spouse's SP are liable for a debt the debtor spouse incurred before marriage;
 - b. Nondebtor spouse SP is not liable for a debt the debtor spouse incurred before marriage.
 - c. CP earnings of the nondebtor spouse are not liable for the debtor's premarital obligations as long as those earnings are held in an account to which the debtor spouse has no right of withdrawal and no commingling has taken place.
 - i. CS is a debt H incurred before he began living with W;
 - ii. The home can be reached since it is Hubert's SP;
 - iii. If W's earnings continue to be deposited into her sole account, these earnings will also be unavailable to satisfy CS.

Question Three Outline

General Characterization Rules

1. Define CP, SP and QCP.
 - a. All property acquired during the course of a marriage is presumed to be CP;
 - b. All property acquired before marriage or after separation is presumed to be SP;
 - c. Property acquired by gift, devise, or bequest is presumed to be SP; and
 - d. QCP is property acquired by either spouse that would have been CP if the spouse had been domiciled in California at the time of acquisition.
2. Define Division at Divorce
 - a. At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise;
 - b. A spouses SP remains their SP at divorce; and
 - c. QCP is treated as CP at divorce.

Nautical Bean

1. GCPP (Rule Above)
 - a. The money used by W to start the business was obtained by inheritance.
 - b. No indication that any community funds were used to start the business.
 - c. Business was purchased; was not started from ground up.
 - d. Business is W's SP, however, the community has an interest in W's labor during marriage.
2. Transmutation (Rule Above)
 - a. No facts to indicate that W's intended for the business to be a community asset;
 - b. No facts presented to indicate that W agreed to change the characterization of the business from SP to CP.
 - c. Business is W's SP.
3. Valuation of Property

- a. A spouse may devote her CP labor to the management of an SP business;
- b. VC and Pereira accounting methods can be used to apportion between the SP component of the business and the CP valued added by the managing spouses labor during marriage.
- c. VAN CAMP METHOD
 - i. Under VC, the managing spouses services are valued at the going market salary for such services; family expenses that were paid from the business earnings are subtracted from the value of the manager's services; the remainder, if any, represents the CP portion of the business, and the rest of the business is the SP of the managing spouse).
 - ii. VC used when the character of the separate business is largely responsible for its growth or productivity.
 - 1. Value for W's services have a market value of \$100,000.
 - 2. Family expenses paid from business earnings were \$450,000.
 - 3. The CP portion of the business would be zero (100,000-450,000).
 - 4. The value of the business, 5 million would be W's SP under VC.
 - 5. W's would likely argue that it was her recruitment strategy and work of her employees that grew her business not necessary only her work.
 - 6. W would also argue that the patent was another reason for the increase and that the patent was should not be considered actual management on her part.
 - 7. W would want VC to be applied.
- d. PEREIRA METHOD
 - i. The Pereira method begins with the separate capital and imputes a fair rate of return (typically current legal rate of 10%); the total SP interest is the principal plus the fair rate of return times the number of years the SP business was in operation and managed by the spouse during the marriage; the remainder is CP).
 - ii. Pereira used when management by the spouse was the primary cause of the growth or productivity of the business.
 - 1. Value of separate capital was \$1,000,000.
 - 2. Fair rate of return would be \$100,000.
 - 3. SP interest would be \$1,700,000 (100,000x7=700,000 plus the initial 1,000,000 investment).
 - 4. CP portion of the business would be 3.3 million.
 - 5. H would argue for Pereira analysis.
 - 6. Would argue that Wife's effort both in hiring and developing patent would indicate that her efforts in management were the primary reason for growth.
- e. Interest of Justice
 - i. Court would likely find that the character of the business lead to growth and that W was entitled to 1.5 million since the community had already more than benefited from W's income during marriage.
 - ii. The court can, in its discretion, decide which method to apply based on the interest of justice.

