

FINAL EXAM – 3 Hours

In the five fact situations below assume that you are responsible for the analysis of the cases presented by potential clients. Assume that California law applies. If any facts are missing, indicate what assumptions you are making and answer the question. This should not be necessary and the facts frequently do not present a single clear answer. Discuss the issues and likely outcome.

1. In 2005 Harold and Wanda started living together while in college. After several years they invited many of their friends to a celebration at which they pledged their undying love and vowed to share all their assets equally. After that they told everyone they were married but never obtained a license or went through a ceremony. Over the next several years they acquired a credit union (CRU) account, with deposits largely from Wanda's salary, but with additional funds from Harold's. Title to the account was in both names as tenants in common. It grew from a zero balance to a balance of \$25,000 in early 2010.

Later in 2010 they purchased a home in Petaluma and used \$20,000 from the CRU account as a down payment. In order to get the \$180,000 loan on the house the realtor told them he needed proof of their marriage, so they went to Reno, got a license and went through a formal ceremony. The house tripled in value and now has a mortgage of \$150,000 at trial. (Ignore any mortgage payments made after separation.)

(30 points)

2. When Paul and Annette married, in 2005 Paul owned Blackacre which had a fair market value of \$500,000 and a mortgage of \$300,000. The next day, as a sign of their love Paul added Annette to title in a deed making Blackacre community property. Two years later the equity had doubled and the parties took out a loan for \$400,000. The \$400,000 was invested as follows (equity is as of trial):

- a. A condo in Hawaii was purchased for \$200,000 and had a net value (after deducting for any mortgage) of \$600,000
- b. \$100,000 was used to invest in Electric Seagull, an internet company which was valueless by time of trial
- c. \$100,000 which was invested in PG&E stock which has paid dividends which have all been spent and had a market value of \$100,000

Paul claims that the only reason that the deed was executed was to keep property away from his first wife. Annette admits that she knew of Paul's motives, but that he repeatedly told her it was a gift for having "to put up with that horrible woman" At trial there is the same amount of equity in the house there was when the parties married.

A year before separation Annette used community funds to purchase a classic Ferrari. Christmas morning the car was in the garage with a red bow on it and a card that said "I love you truly and want you to have this tangible symbol of our love" . Paul registered the car in his name alone and was the only person who drove the vehicle. It is now worth \$50,000 more than when it was purchased.

(40 points)

3 The only asset which Harry and Wendy have is a community property home in Santa Rosa. It has an equity of \$800,000 and a mortgage payment of \$1500, with a fair rental value of \$1500 per month. When the house was purchased, in 1990, Harry used \$150,000 of an inheritance as a down payment. Title was taken as community property with no discussion about what would happen in a divorce or much about the purchase.

It is the only home which the parties three children Tim, 4, Ursula 14, and Victor 17 have ever lived in. The house is not far from the children's schools and keeping the house would allow Tim and Ursula to remain in the same school, although Ursula is about to enter a new high school. The new high school has an extensive extracurricular music program which she hopes to enter even though it has a substantial extra cost to students. Victor hopes to graduate shortly to attend West Point. T is autistic but has coped with the dissolution because his parents have shared custody such that Harry and Wendy spend equal amounts of time with the children. Harry has been staying with his uncle, but the uncle is selling his home and Harry will have to find other housing. Rentals near the old house are scarce.

Child and spousal support was determined to total \$4000 per month, anticipated to decrease to \$3000 when Victor goes to West Point. Wendy spends much time with her boyfriend at her home, but he maintains his own residence and they may or may not get married.

Wendy has been a homemaker and has no source of income but support. With two years training she could be trained as a paralegal and make a substantial salary. For now she can barely eke out a living on her support. Although Harry makes a good salary he lacks the capital to buy a home unless the house is sold. Rental property near school is unavailable. If the house is sold each parent could buy adequate housing but the houses would be at least 20 miles apart and in a new school district.

Wendy wishes to defer the sale of the home. What arguments would be made by each party and what might happen?

(30 points).

4 Mary wants to hire the firm. Unfortunately she has no ready cash and wants to have the firm take a lien on the family residence to secure her obligation for attorney fees. She reports that title to the house is and has always been in joint name. It is worth \$1,000,000 and has a mortgage of \$500,000. It was purchased after marriage with a \$200,000 down payment. Mortgage payments from the beginning have always been made from the joint checking account. The down payment came from the same account, but several years after Mary had deposited \$250,000 from her parents' estate. Following purchase both parties' pay checks were deposited to the account and the balance went up and down. On occasion the account was overdrawn. She claims the account records will show the deposit from her parents' estate and monthly balances, but little else. Harvey claims that he made all payments on the mortgage, separate from the down payment, from a separate property source, but he cannot at the moment find the records but is prepared to state that he always intended to use his separate property to make the mortgage payment and to pay other living expenses from salary.

What will each party argue about the house, what is likely to be decided and what is the risk to the firm?

(35 points)

5 Gordon and Yvette married ten years ago. Gordon was a successful investor. He ran multiple companies for take over investors. Three years ago, because of the great job he was doing one company unexpectedly gave Gordon 25 shares of Bam, valued at \$100. Gordon put the stock in his desk and did nothing with it as he was focused on multi million dollar deals for his clients. It paid no dividends and was ignored by both parties. When the parties filed for divorce the stock was omitted from all disclosures and the judgment. Two years after the judgment the stock was purchased by an unrelated take over company for \$100,000. Gordon had nothing to do with the deal. Yvette has moved to New York to property awarded in the divorce and Gordon still lives in California. She has learned about the stock and wants to know what her options are in terms of what (and why) she could get and how she can proceed.

(30 Points)

Define and or indicate the significance to the study of community property of the following in two or three sentences. A case citation or statutory citation is NOT a complete answer. Logic and reasoning count. Demonstrating that you know the meaning of a case or statute is more important than reference to it. (3 points each)

- 1 Putative Spouse
2. Quasi community property
3. Net Negative Estate
4. Domestic Partnership
5. Defined Contribution Retirement Plan
6. General Community Property Presumption
7. Van Camp approach
8. Marital Separation
9. Moore-Marsden interest
10. Division of personal injury damages