Empire College School of Law Student ID________
Professor Moskowitz
Community Property
Final – Spring 2010
Monday, April 12, 2010

FINAL EXAMINATION – 3 HOURS

Except where indicated otherwise, assume all events and transactions described in this examination occurred in California.

PART I (65 POINTS, 115 MINUTES)

On November 1, 1979, Herbert commenced his employment with PG&E as an engineer. On January 15, 1980, he purchased a home in Santa Rosa for $200,000. He put $50,000 down and financed the balance with a loan for $150,000, secured by a deed of trust against the residence.

On October 1, 1980, Herbert married Winona. On November 1, 1980, Herbert conveyed the residence to himself and Winona, "Husband and Wife, as community property." As of the date of this deed, the residence was worth $215,000 and the debt was $140,000, leaving equity of $75,000.

Between November 1, 1980 and June 30, 1990, the parties made numerous improvements to the apartment building. The improvements cost $100,000. Of this amount, $25,000 came from Winona's separate property and $75,000 came from community funds. The improvements for which Winona paid were made over a two year period, from 1985 to 1987.

Herbert and Winona sold the home on June 30, 1990 for $450,000. After paying off the balance of the original loan -- $70,000 – plus $30,000 of selling costs, including commission, they had $350,000 in net proceeds. They used the proceeds as a down payment on some real property located in Geyserville, which contained both vineyards and a residence into which they moved. The cost of the property (the "residence" property) was $1,100,000, so they took out a mortgage of $750,000 to complete the purchase. They agreed that Herbert would continue to work at PG&E, while Winona would quit her job as a clothing sales representative and oversee the sale of the parties' grapes to local wineries.

The growth of the wine industry in Sonoma County was good for Herbert and Winona. They had no trouble selling their entire crop every year, and due to Winona's marketing skills they were consistently able to get premium prices.

Over the next 15 years, Herbert and Winona expanded their vineyard operation. During this period, they spent $700,000 in grape revenues to purchase an adjoining vineyard (cost: $500,000), plant new vines (cost: $150,000), and install irrigation equipment (cost: $50,000). This second property was purchased for all cash and was owned "free and clear" from the date of purchase.

By April 2007, the value of the "residence" property was $2,700,000. The balance of the original $750,000 mortgage had been reduced to $200,000, leaving equity of $2,500,000. On May 1, 2007, Herbert and Winona borrowed $1,200,000 against the "residence" property, paid off the $200,000 former first mortgage, and pulled out $1,000,000 in cash. They used the cash as follows:

1. $200,000 was used as the down payment on a $1,000,000 vacation home in Lake Tahoe.

2. $500,000 was invested in a stock portfolio.

3. $300,000 was invested in a lot in Cloverdale, on which the parties planned to build a "spec" house to sell at a profit.

Herbert and Winona separated on September 1, 2009. At that time, PG&E was looking for ways to "down size." One way of doing this was to offer its senior employees, such as Herbert, who was then 53 years of age, an opportunity to take early retirement. The company's actuaries determined that if Herbert were to take early retirement at age 55, the present value of his defined benefit pension as of his 55th birthday would be $250,000. The company offered him a cash payment of $250,000, payable immediately, if he retired at age 53. He accepted the offer, retired as of September 30, 2009, and received a check for $250,000 the next day.

You have been appointed by the Court as the Early Neutral Evaluator in Herbert and Winona's marital dissolution action. You have no decision-making authority, but you have been asked to evaluate the merits of their various claims. Herbert and Winona agree that the values of the various assets are as follows:

Residence property: $1,900,000, with $900,000 of debt;

Adjacent vineyard property: $300,000, with no debt;

Vacation home: $750,000 with $775,000 of debt;

Stock portfolio: $400,000; and

Bare land in Cloverdale, on which no house was ever built: $200,000 with no debt.

The parties are making the following claims:

1. Herbert claims that he has a separate property interest in one or more of the existing assets tracing back to his separate property equity of $75,000 in the Santa Rosa house.

2. Winona claims that she has a separate property interest in one or more of the existing assets tracing back to the $25,000 of her separate funds used to improve the Santa Rosa house.

3. Winona wants to keep the "residence" property and wants Herbert to get the adjacent vineyard and the stock portfolio. She wants to sell the Cloverdale property and the vacation home, and split the $250,000 that PG&E paid Herbert.