- iii. *The court would likely find that VC would serve this purpose, especially if H was entitled to all of the SLO residence as SP; otherwise, the court might find that Pereira would be more equitable.*

San Luis Obispo Residence

1. *GCPP (Rule Above)*
 - a. *H received the home as an inheritance during marriage.*
 - b. *The home is H's SP.*
2. *Transmutation*
 - a. *During marriage, spouses may change the status of their property.*
 - i. *Must be made in writing;*
 - ii. *Must expressly declare that a change in ownership is being made; and*
 - iii. *Must be consented to or accepted by the spouse whose interest is adversely affected.*
 1. *Residence is H's SP because acquired through inheritance;*
 2. *No writing or change of ownership declared.*
 3. *Residence is H's SP.*
3. *Improvements*
 - a. *Improvements do not purchase an ownership interest in the realty. Improvements usually give rise to reimbursement claims.*
 - b. *Community Funds Used to Improve Other Spouse's SP*
 - i. *Traditionally a gift has been presumed.*
 - ii. *The presumption is only overcome by evidence of an agreement to reimburse.*
 - iii. *If there is such an agreement the precise terms control the amount of reimbursement; otherwise, the cost of the improvement is reimbursed.*
 - iv. *Modernly, the courts have rejected this tradition and have reimbursed the community for its contribution to the improvement even absent an agreement.*
 1. *H will argue that the improvements were a gift; however, it is likely that W will argue they were not a gift and demand reimbursement.*
 2. *If the court applies traditional analysis the improvements will be deemed a gift since there is no reimbursement agreement.*
 3. *If the court applies modern analysis W will be entitled to a reimbursement in the amount of \$250,000.*

Rolex Watch

1. *GCPP (Rule Above)*
 - a. *Item was purchased during marriage so it is presumed to be CP unless an exception applies or an agreement to change the character of the item to SP was reached by the spouses.*
2. *Transmutation (Rule Above)*
 - a. *No writing declaring a change in ownership.*
 - b. *No facts to indicate that a valid transmutation existed.*
3. *Interspousal Gifts (Rule Above)*
 - a. *H will argue that the watch was an interspousal gift that did not require a writing to be valid.*

- b. H will point to the inscription on the watch to demonstrate the intent on W's part that the watch would be a gift.*
- c. H will point to the fact that the watch was \$25,000 but that they would routinely spend around \$450,000 per year on community expenses and that the gift was not therefore substantial when looking at the economic TOC for the community.*
- d. H will also point to the fact that the watch is of a highly personal nature.*
- e. W will argue that although the watch was inscribed, it was only inscribed to "to her dearest husband" and that such an inscription is not personal to H.*
- f. W will also point to the fact that \$25,000 is still a substantial amount even though the community would routinely spend \$450,000 per year on expenses.*
- g. It is likely that the court will find that the watch was an interspousal gift and that it was therefore H's SP.*

95

1)

Hank = H Wendy = W

Opening Statement: California is a Community Property (CP) state. The Community Property Presumption (CPP) establishes a presumption that all property acquired during marriage is community property. Separate Property (SP) is property acquired before marriage or after separation. Additionally, SP includes ; (1) property acquired by gift, decent, bequest, and devise, (2) SP rents, issue and profits, and (3) SP exchanged for property. Quasi Community Property (QCP) is treated like CP. At divorce all CP is equally divided in-kind, and SP will remain SP. GOOD

Character of the Property: The CPP establishes a presumption that all property acquired during marriage is CP. The Separate Property Preponderant (SPP) will need to rebut the presumption using evidence related to; (1) the source of funds used to acquire the property, (2) actions of the spouses that would have changed the character of the property, or/and (3) statutory law and statutory presumptions. VERY GOOD

Transmutation: Spouse may change the character of property during marriage when; (1) the change is in writing, (2) the writing expressly states the change in ownership, and (3) the disadvantaged spouse consents to or accepts the change in ownership. GOOD

The Lake Tahoe Cabin - At issue is the character of the lake Tahoe cabin. What is the effect and exceptions related to the transmutation of the property ownership to joint title.

Character of the Cabin: See rule statement above.

Here, the cabin was inherited by W when her uncle died. Because the house was inherited it would be considered the separate property of W. However a possible transmutation may have occurred.

Transmutation: See rule statement above.

Here, H persuaded W to execute and record a deed conveying the property. Thus, the conveyance was in writing because it was recorded. The change in ownership was expressly stated as Joint Tenants. The as the disadvantaged spouse W accepted the change when the document was recorded. Therefore, a valid transmutation did occur provided no exceptions apply. GOOD

Joint Title Presumption: When spouses create a joint title is assumed that the intention of the spouses is to home the property in this fission. The presumption may only be rebutted by a writing in the deed or some other contemporaneous document, Tracing is not allowed. GOOD
+1

Here, W will not be able to use the fact that she inherited the property from her uncle. She will need to use some other form of evidence to establish the property as her SP.

Probate Avoidance: Spouses may not create a Joint Title for the sole purpose of avoiding probate.

