

## COMMUNITY PROPERTY-SUMMER 2015

### ISSUE OUTLINE FOR QUESTION #1

#### GENERAL:

1. REGISTERED DOMESTIC PARTNERS (PDP'S )
  - a. DEFINE FC 297 AND 297.5
  - b. Same rights as married couples
2. DEFINE CP AND SP (FC 760, 770, 771)
  - a. EQUAL DIVISION (FC 2550)
3. DATE OF SEPARATION  
Define and Discuss Marriage of Davis (FN 7), conduct of the parties, separate bedrooms, counseling, vacating residence

#### HOME:

1. Presumption (date of acquisition)
2. FC 2640 SP reimbursement
3. Commingling (direct and indirect tracing)

#### STOCK:

1. Presumption (date of acquisition)
2. Burden on Separatizer to show funds from separate source, if any.

#### HONDA:

1. Joint title presumption (FC 2581)
2. Inheritance-SP-Needs tracing

#### BMW:

1. Conflicting presumptions (title vs. date of acquisition)
2. SP down payment needs tracing
3. Credit (loan) is CP; "intent of lender" considering one party earned \$8000 and the other earned \$200,000.

#### CC DEBT:

1. Presumption (date of acquisition)
2. For benefit of CP or not?
3. Debt only in one name not determinative
4. Fiduciary duties (FC 721)

## COMMUNITY PROPERTY-SUMMER 2015

### ISSUE OUTLINE FOR QUESTION #2

#### GENERAL:

4. VALID MARRIAGE  
FC 300
5. PUTATIVE SPOUSES OF MARRIGE INVALID
6. DEFINE CP AND SP (FC 760, 770, 771)
  - a. EQUAL DIVISION (FC 2550)
7. PREMARITAL AGREEMENT
  - a. VALIDITY (FC 1615); independent counsel, 7 days, undue influence, unconscionability, voluntariness (ultimately determine it was invalid and move on)

#### LOTTERY TICKET:

1. Source of funds
2. Presumptions (date of acquisition)
3. FC 2640 claim, tracing money used to purchase ticket
4. Transmutation (signing lotto check)? Fiduciary duty (FC 721)

#### LOTTERY TICKET WINNINGS:

1. Fiduciary duty re investment by Husband (FC 721)
2. Remedies available
3. Standard for investing CP funds

#### HOUSE:

1. Characterize as H's SP then apportion by Moore-Marsden
  - a. Credit Husband with his down payment prior to marriage, increase in equity prior to marriage, all post separation paydown of loan. Husband also receives a pro rata share of marital appreciation.
  - b. Credit Community with contributions to the paydown of the loan plus pro rata share of the marital appreciation.
  - c. The community share of the marital appreciation is calculated by dividing the community contribution (\$100,000) by the purchase price (\$500,000) to get a percentage (20%). This percentage is applied to the total amount of marital appreciation.
  - d. Calculate the amount that Wife gets and the amount that Husband gets.

#### BMW:

1. Characterize as W's SP based on date of acquisition.
2. Discuss whether the community gets credit for paying down the loan obligation and whether the community gets reimbursement
3. Discuss whether Husband gets reimbursement per FC 2640 (c) if the premarital agreement is deemed valid.

**INVESTMENT:**

1. Funded presumably with lottery ticket winnings (SP or CP-see earlier issue)
2. Breach of fiduciary duty regarding the investment of these funds
3. Remedies
4. Standard for investing.
5. Management and control (FC 1100); was this a gift to a friend?

**BANK ACCOUNT:**

1. In H's name only (title presumption, transmutation of funds deposited into this account, Fiduciary duty)
2. Was this a gift between spouses (FC 1100)?
3. Commingling funds: Tracing funds in the account back to deposit of lottery ticket.
4. Determine date of marriage balance and credit that to Husband as his SP; deposits from Husband's earnings characterized as CP; all household expenses as a CP expense. If the account never dropped below the amount that was in it on the DOS then Husband gets his DOS balance back. If not all appears to be CP.

## COMMUNITY PROPERTY-SUMMER 2015

### ISSUE OUTLINE FOR QUESTION #3

8. DEFINE CP AND SP (FC 760, 770, 771)
  - a. EQUAL DIVISION (FC 2550)
9. IDENTIFY THE 401K AS A DEFINED CONTRIBUTION PLAN
  - a. Define Defined Contribution Plan
  - b. Identify separate contributions (pre-marriage of \$100,000 plus post-separation contributions of \$25,000)
  - c. Both SP and CP interests get earnings and losses on their respective shares from the DOS until the plan is divided by a QDRO (or a buy-out if both parties agree)
  - d. All contributions from DOM to DOS are CP and each spouse gets half of the contributions.
  - e. Apply the math  
 $\$250,000$  (value at DOS) -  $\$100,000$  (H's pre-marriage contributions) =  $\$150,000$  (CP portion)  
 $\$150,000$  is divided by two so that each spouse gets half of the CP portion.
  - f. Prepare QDRO
    - i. Some additional mathematical calculations may need to be done to reflect earnings or losses on the separator's portion from date of marriage to date of distributions.
10. IDENTIFY THE PENSION PLAN AS A DEFINED BENEFIT PLAN
  - a. Define Defined Benefit Plan
  - b. Identify the method of division (Time Rule)
  - c. Set forth the Time Rule formula to determine CP interest  
$$\text{CP} = \frac{\text{Total number of marriage years of participation in the plan}}{\text{Total Years in the Plan}}$$

Apply this percentage to the pension benefit, then divide by 2 to determine the non-employee spouse's share.

$$15/25 = 60\%$$
$$60\% \div 2 = 30\%$$
$$30\% \times \$3000 = \$900 \text{ per month to Wife}$$
  - d. A QDRO is necessary to divide this plan benefit.