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Empire College School of Law
Community Property
Summer 2011

ISSUES OUTLINE

PART I (50 POINTS)

House (25 POINTS)

Prior to marriage:

Purchase price: \$300,000
DP: 75,000
Loan: 225,000

DOM:

FMV: 400,000
Loan: 200,000
Equity: 200,000

4/4/08 (Date of
Division)

FMV: 600,000
Loan: 150,000
Equity: 450,000

Appreciation during marriage = \$200,000

CP principal paydown during marriage = \$50,000

SP principal paydown during marriage = \$25,000
SP paydown is reimbursable to W from H per FC §2640(c)

Per Moore-Marsden:

CP interest is:

CP principal paydown: \$50,000

+ 1/6 of appreciation during marriage	<u>33,333</u>	(\$50,000/\$300,000)
Total	83,333	
WSP interest is	25,000	
HSP is	341,667	
H's total =	341,667 (HSP)	
+	<u>41,666</u> (1/2 of CP)	
	383,333	
W's total is	25,000 (WSP)	
	<u>41,667</u> (1/2 of CP)	
	66,667	

Vacation home (10 POINTS)

H's separate property – acquired prior to marriage and inherited.

No community contributions to acquisition, paydown, or improvements. There is no Moore-Marsden issue.

However, W gets §2640(c) reimbursement for the cost of the remodel, paid for from her SP.

Investment account (5 POINTS)

W's separate property – acquired before marriage. No commingling.

Gifts (10 POINTS)

Issues:

1. Gifts other than car:

Acquired by gift; transmutation not required due to value

2. Is car a gift or CP? If CP, does W had a right of reimbursement?

Per *Steinberger*, in the absence of a written transmutation (no evidence of any) it's a gift only if it's consistent with W's prior gift-giving history. If she was not in the habit of giving H gifts of that magnitude, it's CP. Here, W certainly gave expensive gifts but

none as expensive as the car. Therefore, car is probably CP but credit will be given for a lawyerlike analysis that leads to the opposite conclusion.

If car is CP, W has a 2640(b) right of reimbursement which probably exceeds the current FMV of the car.

EXTRA CREDIT: If the student raises the issue of how title was taken and argues that the car is SP if taken in Husband's name per Valli (2011), additional credit will be given.

PART II (50 POINTS)

1. Exceptions to equal division rule **(2 POINTS EACH)**

CP PI damages FC §2603)

FC §2604 (\$5K ceiling for value of CP estate; one party absent)

Student loans (FC §2627)

Breach of fiduciary duty (FC §1101)

Net negative community estate (FC §2622(b); *Eastis*)

2. Sufficient separate income (not separate property) that could have been used to pay the support. FC §915. **EXTRA CREDIT:** Reimbursement request must be brought within 3 years per FC §920. **(5 POINTS)**

3. The date that the marriage reached a complete and final breakdown. This is always a question of fact. **(5 POINTS)**

4. a. Community property **(3 POINTS)**

b. H **(2 POINTS)**

c. Tracing of SP contribution and agreement or understanding (oral or written) **(5 POINTS)**

5. Defined benefit plan: amount of benefits is based on a formula, usually tied to employee's age, length of service, and compensation while employed and participating in plan. Defined contribution plan is based on employee's out of pocket contributions in the plan and gains/losses thereon (similar to savings account). **(3 POINTS)**

Time rule is used to apportion defined benefit plans. **(4 POINTS)**

Apportionment of defined contribution plans is based on actual CP and SP contributions and gains/losses thereon **(3 POINTS)**

6. SP equity at time of conversion: \$150,000

Equity on 1/1/07: \$350,000, of which \$150,000 was SP and \$200,000 was CP.

Equity at time of division: \$150,000. It is all SP per FC §2640(b) **(5 POINTS)**

7. Other than possibly having a community interest in the net “hard assets” of the business – inventory, materials, cash, accounts receivable, and work in process, reduced by existing debts -- Wife has no interest in the corporation. Specifically, there is no goodwill of this business and therefore there can’t be any community interest in Husband’s goodwill. Here, goodwill would most likely be the largest component of the business’ value if it existed because of H’s earnings level. The corporation is not a “business,” per *McTiernan*. Husband’s skills are unique and not transferable. Therefore, the corporation is not a “business,” i.e., a “professional, commercial, or industrial enterprise with assets.” **(5 POINTS)**

END OF OUTLINE