

Community Property Final – 3 hours

Define and/or demonstrate the importance of the following issues in Community Property we have studied. Your answer should be a short paragraph. Length is not crucial, thoroughness and incisiveness are. In allocating time each answer is worth 10 points. **DEFINE FIVE OF THE SIX TERMS**

1. General Community Property Presumption
2. Perrara/ Van Camp Approaches
3. Direct Tracing
4. Marvin Agreement
5. Defined contribution Retirement Plan
6. Tammen Note

Essay Questions:

You are assisting the senior partner at your law firm in assessing new cases. In each of the following cases discuss the rights of the parties to community property. If facts are missing, describe what additional information you would want and why it is important. Discuss the rights of both parties if necessary.

1. Harry and Wanda were married in 2000. They moved into a home owned by Wanda for ten years before marriage. During that time, the house went from an equity value of \$100,000 to \$200,000 with no change in the amount of the \$100,000 mortgage. The day after the marriage , Wanda wrote a grant deed adding Harry to the title.

Three years later, the couple refinanced the house when the market value was \$500,000 and equity was \$400,000 they took out a loan for \$400,000. They made three simultaneous investments with the money:

- A. They purchased a vacation home in Lake Tahoe for \$200,000 which is today worth \$300,000.
- B. They invested \$100,000 in a Hummer dealership. When Hummer was sold and went out of business they received \$50,000 which was placed into a certificate of deposit.
- C. They invested \$100,000 in corporate bonds which are worth what was paid for them.

Discuss division of the three investments. (20pts.)

2. Hank was injured in an auto accident five years ago, two years after marriage to Wilma, and received serious permanent injuries. He received \$1,000,000 as a settlement of his claims. Half the settlement was used to purchase a home, free of mortgage, with ramps and adaptive design. The remainder of the settlement was added to the couple's joint bank account, which had a balance of \$250,000. Between the date of that deposit and separation, the parties used the \$750,000 to buy a number of investments, held in joint name, which are today worth \$1,000,000. It is impossible to trace any investment to any particular source of funds. Hank is a successful software designer and works from his home office earning \$125,000 while sending his work product to his employer over the internet. Wilma is a stay at home housewife who quit a job as an elementary school teacher to care for Hank.

Discuss division of the house and cash. (20pts.)

3. Terri and Chris is a same sex couple. They were active volunteers with the political movement to establish gay marriage. They began living together five years before the issue of same sex marriage was actively litigated in California. Chris believed Terri when she was told that by living together for two years they would, in the eyes of the law, be married and did not need to register as domestic partners (RDP). Terri did not believe this to be true. Chris did not insist on formal registration but did tell her family that she and Terry were married. During this period of time Terri earned a \$200,000 bonus from her employer and placed the money in a bank account, in just her name, to which nothing else was ever deposited. The balance today is \$250,000.

During the window period, the period when same sex marriage was legal, and after the receipt of the bonus, they were formally married. They obtained a license and complied with all other requirements to complete the marriage. After marriage and before separation they acquired stocks and other property worth \$300,000.

While together the parties combined all of their income and paid all joint bills without allocating bills to either's income. Although Chris was authorized to sign checks, all bank and investment accounts were held only in Terri's name.

Discuss ownership and division of both the \$250,000 bank account (15pts.) and the \$300,000 in stocks and other property (10pts.)

4. Charles is a successful accountant. At marriage he owned, free and clear, a vacation condo at Squaw Valley worth \$250,000. He met and married Mary, also an accountant. They both earn a substantial income. After three years of marriage he told Mary how much he loves her and that he wanted to take care of her forever because of this he wants her to have half of everything he owns. He repeated this promise frequently but never put her name on any ownership documents. Later he sold the condo but placed the proceeds in a bank account in just his name.

Two years later he purchased a large antique diamond bracelet, paying for it with \$2000 from the bank account. While they could well afford the bracelet, the parties did not have a history of giving each other very expensive gifts. He told Mary about the bracelet when he presented it to her on Valentine's Day, although afterwards he always kept it in his sock drawer but let her wear it whenever she desired. A month before the parties separated it was learned that the bracelet was formerly owned by Martha Washington and was worth \$70,000 because of its historical connection.

From three months before separation until six months after the divorce was filed Mary kept hidden \$15,000 her employer had given her as a performance bonus. Charles learned about the bonus when he received a large box of discovery from Mary. The discovery did not list the account with the bonus in it, although the statement was included in an envelope with pictures that had been requested and also contained a several months old set of instruction for sending money to off shore bank accounts. The bonus was still in an undisclosed bank account in Petaluma.

Discuss ownership for the condo, bracelet, and \$15,000 bank account. (30pts.)