

## Answers to 2012 Spring Community Property Final

### DEFINITIONS:

#### 1. General Community Property Presumption

Property earned or acquired while the parties are married and not separated is presumed to be community property, and thus subject to equal division. Any spouse wishing to establish such property as separate bears the burden of proof in establishing facts necessary to show the separate property interest. Conversely property acquired while the parties are separated, before marriage or by gift, devise or bequest is presumed to be separate property.

#### 2. Pereira/ Van Camp Approaches

These are two methods for allocating the interest in a separate property business where there is an infusion of community capital or labor and dividing the profits. Pereira establishes a reasonable rate of return on the separate property contributed and the balance is community property. Van Camp does the reverse: establishes a reasonable salary for community labor and the balance is return on the separate property contribution. These are approaches not formulae.

#### 3. Direct Tracing

This is the strongest method for tracing a separate property contribution to the acquisition of property. It is used to rebut the General Community Property Presumption. It requires the showing that separate property dollars were used to make a purchase and that the property acquired was intended to be separate. Community Expense tracing is the alternative where it is necessary to show that from mixed funds community expenses exhausted the community funds before the separate property was spent. It is presumed that community funds were used to meet community expenses..

#### 4. Marvin Agreement

The courts will enforce agreements between unmarried parties to treat their acquisitions as though they were married. Agreements may be written or oral. Any form of agreement, contract, or equitable theory can be enforced. Such an agreement is a violation of public policy only to the extent that sex is an integral part of the consideration.

#### 5. Defined Contribution Retirement Plan (DCRP)

A DCRP is one of the two main types of retirement plan. The other is a Defined Benefit Plan. In a DCRP a fixed percentage of salary, possibly matched by an employer contribution is set aside. A typical example is an IRA. A DCRP is easy to value and is like a bank account. With a defined benefit plan a complex formula determines worth. Value comes from employer contributions, not just employee deductions.

#### 6. Tammen Note

A Tammen Note is the device used to equalize the division of community property where there are not enough assets or cash in existence to do so from the community. One spouse is

ordered to pay the other \$x at a sufficient interest rate, conditions, and term that it could be sold for the amount actually due to create an equal division..

## ESSAY QUESTIONS

\* Indicates that question was designed to have more than one correct answer.

1. The house appreciated \$200,000 before marriage, which was the amount which was Wanda's separate property contribution to the acquisition costs. She is entitled to the return of this sum under FC 2640. When the house was refinanced \$400,000 was the loan amount, half of this was Wanda's separate property and half was community property.

A. CONDO The condo increased in value going from 200k to 300k. Half of the purchase price was Wanda's separate property, which she is entitled to get back, \$100,000. The balance of \$200,000 is community property to be divided equally. Wanda thus gets a total of \$200,000 and Harry \$100,000.

B. HUMMER DEALERSHIP Half the purchase price is Wanda's separate property, 50K and half is community investment. The amount recovered on this investment was only the amount of Wanda's separate property investment. Wanda receives her separate investment back before the community receives anything. Wanda is paid the entire 50K.

C. BONDS The Bonds are worth what was paid for them with no change in value. As above half of this sum, 50K is Wanda's separate property being returned and 50K is the community's funds being returned.

\*2. Funds received from a PI settlement are community property if the accident is during marriage. However at least half the sum received must go to the injured spouse, and the total need NOT be divided equally. This special rule, community property that need not be divided equally continues so long as the funds or their proceeds are identifiable as to source.

Because of the special rule Hank should receive the house without offset for its value. The house is specially adapted for his use and would be expensive to replace.

Division of the remaining \$1,000,000 is more problematic. This money is the result of the investment of \$500,000 traceable to the PI settlement and \$250,000 from other community funds. There is no way of determining what investment came from which funds. Since the source of funds for any investment cannot be determined and since Wilma gave up her teaching career to care for Hank it is equitable to divide these investments equally.

\*3. Terri and Chris need to divide funds acquired before their formal marriage, \$250,000 and after marriage, \$300,000 but all held in Terri's name.

Chris has two arguments for claiming an interest in the \$250,000. First she can claim that the doctrine of putative spouse applies to her relationship with Terri. A putative spouse is one who has a good faith belief that they are married although they entered into a void or voidable marriage. If a putative marriage is recognized what would have been community property is divided equally. While she had a good faith belief in her status, Terri did not do anything to complete domestic partnership registration. This failure would likely prevent this status from

being extend to Terri.

Part of the argument which Terri would have to make is that the putative spouse statutes apply to domestic partnerships. There are conflicting decisions on this point. One court has determined that the Legislature opted not to extend putative status to RDP's since the statute speaks only to marriage. Another court, more convincingly, has held that the Legislature intended to treat RDP's exactly like spouses and the statute should be interpreted as such. However, even if interpreted in this fashion there is still no indication that any attempt at registration was made.

Chris' second argument is that she and Terri had an agreement or contract to pool their resources, and this contract should be enforced. California broadly enforces any contract which does not rest on sex as consideration. There is no indication of sex as consideration here. The fact that the parties combined their resources will likely be enforced. The fact that Terri misled Chris as to their marital status is another factor in Chris' favor. This argument would likely lead to equal division of the \$250,000.

Division of the \$300,000 will be on an even basis. The investments were all acquired after the parties married and are presumptively community property. The fact that this involves a same sex marriage is irrelevant to property division. The fact that the accounts and investments are in Terri's name does not prevent application of the general community property presumption. Further Terri has no factual basis to claim any separate property interest.

\*4.

CONDO The condo was always just in Charles' name. While married persons can deal with each other just as single persons may, a writing is necessary to transmute ownership of separate into community property. Partial performance is not enough. The writing must indicate that the disadvantaged party intends to change the form of ownership. Here there is nothing to indicate that Charles intended to alter the ownership of the condo or its proceeds except his oral statements. The statements are not enough

BRACELET Gifts intended for only one party's use, tangible items of a personal nature, may be made without a writing. The gift also needs to be consistent with the parties life style. While the parties have no history of expensive gifts, they can clearly afford the \$2000 cost of the bracelet. While Mary would argue that the gift was made on Valentine's Day, Charles would argue that it was never delivered since he kept possession and retained the bracelet in his sock drawer. Mary would also argue that she used the bracelet whenever she desired. An argument by Charles that the bracelet had an excessive value for their life style will likely not work since the value was discovered after the bracelet was purchased and delivered to Mary. Mary would likely be awarded the bracelet.

BANK ACCOUNT The bank account is clearly community property which normally would be equally divided. The issue is whether Mary's behavior alters this rule.

Spouses stand as fiduciaries to each other. They are under an obligation to disclose all community assets to the other, whether asked for information or not. Failure to meet this standard may lead to an award of sanctions and attorney's fees to the innocent spouse. The sanctions can be up to 100% of the asset not disclosed. Attorney's fees are mandatory if the conduct would merit punitive damages in a civil action and must include fees if punitive damages are not appropriate. Actual damages are not require for an award of sanctions.

Here Mary did not meet her duty to disclose. Charles found out about the account through her error, not her intention to disclose. The bank statement was left with other documents and near instructions on how to transfer bank accounts out of the country. It is likely that Charles would be awarded all the bank account and would likely recover attorney's fees as well.