Here, the facts establish that after consulting with his friend H decided to change the character of the property for the express purpose of avoiding probate. Thus, the transmutation would be invalid due to the nature of the transmutation, Joint Title.

Presumption of Undue Influence and Fiduciary Duty: When a transmutation occurs there is a presumption of undue influence related to the disadvantage spouse. The advantaged spouse will have to present evidence that the disadvantaged spouse knew and understood the effect the transmutation would have on their ownership interest. Additionally, each spouse has a duty of good faith and fair dealing with relation to the management and control of the other spouse's SP and CP. GOOD

Here, W is the disadvantaged spouse because she lost part of her ownership interest when the character of the property was changed. H is the advantaged spouse because he gained an ownership interest in the house. W will protect her ownership interest by establishing that H conspired to gain an interest in the SP when he consulted his lawyer friend. Additionally, she will be able to establish that H used the fact that he himself was a lawyer to persuade W to change the character of her property and by doing so he breached his fiduciary duty. H may argue that he was only trying to avoid probate and save money. However, this argument will fall short as he was an attorney and should have known that such an action was not allowed. Ultimately, H will not be able to overcome the presumption of undue influence to establish a valid transmutation and he violated his fiduciary duty.

VERY
GOOD

Remedy For Breach of Fiduciary Duty: The court may award the injured spouse attorney fees and require disclosures of the breaching party. In some instances the court may award the entirety of an asset to the injured spouse.

Here, H was a professional in a field related to his breach of duty. The court will combine his knowledge with his persuasion of W and likely award the entirety of the Lake Tahoe cabin to W.

✓

The Autographed Baseball Bat - At issue is issue here is the character and ownership of the baseball bat.

Character of the Baseball Bat: See above for rule statement.

Here, the baseball bat was inherited by W from her uncle. Thus, it is her separate property. The amazing increase in value will have no effect on the character of the bat as W is entitled to all profits and issues realized from SP.

Inter-spousal Gift: When a spouse makes gift personal in nature and the value of such a gift is inconsequential when considering the income of the marital economic community the writing requirement for a transmutation is not required. ✓

Here, H may try to establish that the bat was a gift because it was displayed on the fireplace mantel in the Lake Tahoe cabin. However, the value of the bat at divorce will prevent H from establishing that the value of such a gift would be inconsequential.

VERY GOOD

The New York Loft - At issue is the character and ownership of the New York Loft.

Character of the New York Loft: See rule statement above.

Here the loft was acquired with CP funds during marriage. Thus, the loft is CP.

Quasi Community Property: Property acquired in another state that would have be CP if acquired in California is consider QCP if the couple seeking divorce is domiciled in California at the time of divorce.

GOOD

Here, the New York loft was bought in 2001 when H and W lived in New York. They moved to California in 2011 and either rented a house or were domiciled in the the property W inherited. Thus, they were domiciled in California at the time of divorce in 2023. There for the New York loft would be considered community property and divided equally and in kind. The fact that property was in H's name alone is not establish the property as H's property. The court considers the character and source of the funds used to purchase the property.

W's Education - At issue is the right to reimbursement to the community.

Character of the Education: The community does not have a right related to the degree of the educated spouse, the degree and any debt associated are the sole property of the educated spouse. The community does have a right to reimbursement. *HL*

Equitable Right to Reimbursement: The community has a right to reimbursement with interest when; (1) CP funds are used to pay for a spouses education, and (2) the earning capacity of the spouse is substantially increase. *GOOD*

Here, W's education took three years to complete and was paid for out of H's earnings. She used here education to start an IT business and the facts establish that the business is a success. Because the business is considered a success W's earning capacity was substantially increased from being a stay at home mom previously. Therefore, the community is entitled to reimbursement with interest. *GREAT*

Modification / 10 year rule: There is a reputable presumption affecting the burden of proof that if less than 10 years have passed from the end of the education that the community has not benefited, if more than ten years have passed the has benefited. ✓

Here W finished her education in 2016 and she and her husband filed for divorce in 2023. Thus, 7 years have passed and the burden is on W to show that the community has benefited and a community reimbursement modification is called for. W will assert that that the success of her business helped support the family. Ultimately, the level of success and the amount of family contributions will influence the courts dissension. They will likely hold that the community will need to be reimbursed.

Modification / Education of Both Souses: When both spouse are educated using community funds the right to community reimbursement is off set. ✓ +

Spousal Support Modification: When the education of a spouse places them in a better off position financial than they would have been upon divorce the court may modify spousal support. ✓

Here, W is in a better position to earn a living due to the success of her IT business. Thus, spousal support modification is called for.

