

Professor Averill  
Community Property, Fall 2015  
Final Exam Issue Outline

Section I (40 Points Total)

Question 1 (Student Loans-10 points)

1. Debt incurred PTM so H's SP.
2. Parties both generally liable during the marriage.
3. At DOS loan balance needs to be assigned.
4. Student loans generally follow party receiving education.
5. No offset of loan assignment if community has already benefitted from the education which is presumed if marriage more than 10 years in duration.

Question 2 (Prenuptial Agreement-10 points)

1. Parties may enter agreement to deviate from CP laws.
2. Did each party have independent counsel?
3. Did the parties have sufficient time for review prior to signing (Not less than 7 days.)
4. Was the agreement entered into voluntarily or was there duress?
5. The party challenging the prenuptial agreement has the burden to establish the prenuptial agreement is not valid.

Question 3 (Classification of House-20 points)

1. Contract was not entered until after marriage even though offer/counter offer exchanged PTM.
2. Property is presumptively CP because purchased DM.
3. Post Lucas-Transmutation requires writing.
4. H would have burden to rebut presumption since he is claiming his SP.
5. Down payment was H's SP from parental gift.
6. Down payment not commingled-gift and marriage close in time.
7. Title taken in H's name not controlling alone since purchased DM.
8. "Lender's Intent"
9. Husband's income after DM is CP even though lender relying on it.
10. Prenuptial not valid so not controlling as to classification.

## Section II (60 Total Points)

### Question 1 (Business Valuation-30 points)

1. W owned business PTM so SP.
2. W's time and labor become CP after DM.
3. Business increasing due to W's unique design talents.
4. *Pereira v. Van Camp* business valuation to determine CP interest in SP business.
5. Choose *Pereira* given W's efforts are primary reason for increase in value and her efforts are CP after DM.
6. W will receive her initial investment (\$20,000) and reasonable rate of return and CP will receive the rest of the value.
7. Discussion of appropriate rate of return.

### Question 2 (Reimbursement for Home Improvements-15 points)

1. Property is H's SP.
2. CP is used to improve SP.
3. Costs of improvements are reimbursable.
4. Costs of maintenance are not reimbursable.
5. Reimbursement of costs expended for improvements vs. increase in value of property as a result of improvements.

### Question 3 (Value to Use for House Division-5 points)

1. Value as close to the time of trial as practicable.

### Question 4 (Bonus-10 points)

1. Purpose of bonus- prior services vs. future work
2. Date of separation is key to determining interest in bonus.
3. Date of separation under *Davis*-Were the parties living "separate and apart."
4. Analyze pool house scenario.
5. When was intent to divorce communicated?
6. Was behavior of parties consistent with living separate and apart?