

ISSUES OUTLINE

PART I (60 POINTS)

1. 2007-08 stock options:

Nelson formula applies: $\frac{\text{Date of grant}-\text{Date of separation}}{\text{Date of grant}-\text{Date of exercise}}$

Here, date of grant was during marriage and date of exercise was also during marriage (before separation). Therefore, 2007 stock options are 100% community property.

5 POINTS

2010 stock options:

$\frac{\text{Date of grant}-\text{Date of separation}}{\text{Date of grant}-\text{Date of exercise}} = \frac{1/1/05-7/1/09}{1/1/05-1/2/10} = \frac{54 \text{ months}}{60 \text{ months}} = 90\%$

The 2010 block of options is 90% community property.

5 POINTS

2. Commercial building rental account:

Herb acquired commercial building by inheritance; it's his separate property.

Community contributed \$50,000 of CP (2007 stock option proceeds) toward improvements.

Per Wolfe, at a minimum Wendy is entitled to one-half of the CP expended on the improvements (\$50,000), or \$25,000. If she requests, on behalf of the community, reimbursement for the increase in value of the property as a result of the improvements and shows that they really did result in such an increase, she is entitled to half of such increase in value, based on the value at time of trial (Sherman) or, in this case, based on the value established by the sale of the property, in addition to one-half of the amount expended.

5 POINTS

In this case, Wendy can argue that the improvements caused the property to increase in value by \$250,000 (**EXTRA CREDIT**) with a possible reduction for the portion of this increase that Herb can established was caused by an increase in the real estate market between the date of the 2007 appraisal and the 2008 sale; the market was pretty flat during this period, so a market increase would have been unlikely).

If the increase in value approach is taken, per Moore and Sherman the community's interest would be as follows:

<u>Community contribution:</u>	<u>\$75,000</u>	=	15%
Acquisition value:	500,000		
Increase in value:	\$250,000		
Community share:	\$75,000 (amount expended)		
Plus	<u>15,000</u> (increase in value)		
Total	90,000		

The proceeds of the sale of the building went into the rental account. Depending on whether Wendy makes a claim for reimbursement on behalf of the community, her interest in that account is either half of \$75,000 (\$37,500) or half of \$90,000 (\$45,000).

10 POINTS

3. Amador County land:

a. Characterization:

Land was acquired during the marriage with proceeds of the 2008 stock options. There is no basis for stating that it is separate property (FC sections 770, 771) and it was acquired with community funds. Therefore, it is community property.

5 POINTS

b. Value if awarded to Herb:

Community property is valued as near as practicable to time of trial. (FC section 2552(a)). Value as of time of trial is \$30,000. Herb gets it at \$30,000.

5 POINTS

c. Value if awarded to Wendy:

Wendy receives the same treatment as Herb. Neither party has any right to separate-property reimbursement under Family Code section 2640. Furthermore, although Herb engaged in conduct constituting a breach of fiduciary duty with respect to the liquidation of the Charles Schwab account (see below), he did not engage in any such conduct with respect to the Amador County property. Therefore, there is no reason to treat the parties differently with respect to the valuation of the Amador County bare land.

5 POINTS

4. Charles Schwab account.

a. Opening of account in 2008.

The initial deposit was made with \$15,000 of the proceeds from the 2008 stock option exercise. Because these funds were 100% community property (see above), this account was 100% community property when opened. Under the tracing principle, title (Herb's name alone) is not dispositive.

5 POINTS

b. Change in value.

The account declined in value from the initial \$15,000 to \$12,000. Although Herb breached his fiduciary duty by removing the \$12,000 and moving it to Merrill Lynch, the decline in value was caused by market factors, not Herb's conduct.

The \$12,000 in Schwab holdings (now in Merrill Lynch) should be valued as of time of trial. Wendy is entitled to one-half of the \$12,000, as adjusted for (gains and) losses as of time of trial, subject to considerations described in the next paragraph.

5 POINTS

c. Removal to Merrill Lynch and addition of proceeds from 2010 options.

Although the "time" of the question is prior to trial, given the severe decline in the Merrill Lynch account (a total of \$27,000 initial investment

having declined to \$10,000), it is likely that there will be a net decline as of time of trial.

