

FINAL EXAM
3 Hours

Unless specifically indicated otherwise, please assume that all of the fact situations below took place in the State of California.

PART I (50 POINTS)
100 Mins.

Harold and Wilbur met in San Francisco in 1985. Harold was an architect with a well-respected San Francisco firm and Wilbur, although college educated, was a part-time graphic artist who also worked as a server for a number of caterers. Harold and Wilbur found themselves very attracted to each other and soon began living together, with Wilbur moving into Harold's rent controlled apartment.

As the relationship progressed, Wilbur worked less and took primary responsibility for household matters. In 2000, shortly after the Registered Domestic Partnership Act took effect Harold and Wilbur formally became registered Domestic Partners with the State of California and had a commitment ceremony, before one hundred or so of their closest friends, whereby each of them promise to share everything and to care for each other for the rest of their lives.

In late 2002 a two bedroom cabin was purchased, in Harold's name, using funds from a savings account in Harold's name (the monies of which came from his earned income) and the loan for this property was solely in the name of Harold. Harold had a far higher credit rating than Wilbur. Harold and Wilbur used the cabin on weekends and for holidays and intended to retire there.

On February 15, 2004, shortly after Mayor Gavin Newsom of San Francisco, directed the City Clerk of San Francisco to issue marriage licenses to same-sex couples, Harold and Wilbur obtained a marriage license and a week later were formally married, again before one hundred or so of their closest friends. This marriage was voided by the California Supreme Court, with many others, in August of 2004.

On July 4, 2008, shortly after the decision in "The Marriage Cases", by the California Supreme Court, Harold and Wilbur again married. Again before about one hundred of their closest friends and have been married ever since.

In the summer of 2012 Harold retired (there are substantial funds, over \$1,500,000.00) in the deferred compensation accounts acquired through his employment and over \$300,000.00 in his personal savings

account. He and Wilbur relocated to the cabin in Guerneville (the mortgage has been paid off), giving up the apartment in San Francisco. At that time Wilbur's name was put on title to the cabin. Since the move Harold has been working on a book (a long time goal of his) and Wilbur continues to attend to most of the domestic responsibilities, as well as creating some objects of art (which he occasionally shows at local events) and on rare occasions acting as a server for a few caterers that he knows in Sonoma County.

Very recently Harold has informed Wilbur that Harold met Charles and realizes that he is in love with Charles and wants to live with Charles. Harold told Wilbur that he would like to resolve their situation amicably. However, Wilbur has been informed that if he does not vacate the cabin within two weeks then Harold will immediately file whatever actions are needed to end the relationship. Wilbur is now extremely upset and confused.

Wilbur has come to you for advice. He wants to know what his rights are regarding his relationship with Harold. In particular Wilbur wants to know what his rights are regarding the Guerneville cabin and the extensive monies in Harold's deferred compensation accounts and savings accounts. Discuss what advice you will give to Harold and discuss the legal principles supporting that advice. (Do not address issues of spousal support or attorney fees)

PART II (25 POINTS)
50 Mins.

Howard and Wanda married on July 1, 1975. At the time of the marriage Wanda owned an apartment building, which she had inherited from her grandfather. The building has no mortgage and the rents more than covered the maintenance, taxes and insurance regarding the building. The funds from the building went into an account, solely in Wanda's name, which she had taken over from her grandfather. Throughout the marriage, the funds from the building continued to go into that account and any expenses regarding the building were written from that account. Each year, Wanda would take a few thousand dollars from that account and put that into the joint family checking account, which was used for the regular family expenses.

Howard was the primary wage earner, and had a very good income working as a stockbroker for a major brokerage company. The family lived very well and had extra monies, never mind the monies from Wanda's apartment building. Wanda and Howard have two children, twins, who they were able to send to fine colleges and the children are now both out of college and supporting themselves for the past six years and each are married with children of their own, although they both live on the east coast. Shortly after the children were born, in 1985, a family trust was set up and all of the real property that the each of them owned, including their residence and Wanda's apartment building were transferred to the trust, with Wanda and Howard as joint owners of the trust.

During the marriage and prior to the children leaving for college Wanda attended to family duties, as well as being available for all of the social responsibilities that Howard's brokerage firm requested, never mind managing her apartment building. Once the children left the home, for college, Wanda has found her life fairly meaningless. Howard was almost always busy with business matters or doing activities (golf, card games, etc.) with either colleagues or clients. Beyond the social events related to the firm, he spent almost no time with Wanda and they had not taken a joint vacation since the children left for college. To do something meaningful, Wanda became involved in a number of charitable organizations, as she has always had very good organizational skills and quickly became a board member of a number of organizations. Howard was very happy about this, as Wanda's presence on these boards only increased his ability to tap into wealthy clients, a number of whom were involved with the charities that Wanda was involved with.

About six years ago Wanda fell in love with Jerome, the executive director of one of the charitable organizations. Jerome is independently wealthy. They quickly developed an extremely passionate relationship and

Wanda started spending all of her personal time, beyond that necessary to maintain appearances of being married to Howard, with Jerome, even moving most of her personal belongs to Jerome's residence and basically living there, although her legal address remains the family home. Wanda does not go to social events with Jerome, for appearances sake, they take a number of out of the area vacations together each year and Wanda has not slept in the family home, or with Howard, for over five years. Howard and their children are fully aware of this situation and Howard and Wanda agreed not to file for divorce until Howard retires, which will be in a few months, as to do so would have endangered Howard's employment and possibly Wanda's ability to remain on the boards of the various charities, never mind possibly embarrassing Jerome.

For the past five years Howard has received, as a reward for very high performance, an increasing amount of the shares in the parent corporation of his firm. Also, the contributions to his retirement accounts have been very large for the last five years.

Howard has now come to you about filing for divorce. He is about to retire soon. He realized that Wanda will be entitled to a substantial share of the retirement accounts in his name, as well as one-half of the value of the family home. He wants to request a date of separation of about five years ago, as he is clear that the marriage ended at that time and that no dissolution was filed, solely for the sake of appearances. Also, he wants to know the character of the apartment building. His contention is that it is now community property, although no deed putting that property in both names was ever executed. The trust documents merely stated that all real property, in either parties name was transferred to the trust. Also, he really wants to know about the date of separation, as if it can be five years ago, all of the stock received and a large portion of the retirement account would be his separate property. What advice do you give to Howard and discuss the legal principles supporting this advice.

PART III (20 POINTS)
30 Mins.

Answer the following questions in five sentences or less. Each numbered question is worth 5 points.

- a. If employee spouse, whose defined benefit plan has matured and vested, chooses to continue working and the non-employee spouse opts for payment, as of what date is payment to commence if a Court must make the order?
- b. Under what circumstances may a Court award 100% of a community property asset to one of the parties?
- c. What are the six different bases for setting aside a Judgment pursuant to Family Code Section 2122?
- d. Please state the *Van Camp* formula and indicate when it is used.

END OF EXAMINATION