

SECTION 1
60 points
(100 minutes)

Herbert and Winona met while they were both vacationing in Fiji. Herbert resides in Indiana and Winona resides in California. Winona was on vacation celebrating her divorce from Greg. At the end of their 7-day whirlwind romance in Fiji Herbert and Winona decided they couldn't live without each other and quickly arranged to be married before returning home. Herbert had always dreamed of living in California so they planned that he would return to Indiana and pack up his belongings and move to California where he would move in to Winona's home which had been awarded to her in her divorce from Greg.

Greg had executed an Interspousal Transfer Deed to Winona the day before she left for Fiji and she'd already had it recorded. The value of the house at the time of transfer to Winona was \$900,000 and there was an outstanding mortgage in the amount of \$600,000 which was also assigned to Winona.

When Winona arrived home there was a letter waiting from her divorce attorney indicating that she needed to contact her right away. She had forgotten to sign a page of the Marital Settlement Agreement so the court had returned her Judgment of Dissolution without filing it. As a result, she was still married to Greg. Winona was extremely distressed upon learning that she was still married to Greg and couldn't decide what to do so she shoved the letter in a drawer where she promptly put it out of her mind. She received multiple voice mail messages from her attorney, but did not return any of them.

Herbert also had a letter waiting for him upon his return home to Indiana. His letter was from his realtor indicating that the property he had always wanted to purchase was available, but he needed to act fast if he was interested in purchasing it. Herbert was a financially astute individual and he had over \$1,000,000 in an investment account so he arranged to withdraw \$250,000 and purchase the Indiana property in cash. He took title to the property as "an unmarried man, as his sole and separate property." Upon concluding his transaction he moved to California.

The year following their marriage, things started to get a little rocky between Herbert and Winona. Herbert was concerned that whenever they had a disagreement Winona told him that he could get out of "her house" if he wasn't happy. This made him feel like he was just a guest and could be removed at any time. After a few sessions in marital therapy, Winona acknowledged that she should consider the house as "our home." Herbert responded that he was never going to feel like it was truly "our home" unless he was an actual owner. On their next wedding anniversary, Winona gave Herbert a validly executed deed to the property which read in part "I, Winona, do hereby convey my right title and interest in the property from an unmarried woman as my sole and separate property to Winona and Herbert, a married couple as joint tenants."

This gesture by Winona could not save the marriage and the parties separated the following year with Herbert filing for dissolution of marriage. He wanted to return to Indiana to enjoy the property he had purchased before moving to California. The parties completed their Preliminary Declaration of Disclosure documents and Winona was surprised to learn that Herbert owned a property in Indiana and had a substantial investment account. The Indiana property had doubled in value and was now worth \$500,000. Herbert had not made any additional contributions to his investment account during the marriage. The California property is now worth \$1,200,000 and the mortgage had decreased to \$400,000. Although Winona was surprised to learn that Herbert had assets in Indiana, Herbert was far more surprised to learn that Winona's divorce to Greg had never been dissolved which she disclosed in support of her position that the California property was her sole and separate property.

(For purposes of answering the questions, please assume that California community property laws apply.)

You represent Herbert. Please advise him on the following issues:

1. Herbert is shocked to learn that Winona's divorce from Greg was not final? How does this impact his dissolution action with Winona? Explain. (10 Points)
2. It is Herbert's position that the property in Indiana is outside of the court's jurisdiction in California and Wendy has no interest in the property. Please explain the characterization of the Indiana property? What interest, if any, is Winona entitled to in the property in Indiana and why? (20 points)
3. Herbert believes that the property in California should be divided equally between them. Winona argues that the California property is her separate property because she received it in her previous divorce and the parties were not validly married. Please explain the characterization of the California property? What interest, if any, is Herbert entitled to in the property in California and why? (20 points)
4. Winona asserts that she is entitled to receive one-half of the balance in Herbert's investment account. What do you advise Herbert regarding his investment account? (10 points)

SECTION 2
40 points
(80 minutes)

Hayes and Wanda were married in 1990. They were both 26 at the time of their marriage and starting new careers. Hayes worked in the IT industry and was paid as a salaried employee. Wanda was an attorney and was paid a salary plus bonus depending on her billable hours and the annual profitability of the firm. Wanda was very driven and worked at least 60 hours each week from the office and often brought work home at night. Wanda was made an equity partner in the firm in 2000. Beginning in 2001, Wanda began sharing in the equity distributions to the partners. In addition to her annual salary, Wanda received an additional \$100,000 in equity distributions in each of the years from 2001 through 2005. Wanda opened an account in her name alone and deposited these distributions into that account. Hayes was not aware of Wanda's new income structure as she continued depositing all of her regular salary into their joint account and her salary figure had also increased every year.

In 2006 Hayes filed for Dissolution of Marriage since he and Wanda very rarely spent much time together. Upon being served with the Summons and Petition Wanda suggested that the parties use a mediator because she did not want the information regarding her divorce to end up in the courtrooms where she frequently appeared. Hayes was agreeable to participating in mediation. At their first visit with the mediator, the mediator gave Hayes and Wanda blank Preliminary Declaration of Disclosure (PDD) forms to complete before they returned for their next appointment. At their next appointment neither of the parties had completed the forms. When the mediator inquired about the completion of the forms, Wanda advised her that they were both fully aware of their community property assets and it wasn't necessary for them to complete the forms. Hayes just responded that Wanda told him they didn't have to complete the forms if they didn't want to and they could enter a mediation agreement waiving their exchange of the documents. The mediator became concerned about Wanda's apparent level of control in the relationship and unwillingness to complete the disclosure documents and advised them that she would not continue to act as their mediator unless they each sought the advice of independent counsel. After meeting with independent counsel, Hayes insisted that they both complete the PDD's. Wanda still refused so the mediator declined to continue with their case and they proceeded to the litigation model of dissolution.

After Hayes retained private counsel, he sent Wanda a letter demanding that she complete and serve her PDD's as she had elected to represent herself. Wanda again asserted that it wasn't necessary because they both knew the extent of their property. As a result, Hayes' attorney filed a motion to compel the completion of the PDD's. Wanda finally completed her PDD's after being ordered to do so by the Court. However, her PDD's failed to disclose the existence of the \$500,000 in equity distribution funds that were in a bank account in her name alone.

The parties proceeded to equally divide all of the assets and debts listed on their respective disclosure documents. They waived receipt of the Final Declarations of Disclosure and entered a Marital Settlement Agreement which was incorporated into their Judgment of Dissolution. The Marital Settlement Agreement provided in part, "This agreement represents a full and complete settlement of all of our respective property rights." In another paragraph the Marital Settlement Agreement provided, "The Court retains jurisdiction to effectuate the distribution of our property."

Hayes was enjoying his single life until four months after the entry of judgment when he received a statement from the Internal Revenue Service indicating he owed a substantial sum of money in unpaid income taxes for the \$500,000 in equity distributions to Wanda during the period from 2001-2015. Hayes immediately contacted his attorney.

You represent Hayes. He is requesting advice on the following issues:

1. Hayes wants to set aside the Judgment of Dissolution to divide the \$500,000. Will he be able to accomplish this? (10 points)
2. Hayes wants to call their mediator to testify about Wanda's unwillingness to complete the PDD's while they were in mediation. (10 points)
3. What, if any remedies, will Hayes have to divide the \$500,000 in Wanda's equity distributions? (10 points)
4. What, if any, is Hayes' liability for the unpaid taxes on the \$500,000 in equity distributions? (10 points)