W's IT Business - At issue is the community interest in the business, the associated good will and in-kind division.

Character of the business: See rule statement above.

Here, W's IT business was started during marriage and probably with community funds. Thus, the business would be considered CP. Thus, the community would have an interest in the totality of the business and the associated good will.

CP Business Good Will: The courts will use the Market sales evaluation or Capitalization of Past Earnings to determine the value of the business. The market sales valuation considers what the open market will pay for a business beyond the value of the tangible assets. The Capitalization of Past Earning attributes good will to the higher than average earning of the CP business compared to summarily businesses in the area. In both instances a forensic accountant will be need to determine the value. ✓

Here, the court will likely use the Capitalization of Past Earning because it provides a more accurate value of the business's good will. Additional, the nature of W's business being IT means that value of the tangible assets would would be low, making the market sales method less accurate. Ultimately, the court will use the Capitalization of Past Earning to establish the good will.

Overall, Great Job. You really
showed your knowledge and
understanding of the subject.

END OF EXAM

2)

QUESTION 2

The issue is whether Hubert (H) and Whitney (W) have a respective rights in the following assets.

General Presumptions

Community Property (CP)

California (CA) is CP state. Property acquired during the course of marriage is presumed to be CP. In order to determine the characterization of CP and SP depends on three factors (1) source of the item; (2) actions that affect the characterization of the item; and (3) statutory provisions of the item.

Separate Property (SP)

All property acquired prior to marriage or after separation is presumed SP. In addition, all property acquired by gift, devise, and bequest, as well as rents, issues, profits are presumed SP.

Division in Kind

Unless stated orally or in writing to the court all property will be equally divided. Division in kind call for the equal division of an asset, not the total estate.

Marital Economic Community (MEC)

MEC begins at marriage and ends at the death of one spouse or the date of separation. For MEC to be terminated by separation there must be a complete and final break of the

marital relationship, which requires a spouse to have the express intent and conduct consistent with that intent.

Here, MEC began in 2008 when married and ended in 2020 when W filed for dissolution of marriage. The intent was to end the marriage through a filing of dissolution, and the conduct was filing for dissolution and moving out of the couple's home. ✓/+

At Divorce

Unless the existence of an agreement all property shall be divided equally in kind unless special rule applies. ✓

With the general principals in mind, each asset will be looked at in turn.

Characterization of an Asset

In order to determine the characterization of an asset courts will often trace the source of funds. A mere change in the form of the asset does not mean characterization has been changed. ✓

Hubert's Home

Premarital Agreement (PMA)

A PMA is an agreement that is between two potential spouses in contemplation of marriage. In order for a PMA to be valid it must be: (1) in writing signed by both spouses, (2) entered into voluntarily, and (3) not unconscionable. It must also not be in violation of public policy (i.e., contemplate divorce or contract child support). An oral PMA may be valid if full performance or detrimental reliance. A PMA may be amended and does not need consideration. ✓/+

A PMA needs to be voluntary and not unconscionable which requires: (1) independent counsel or express waiver in writing, (2) 7 days between presented with agreement and time of signing, (3) full and fair disclosure, (4) proficiency in the language the agreement is in, (5) understanding of rights, (6) no duress, fraud, or undue influence, and (7) court catchall - anything the court deems relevant. ✓/H

Here, H and W entered into a premarital agreement that provided that each spouse's wages was their own SP and that any business created using SP funds would remain that spouses SP. However, during the premarital discussions W entered into the agreement both involuntarily and unconscionably. Although H had independent counsel, W did not, nor did she waive her right to independent counsel. She trusted H and decided she did not need an attorney. She only verbally told H and his counsel that she waived her rights to an attorney. She needed an express waiver in writing. Next, W was only given 3 days in between the time that she received the agreement and the signing, not 7 as required. Next, H failed to disclose any of his financial and economic assets, which violates the fair and full disclosure requirement. Finally, W signed the agreement just prior to her wedding ceremony in front of all of her friends and family. It could be argued that this was an immense amount of pressure, or duress, to sign the agreement or risk H not going through with the wedding and letting down all the people who were at the wedding. ✓/H

Conclusion

In conclusion, the court will likely rule the premarital agreement invalid because it was not entered into voluntarily and it was unconscionable - no express waiver in writing, no 7 days, no fair and full disclosure, and under duress. Therefore, the agreement is invalid. Meaning, that all wages/earnings that H received during the course of the marriage was, in fact, not his own SP. All wages earned during the course of the marriage was CP. Thus, when H was making mortgage payments on the home with his salary it was with CP funds thereby entitling an ownership interest in the home (see analysis below). ✓/H

Pro Rata

When CP funds are used to pay the down on an SP home, the community is entitled to a pro rata ownership interest. The interest is determined by applying the Moore Marsden formula. This is calculated: $CP\% = CP \text{ contributions} / \text{purchase price (remainder is SP)}$, then the CP / current value.