4. Herbert agrees that Winona can have the "residence" property and agrees to take the adjacent vineyard. However, he wants to split the stock portfolio, keep the vacation home, and keep all of the proceeds of the sale of the Cloverdale land. He also claims that the PG&E payout is his separate property because it was earned and paid after separation.

Your answer to this question should be in two parts:

1. Evaluate each party's respective interests in the following assets:

   a. The "residence" property (15 points);

   b. The adjacent vineyard property (5 points)

   c. The vacation home (10 points);

   d. The stock portfolio (10 points);

   e. The Cloverdale bare land (5 points); and

   f. The PG&E payout (10 points).

2. Analyze each party's proposed division of the marital property in terms of Family Code section 2550 [division of community assets must be equal or substantially equal] and recommend a property settlement. You may either recommend the settlement proposed by either of the parties, or suggest one of your own (10 points).

Empire College School of Law
Professor Moskowitz
Community Property
Final – Spring 2010
Monday, April 12, 2010

Student ID________

PART II (35 POINTS, 65 MINUTES)

Henry was admitted to the State Bar of California in December 1994 and opened a solo law practice on February 1, 1995**.** He had been in practice for exactly six months when he married Wanda on August 1, 1995. At that time, he had 10 clients and was breaking even each month in terms of cash flow. As of the date of marriage, his law practice balance sheet looked like this:

ASSETS	
Cash in bank (not including client trust account):	$5,000.00
Office equipment	10,000.00
Accounts receivable:	7,500.00
Work in process (completed, unbilled work)	2,500.00
Total assets:	25,000.00
LIABILITIES	
Accounts payable:	8,500.00
Wages payable (to secretary)	2,500.00
Payroll and other taxes payable	4,000.00
Total liabilities:	15,000.00
NET EQUITY (Assets minus liabilities):	10,000.00

During the marriage, Henry became quite successful. He was so successful, in fact, that in 2005 Wanda was able to quit her job as a high school physical education teacher, which she had held since August 1, 1990, and go to baseball umpiring school. She completed the program one year later and got a job as a minor league umpire just in time for the beginning of the 2007 baseball season.

On July 1, 2008, Wanda was injured when a player accidentally spiked her while sliding into home plate on a close play. The injury left her disabled, and on March 15, 2009 she was awarded $500,000 in workers' compensation. The award recited that it was based on Wanda's salary of $50,000 per year for a "work expectancy" period of 10 years commencing July 1, 2008.

The same day, Henry was injured in an automobile accident. On March 15, 2009, the same day that Wanda received her workers' compensation award, he entered into a settlement with the defendant driver's insurance company. After paying his attorney's contingent fee and all of the medical bills relating to the accident, Henry was left with $500,000.

Henry and Wanda separated on June 1, 2009. Their assets consist of the following:

1. The family residence, with $200,000 in equity;

2. Henry's law practice (still a solo practice), valued at $300,000 as of the date of separation but $100,000 at the present time;

3. A savings account containing $800,000, the source of which was the parties' earnings during the marriage;

4. Wanda's State Teachers' Retirement System (STRS) benefits, which have not been valued (STRS is a defined benefit plan);

5. Miscellaneous household furniture, furnishings, and vehicles;

6. Henry's pension and profit sharing plan through his law practice, valued at $600,000;

7. Wanda's workers' compensation award, which has been kept in an account in her name alone and has not been commingled with any other assets; and

8. Henry's personal injury damages, which have been kept in an account in his name alone and have not been commingled with any other assets.

You have been appointed as the judge pro tem for purposes of presiding at Henry and Wanda's Court-ordered Settlement Conference. Henry and Wanda have agreed on the character, value, and disposition of their family home, the household furnishings and vehicles, and the pension and profit-sharing plans from Henry's law office. They have not reached any agreements on the value of the law practice, apportionment of the STRS benefits, Henry's personal injury award, and Wanda's workers' compensation award. They plan to use the savings account to equalize the division of the disputed assets, so even though they agree that the account is entirely community property, they have not yet agreed on how it is to be distributed.

You have no decision-making authority, but you have decided to prepare for the Settlement Conference by writing a memorandum to your file regarding the contested assets. Write your memorandum, addressing the following issues:

1. The character and value of the law practice (10 points);

2. The character, value and distribution of Wanda's workers' compensation award (5 points);

3. The character, value and distribution of the personal injury settlement (5 points);

4. The character and distribution of the STRS benefits (10 points); and

5. The distribution of the funds in the savings account as necessary to result in an equal division of the community estate (5 points).

END OF EXAMINATION