

QUESTION 1
70 points
(120 minutes)

On 1/1/2005, the night of their 5th anniversary of living together, Wendy and Hank had consumed 1.5 bottles of champagne during their anniversary dinner. At the end of dinner, Wendy giggled and said to Hank, "Why don't you just marry me already?" Hank couldn't tell if Wendy was serious or not because she was slightly drunk when she blurted out the question. In order to get Wendy to back off the marriage discussion, Hank said, "After five years of living together, you are already my common law wife." Wendy giggled again and referred to Hank as her "Hubby" the rest of the night.

The very next day, Wendy asked Hank if she really was his common law Wife. Hank was in the middle of watching an important football game and did not want to be bothered by a serious conversation. He simply responded by saying, "Of course honey." Wendy immediately ran into the next room to call her best friend, Sandy, to tell her the news about her common law marriage. Sandy, a personal fitness trainer, told Wendy that she didn't think there was such a thing as a common law marriage in California. Wendy told Sandy that she must be mistaken because Hank, being a lawyer, would never lie to her about something as serious as marriage.

During the next five years, Hank would occasionally hear Wendy talk to other people about their marriage and refer to him as her husband. Wendy finally asked Hank what she needed to do to change her last name to match his. He responded by saying, "Let's get married for real and then you can change your name once it's official." On 6/1/2010, they obtained a marriage license and took it to their friend, an ordained minister, who married them on the spot. Immediately following the ceremony, the minister completed the marriage license and handed it to Hank, saying, "I'm off to a funeral, make sure you get this filed." Hank intended to get the license filed with the county recorder's office but he repeatedly forgot. Finally, he couldn't locate the license and decided it was not really a big deal anyway since he never finalized his divorce with his first wife.

On 1/1/2018, Wendy saw Hank walking down the street, arm and arm with Sandy. She was shocked and immediately hired a private investigator to get evidence she could use in court to prove Hank's adultery. The investigator discovered that Hank and Sandy had been carrying on their relationship for the past two years. Hank had a secret cell phone and email account that he used primarily for communicating with Sandy. Hank's bank records show that he had spent \$50,000 on hotels, dates, dinners, and weekend trips that he took with Sandy. The investigator also told Wendy that Hank had been married previously and he could not locate any divorce Judgment related to Hank's first marriage. On 3/1/2018, Wendy confronted Hank about the affair, told him about her private investigator, told him that their marriage was over, and told him she would get everything in the divorce due to his infidelity. Hank laughed and said, "Good luck with that. We aren't even married."

The following property existed as of the date of separation on 3/1/18:

1. Hank's 401(k) retirement plan through his employment at the law firm (a defined contribution plan) which contains Hank's contributions he made by payroll deduction starting on 1/1/2005. Hank was still contributing to this plan as of the date of trial.
2. Hank's pension plan through his employment at the law firm (a defined benefit plan). Hank began participation in this plan on 1/1/2010 and was still participating in this plan as of the date of trial.
3. A BMW automobile that Wendy inherited from her father on 1/1/2011. The BMW was titled in Wendy's sole name.
4. A Lexus automobile that Hank purchased on 1/3/2005. Hank charged the \$1000 down payment on a credit card and financed the rest of the purchase price with a five year bank loan. Hank made payments on the Lexus using his earnings until the Lexus was paid off. Hank added Wendy to the title of the Lexus at the time of purchase.
5. A joint bank account titled in Hank and Wendy's names containing \$50,000. The source of the \$50,000 was Hank's earnings from his job as a personal injury attorney.
6. A bank account titled in Hank's sole name, containing \$25,000. Hank could not recall the source of the funds deposited into this account.
7. A credit card in Wendy's sole name with a \$10,000 balance. The only charge on this card was a \$10,000 retainer that Wendy paid to her private investigator on 1/1/2018.

You represent Hank. What legal and factual arguments will you make to get Hank the best possible financial result in this matter?

You represent Wendy. What legal and factual arguments will you make to get Wendy the best possible financial result in this matter?

QUESTION 2
30 points
(60 minutes)

Wanda and Hal were married for 25 years. Wanda never worked outside the home and had only an 11th grade education. Hal was an accountant and managed all of their money, assets, and investments. Each year Hal would prepare their tax return and provide only the signature page to Wanda, which she would dutifully sign each year without question.

About 20 years into their marriage, Wanda asked Hank for a copy of their most recent tax return. Hank abruptly told her that it would be meaningless to her since she could not possibly understand any of it. One year later, Wanda asked again to see the tax return. This time, Hank said he would give it to her but that he had to obtain a copy from his office. The next day, Hank brought home a recent tax return that had the word “DRAFT” stamped across the front page and which contained numerous redactions with black ink. Wanda did not pursue this request further.

When it came time for Wanda to sign the following years’ tax return, she refused to sign it unless Hank provided her with the complete return, including all of the supporting schedules. Hank complied with the request. Upon her review of the tax return, Wanda learned that she and Hank owned three rental properties. Wanda immediately asked to see all of the bookkeeping records associated with the three rental properties. Hank informed Wanda that no such records exist.

On the night of their 25th wedding anniversary, Wanda had Hank personally served with a Summons, Petition for Dissolution of Marriage, and a copy of her completed preliminary declaration of disclosure (PDD). Thirty days later, Hank filed his Response and Request for Dissolution of Marriage. Six months later, Wanda still had not received Hank’s PDD. On her way to her attorney’s office to complain about Hank’s failure to provide a PDD, Wanda drove past one of their rental properties and saw a sign posted in the yard that said “SOLD”. Wanda had not been told that the property was for sale, that there was an offer, that the offer was accepted, or that the transaction had been concluded. Wanda called the real estate agent who told her that Hank listed the property for sale the day after he was served with the Summons and Petition.

Wanda immediately sent a text message to Hal demanding to know the details of the transaction and inquiring about when she would get her half of the money. Hal texted back saying, “There is nothing to disclose. There was no profit from the sale.”

All further requests of Hal to provide a PDD went unanswered. Prior to the trial, Wanda hired an asset locator firm who discovered other assets and debts that Wanda was not aware of previously. Wanda listed all of these assets and debts on her Final Declaration of Disclosure (FDD) that she had served on Hal. The trial court divided all of the assets and debts listed on Wanda’s FDD equally.

Two months after the final judgment was entered, Wanda received a letter from the asset locator firm informing her that they mistakenly failed to tell her about a brokerage account that they found in Hal's name. This account had a value of \$500,000 just prior to the date of separation. This account was not listed on Wanda's FDD.

You are Wanda's attorney. What arguments do you make on Wanda's behalf?