Here, In 2011 H purchased a home for \$500,00 with a down payment of \$100,000, and a 30-year mortgage. During the marriage \$100,000 was paid on the loan. $\$100k/\$500k = 20\%$ CP; 80% SP $20\%/\$1M = \$800k$ SP and \$200k CP; $\$200k/2 = \$100k$ H/W CP; H = \$900k CP/SP, W = \$100k CP/SP.

Conclusion

In conclusion, the court will likely rule that H should receive \$900k of the CA home and W should receive \$100k of the CA home because CP funds were used to pay the principal amount on the loan during the course of the marriage. H's argument that his payment was with SP funds were the terms of the premarital agreement. However, the premarital agreement is not valid because W entered into it involuntarily and unconscionably.

Obligation to Pay Child Support

Creditor's/Debtor's Rights

Creditors may assert its rights to any CP, including debts occurred prior to marriage. However, a creditor may not assert its right regarding the obligation to pay child support.

Here, H was deemed by the court to be the father of a 10-year old child. The court order him to pay \$1,000 per month in child support. If H ever fails to pay the child support and

creditors come after the CP, they may not assert its rights because a child support is an exception to the ruling on creditor/debtor rights.

Conclusion

In conclusion, it is likely that the court will rule that creditor's may not assert rights on the CP for H's obligation to pay child support. H will have to pay from SP funds.

END OF EXAM

3)

General Community Property Presumption

California is a community property state. Absent an agreement to the contrary (a premarital agreement) most property obtained during the course of the marriage will be presumed to be community property. Community property is owned equally by both parties in the marriage. Separate property belongs exclusively to one spouse of the marriage. Separate property includes property owned prior to marriage and property obtained during the marriage by gift, inheritance, and bequest. Profits that come from separate property remains separate property. At divorce, community property is generally divided between the spouses equally. ✓

Economic Community

The economic community begins at the date of marriage and ends when the parties have a permanent separation with no intent to reconcile. This used to require a physical separation, but now this is not a requirement in CA. ✓

Issue #1: Rights and Liabilities in the Nautical Bean

W purchased the nautical bean for \$1m, which was the amount she received as an inheritance, and exclusively used this money for the purchase. Inheritance is presumed to be SP. Here there are no facts to indicate that the couple had an agreement to the contrary. Businesses purchased or started with SP are SP businesses under CA law. Under CA law, SP businesses will have either Pereira or Van Camp applied, or a hybrid of the two. Courts have discretion relating to how these are applied and can consider what provides the most equitable outcome. ✓

Pereira: Pereira is generally applied when the SP business appreciates in value due to the labor, effort, and skill of the spouse. Under Pereira, the initial investment of SP is taken and to it the court will add 10% per year (the legal interest rate) that the business was operated during the marriage to come up with the SP amount.

Here, the court would take the original \$1m SP investment and add \$100k per year (the 10% interest rate) that the business was operated during the marriage. The business was owned by W between 2011 and 2018, which is 7 years. Therefore, the SP amount would be \$1.7 million. The value of the business at date of trial is \$5m. The court would take the \$5m and subtract the \$1.7m of W's separate property to determine the CP value. Here that would be \$3.3 million. The \$3.3m would be divided to determine each party's share upon divorce. H would receive \$1,650,000. W would receive \$3,350,000. ✓++

Van Camp: Van Camp is generally applied when the SP business appreciates in value due to factors outside of skill, effort, and labor of the spouse. Frequently this would be caused by outside market forces and factors. To determine the community's interest in the business, the court would look at the average similarly situated business owners income and multiply this by the amount of years the business was operated during the marriage. Then the court would subtract the amount that the spouse spent on community expenses. The remaining amount would be what the community's share is. ✓↓

Here, the court would look at the \$100k per year figure that the facts indicate is the average income of a similarly situated business owner and multiply that by 7, the years that W owned the business during the marriage. This would be \$700k (100,000 x 7). From that the court would subtract the amount that W spent on community expenses during the same 7 years, which would be \$3,150,000 (450,000 x 7). This would be a negative number, because the community expenses exceeded the income of a similarly situated business owner, specifically, negative \$2,450,000. Because of this, the community would have no interest in the business at all, and it would be entirely W's SP. ✓++

W would argue for a Van Camp analysis because it benefits her by eliminating any community interest. H would argue for a Pereira analysis because it would provide the community with a share of the business, thereby benefiting him.

