

FINAL EXAM
3 Hours

Unless specifically indicated otherwise, please assume that all of the fact situations below took place in the State of California.

PART I (50 POINTS)
90 Mins.

Howie married Willow in 1980. Although he was a college graduate he took a job as a carpenter, working for a local manufacturer, doing carpentry work at their plant. His father had been a carpenter and Howie had learned much from his father. Although he had plans to do something with his college degree, he found that he really enjoyed the carpentry work and that it did not make excess demands on his time. Willow, who had met Howie in college had a degree in accounting and had originally intended to work as a bookkeeper, which would allow her to spend time raising a family. She did obtain a job at a local accounting firm. Howie and Willow had two children by 1985.

As time passed, Willow found that she really had a flair for the financial end of things, particularly in managing other people's money. By 1987, she had opened her own business and Howie had taken over most of the domestic duties of the household as he did not work overtime and his job did not make any substantial demands on his time. This was not the case for Willow. As her clients grew and the number of her employees grew, she spent substantial hours at her business, as well as being involved in doing lectures and being on the boards of a number of local charities and being involved in many civic affairs. Willow had set up a 401(k), for herself, and she had also set up a number of money market accounts. Willow managed of all of the financial matters for the family, with the exception of the 401(k) that Howie had from his employment.

In 1985, after the children had arrived, Willow's parents gave Willow \$100,000.00 to use as the down payment on a home, which was taken in the names of the parties as joint tenants. In 1995 the parties purchased a commercial building, as joint tenants. This is where Willow's company was based. The building also had a few other tenants.

By 2005 the children were grown and in college and Howie and Willow realized that they had grown far apart and had little in common, now that the children were no longer in their lives. They attempted counseling for few years to try to resurrect the relationship, to no avail. In 2010 they realized that the marriage was doomed and that they needed to divorce. Wanting to avoid messy litigation they went to a mediator whom Willow had known through her civic activities. Rather than spend extra money on experts, it was agreed that Willow would calculate the value of her business and that the values of the properties would be obtained from a broker who was a friend of Willow.

With the help of the mediator each party created an Income and Expense Declaration and a Schedule of Assets And Debts in which specific values for the assets were set forth, using the value of the business that Willow had provided, the values for the residence and commercial building from the friend of Willow and the stated amounts for the two different 401(k) plans and money market account, from the statements for these items. There was a joint checking account with a stated value and each party had their own vehicle, with approximately equal values.

The parties had no debt of any consequence, beyond the debt on the commercial building, as the residence had been paid off years ago.

The parties entered into an agreement, with the assistance of the mediator, whereby Howie would keep the residence and his 401(k) and Willow would keep her company, the commercial building (with the debt attendant to it) and her 401(k). The money market account was equally divided between the parties. As Howie was expecting to retire in a few years and Willow also stated that she intended to retire, the parties waived spousal support, from one to the other, in the agreement, although Willow's income was \$120,000.00 per year and Howie's income was \$60,000.00 per year. Judgment was entered on August 15, 2010, with the Agreement attached to the Judgment.

The stated values for the assets, in the Schedule of Assets And Debts, which mirrored each other, were as follows:

	FMV	Debt
Residence	500,000	0
Commercial Building	450,000	100,000
Willow's Business	400,000	0

On September 15, 2010, Howie, in going through some papers at the residence, from which Willow had not yet removed all of her items found a copy of a loan application, signed by Willow on June 1, 2010 that stated that the value of the residence was \$500,000, that the value of commercial building was \$550,000 and that the value of her company was \$400,000. Howie took no action at that time not really knowing what to make of this. Three weeks ago the newspaper announced that Willow was selling her company to a statewide firm for the sum of \$600,000. Howie has come to you. He now feels that Willow was not honest with him at the time of mediation and the agreement, that the loan application that he found was likely accurate and that he would never have entered into the agreement he made or waived spousal support had he known the actual values that were in the loan application.

Howie wants to know if the judgment can be "set aside", the basis for this and what needs to be done to accomplish this. Further, Howie wants to know what is likely to happen, regarding the assets (residence, building and business) if the Judgment is set aside (How much spousal support might be awarded is not to be addressed). Discuss the various issues raised by this question, what advice you will give to Howie and the legal principles supporting that advice.

PART II (30 POINTS)
60 Mins.

Hank and Whitley were married in 1990. Two years prior to marriage Hank had started a restaurant, called "Hank's Place" that had just started to make a real profit shortly after the parties were married. The restaurant has continued to grow and make more profit each year and has done well, even in the recent economic downturn. From the time he started the restaurant until about ten years ago Hank had put an extreme number of hours into the restaurant, as he was the original chef and he developed the restaurant's clientele.

About ten years ago Hank turned most of the daily operations of the restaurant over to the assistant chef who had been working with him for the five years prior to that transition. Thereafter Hank would come in a few times a week so that the patrons would know that Hank was still a significant factor in "Hank's Place".

Also, about ten years ago Hank, with the assistance of Whitley, who had a background in retail marketing, started a separate business, called "Hank's Spreads", creating various sauces and other items that were sold to boutique upscale food markets in Northern California. This is where Hank and Whitley have spent most of their efforts for the past ten years, with Hank creating the various items and Whitley doing the bulk of the marketing.

Whitley and Hank, although seemingly working well together on the business aspects of their relationship, their personal relationship had foundered. Whitley traveling frequently, to see that the products reached a wide market. She attended food shows and meetings with the owners and managers of the various stores where the products were sold or to be sold. On one of the trips, in the Monterey area, Whitley met Jacques, and a very passionate relationship quickly developed. Soon Whitley was making more and more trips to the Santa Clara, Santa Cruz and Monterey areas, nominally to market the products. In reality, she was meeting with Jacques, at upscale hotels and resorts and paying for these meetings from the company promotional account, as Jacques, although charming, was not financially successful.

Recently Hank has become aware of the affair and confronted Whitley about it. Whitley has refused to end her relationship with Jacques and Hank has come to you for advice. He has concerns about his interest in "Hank's Place", Hank's Spreads, and believes that Whitley's actions in paying for the recent trips prior to separation were improper. He wants to know what the likely outcome regarding these matters will be if he chooses to divorce Whitley and has to go court about them. What advice do you provide to Hank?

PART III (20 POINTS)
30 Mins.

Answer the following questions in five sentences or less. Each numbered question is worth 5 points.

- a. What is required for the effective transmutation of property from community property to separate property or from separate property to community property. **(Please state the rule; no credit will be given for just answering with the case name.)**
- b. What is the rule where one of the parties has received proceeds from a personal injury lawsuit where the injury occurred during the marriage. **(Please state the rule; no credit will be given for just answering with the case name and/or the statute.)**
- c. If the community makes payments that reduce the mortgage on the separate property of one of the parties, during marriage, state the rule for determining how the community is to be reimbursed for these payments **(Please state the formula; no credit will be given for just answering with the case name.)**
- d. Under what circumstances does the Court presume that the community benefited from education, a degree or a license paid for with community contributions to a party's education or training? **(Please state the rule; no credit will be given for just answering with the case name and/or the statute.)**

END OF EXAMINATION