

Part I – Short Essay Answers

1. Mary and Larry met and began living together in 2000 when both were 25 and had started their first jobs as engineers. With little discussion, they opened a joint bank account and regularly deposited both their pay checks into the account. They were paid the same. While they told their friends they were a domestic partnership (RDP) they filed no paperwork with the Secretary of State but did file joint California tax returns as RDP's.

They used the joint bank account to pay all their joint bills. They also purchased several investments, stock and a house in Petaluma. Title to these assets was taken in Larry's name. There was little discussion between them about ownership, but each agreed that Mary would get her fair share of any investments if they separated.

In 2012 they married in a formal ceremony with a license. Larry had his attorney draft a premarital agreement which provided that each would keep their existing property but what was acquired later would be subject to the usual community property rules. There was no listing of either parties' assets or debts or acknowledgment of what property existed. It did provide that neither party would receive alimony from the other. The agreement, a single page document, was given to Mary five days before the marriage, and was signed without change, explanation, or detailed review. They separated in 2014.

At the time of their marriage the bank account contained \$150,000. This included not only their paychecks but what was left of Mary's 2010 inheritance. Except for the original amount of the inheritance neither party has any records of what went into or out of the account or how it was spent. At time of separation, the account contained \$100,000.

What are each parties' rights in the bank account and house? What effect does the prenuptial agreement have on the assets and support? (25 points)

2. Bill and Pat were married in California in 2000. They separated in 2014. Pat worked for Apple as a designer starting in 2006. While working for Apple, in 2007, he received options (Grant I) to purchase 10,000 shares of stock in blocks of 2,000 shares each year on the fifth anniversary of the grant at \$50/share (between 2012-2017). Similar options were granted to all employees hired when Pat was hired. The options provided that Pat needed to work for Apple when she exercised the option, first available in 2012, and that the options could not be assigned to anyone else. Microsoft hired Pat in 2011 and as part of her employment package granted her identical options with unchanged identical terms. The options were exercised yearly as they matured. They separated in 2014 just after the third installment of options was exercised.

In 2014 as part of a companywide plan to retain employees Microsoft issued 5,000 options (Grant II) which were exercisable yearly in blocks of 1,000, starting in 2015, provided Pat was working for Microsoft both exercised. Grant II was issued a week after separation. Both sets of options were taxable when exercised. Pat estimates that the taxes will amount to \$10,000 on each exercised set of options, but this figure may vary.

In what manner could the options be divided and what factors should be considered? (15 points) (You need not fractionalize years of service to the employer.)

Bill went to a three year art school starting in 2006, after the parties married. Tuition was paid in part with student loans that totaled \$50,000. The loans were used to pay both tuition (\$30,000) and for living expenses. Because of his school load, Bill was not able to work while attending school. The loans still exist in their original form with \$20,000 due to the original creditor. At the time of separation and trial Bill had not found a job, but was reviewed by the critics as having great potential. He has never sold a painting. He is considering beginning a career as a stock broker.

How should the obligation for student loans be allocated? (10 points)

3. Carlos and Lola

Carlos started as a school teacher, age 42, when he and Lola met. Three years later they married. His retirement was provided by STRS and would vest when he had ten years of credited service. It would be payable at age 55 or when he had 20 years of service. They separated twelve years after marriage when he was 52. At trial his retirement benefits have a net present value of \$50,000 as valued by his expert or if valued by her expert \$125,000. At early retirement, in three years at age 55, the pension will pay \$1,000 monthly. At normal retirement, after both 20 years of service and at age 65, the pension would pay \$1,400 monthly. The parties only other asset is the community residence with an equity of \$100,000.

Discuss the various options for dividing the pension benefits. Indicate how each party would be affected by the various methods of division. (15 points)

Assume the house did not exist, what are Lola's options as to when and how she would receive her share of the retirement? Comment on any advantages or disadvantages that timing may produce. (10 points)

4. David and Carol

David and Carol were married in 2000. They moved into a house David owned. It was purchased for \$200,000 and with a down payment of \$20,000. Title was always in his name. At marriage in 2004 it was worth \$250,000 and had a mortgage of \$170,000. At separation ten years later, the house had a value of \$300,000 with a mortgage of \$160,000. It was sold and the proceeds were held by David's lawyer in separate trust accounts divided according to the community property shares.

Shortly thereafter the parties reconciled, resumed living together, and purchased a second house as community property using the funds held by the lawyer. The new house was purchased for \$800,000 with a \$140,000 down payment. At separation the house was worth \$1,000,000 with a mortgage of \$500,000. At trial the house was worth \$1,500,000 with a mortgage of \$400,000 and all post separation payments made by tenants.

How should proceeds from each house be allocated and why? (15 points)

Part II – Definitions

Define each of the following terms, in **three sentences of less**, indicating its significance in the community property context. (3 points each) **Item 9 is worth 6 points and 6 sentences may be used.**

1. General Community Property presumption
2. Family Law Attorney's Real Property Lien (FLARPL)
3. Equal Division
4. Pierra/Van Camp approaches
5. Defined Benefit Plan
6. Legal Separation (NOT the proceeding)
7. Date of Valuation
8. Bifurcation of Marital Status
9. Fiduciary Duty (as it relates to Community Property)