Here, the business "grew substantially over time due to W's hard work and effort..." in addition to the patent that she received for technology she developed in 2012. While W may argue that the business grew because the coffee industry experienced a boom during these years, which would favor a Van Camp approach, the facts contradict this view.

While the court will have the option of applying either Pereira, Van Camp, or a hybrid of the two, the court will likely evaluate the business under Pereira. The court could consider equity in their decision, and find between the two, Pereira fits the facts and the outcome does not appear to be unjust to either party. ✓+

H's interest in the Nautical Bean would be \$1,650,000 and W's would be \$3,350,000.

Issue #2: The SLO Residence

Here, H inherited a home from his grandmother in SLO with a value of \$2m at the time he received it. Because inheritance is presumed to be separate property, and there is no evidence of an agreement to the contrary, the home would start as H's SP.

Both H and W lived in the home and held it out to be both of their's. There is no information about how the home was titled, but this would not impact the CP analysis based on CA law, so it would not be relevant. The issue here is whether a valid transmutation occurred that would change the nature of the home from H's SP to CP. ✓+

Starting on January 1st, 1985 a valid transmutation in CA occurs when there is an agreement in writing that expressly states the intention to transmute a particular asset. It must be signed by the party that is giving up some or all of their interest in the asset and ✓+

must be voluntary (free from undue influence, fraud, etc). An exception to this is a valid inter spousal gift, which is when one spouse gifts another some property. It must be personal in nature and must not be so valuable or expensive that it is out of the ordinary for the spending and income of the couple. Here, the cabin is not a valid transmutation, and it is not an inter-spousal gift due to the value, method of attempted transmutation and lack of personal nature.

Here, the only facts that could implicate a transmutation is that both spouses held the house out to be property of both people and that they both lived there. Both of the parties living in the house does not implicate any change in the characterization of the property, and is therefore not relevant. The fact that the parties held the house out to be property of both could implicate a transmutation, but even if it were an attempted transmutation, it would fail because it was not in writing and there is no evidence of express intent. ✓ H

The home is H separate property.

The second issue in here is the \$250k W spent on upgrades. While this does not impact the nature of how the home would be characterized, it does bring into question whether she is eligible for some form of compensation. ✓

Under Anti-Lucas legislation, a SP or CP contribution to another spouse's SP could require reimbursement, unless there is evidence that it is intended as a gift. Here, W spent her income from Nautical Bean on the house improvements. While the Nautical Bean is a SP business, the income from it would be classified as community property, because it is not related directly to the value of the business, which is a different matter. While the improvements were paid for near the same time as the Rolex was purchased, which does appear to be intended as a gift, at least on the surface, there are no facts indicating that the improvements were also intended as a gift.

Therefore, the community spent \$250k on improvements, and would be due compensation. This can be in the form of dollar for dollar reimbursement or as a portion of the property's increased value as a result of the improvements. Here there are no facts that directly speak to the improvements adding to the value, although it is possible. Because of the lack of information related to this issue, the community would be reimbursed the \$250k. Half of which (\$125k) would be allocated to each spouse. ✓

Issue #3: The Rolex

A valid inter spousal gift is one of the exceptions to transmutation regulation under CA law (see above).

Here, W gave H an inscribed Rolex, which cost \$25k for his birthday. The inscription used the word "gift" to refer to the watch, so it is clear that this was at least an attempt at an inter spousal gift, and not intended to be property of the community.

To be a valid gift, the property must be personal in nature and cannot be extremely expensive or valuable in the context of the couple's lifestyle, income, and means.

The watch is something that H would personally wear. It is inscribed to him, with his name on it. The court would most likely find that the watch is personal in nature.

The watch cost \$25k. While this is a significant amount of money on its face, this may not be overly valuable for this particular couple. The facts indicate that this couple's community expenses were \$450k per year. In light of the amount of money they routinely spent, the Rolex is a small percentage of their spending. Therefore, it most likely is not unduly valuable or expensive for the couple to be considered a valid inter spousal gift. ✓

The Rolex is H's separate property.