Spouses have a fiduciary duty toward one another with regard to the management of community property. FC sections 721, 1100-1101. That fiduciary duty continues after the date of separation. FC section 2102. Herb's transfer of the funds without notice to Wendy was a breach of such duty.

[EXTRA CREDIT] If the \$12,000 had done better at Merrill Lynch than it would have done at Schwab, there would be no credit or bonus to Herb.

As established above, the proceeds of the 2010 stock option exercise were 90% community property. Thus, \$13,500 of the total of \$15,000 is community property.

Without taking into account any consequences for Herb's breach of fiduciary duty, the community's pro rata share of the remaining \$10,000 is calculated as follows:

- i. Of the original \$27,000, \$25,500 was community property.
- ii. Therefore, $25,500/27,000$ (94.44%) of this account was community property.
- iii. Of the remaining \$10,000, \$9,444 is community property and \$53.66 is Herb's separate property. However, if Herb owes the community any money for breaching his fiduciary duty (see first half of the answer to this subpart), there may be no separate property and he may owe the community some money for post-separation losses resulting from his moving the Schwab account to Merrill Lynch.

10 POINTS

PART II (40 POINTS)

1. Character of lottery winnings.

Under the tracing principle, the character of the winnings depends on the character of the property used to purchase the winning ticket. The funds used to purchase the ticket on August 15, 2009 were from the parties' joint checking account.

The character of the funds depends on when the parties were separated. If the ticket purchase was made with pre-separation earnings, the winnings are community property. If it was made with voluntary post-separation support paid by Alice to Barbara, the winnings are Barbara's separate property.

The range of possible dates of separation is from March 1, 2009, when Alice moved out of the former family residence (the date that Barbara will be arguing for) through and including November 1, 2010, when Barbara filed her Petition for Dissolution of the Registered Domestic Partnership (RDP). The actual date, which is defined as the date on which the RDP reached a complete and final breakdown, could be somewhere in between those dates.

The significant facts are as follows:

FACT	DATE
Alice moves out	3/1/09
A & B attend symphony	6/09
A & B attend art show	8/09
A & B attend play	10/09
A attends Thanksgiving at A's new home	11/09
A stays overnight at family home average of 3 nights/mo	5/09-9/10
Joint credit cards and savings account cancelled/divided; checking account left open	4/09
A deposits post-separation earnings into joint account; calls them "support"	5/09-9/10
B dates other women; cohabits with one	5/09/9/10
B purchases lottery ticket	8/15/09
B meets and cohabits with F	9/10
B files for disso	11/10

Were the parties separated as of August 2009? ANY LAWYERLIKE ANALYSIS WILL RECEIVE FULL CREDIT. HERE'S MINE:

A and B were still dating through October 2009. A was still staying over at the family home regularly through September 2010. Although the parties had closed their joint credit cards and savings account, they still had a joint checking account open and A was depositing funds into it to pay both joint obligations (such as the home mortgage) and some of B's living expenses. A's unilateral reference to these payments as support, even though she is an attorney, is not dispositive.

Both parties had new mates before August 15, 2009, but there's no evidence that B a stable relationship with a new mate as to cause a "complete and final breakdown" of the A-B relationship. Although B's relationship with C was ongoing for a longer time, that fact is also not dispositive. Baragry. B didn't meet F until September 2010, at which time both parties were involved in more or less permanent relationships with new mates.

Based on all of the above, I conclude that the date of separation was September 20, 2010, when B moved in with F. Therefore, the lottery ticket was purchased prior to separation with community funds, and the winnings are community property. Although B did not tell A about the winnings right away, there is no breach of fiduciary problem because she preserved the funds intact and disclosed them.

30 POINTS

Date of valuation of Alice's law practice. Community property is generally valued at time of trial. FC 2552(a). However, when the community asset is a business whose value is dependent solely on the efforts of a spouse or registered domestic partner, the date of valuation is the date of separation. Green.

Alice's law practice was started during the marriage. Therefore, no Pereira/Van Camp allocation is necessary.

The date of separation is September 20, 2010 (or whatever date the student arrives at after analyzing that issue in appropriate detail and in a reasonable manner). If

September 20, 2010 is used, all of the income Alice received, and will receive, in fees from Daniel following his rise to fame will be her separate property.

10 POINTS

END OF OUTLINE