

Community Property-Summer 2016

Issue outline for Question #1 – Take Home

PLUMBING BUSINESS:

Wife's Arguments:

- A. Characterize- FC 760- acquisition during marriage.
- B. Valuation at date of trial (FC 2552a)
- C. Wife gets ½ value at date of trial
- D. Reimbursement to community for funds spent on Plumbing seminar

Husband's Arguments:

- A. Characterize-FC 760
- B. Valuation at date of separation (FC 2552b)
- C. Wife gets ½ value at date of separation
- D. Possible reverse Pereira/Van Camp argument for increase in value after DOS

MILLION DOLLAR PROFIT:

Wife's arguments:

- A. Characterize- profit traceable to CP Business, therefore all CP
- B. Alternatively, equitable apportionment because contract acquisition based on education obtained during marriage and Husband's time spent courting the builder for a contract while the parties still married
- C. Apportion profit using the reverse Van Camp formula which results in more profit allocated to the community; Wife gets ½ CP interest. Husband's SP (post-sep labor) gets compensation for his labor plus a reasonable return. Court has discretion to use any apportionment method they want.

Husband's arguments:

- A. FC 771- define earnings after date of separation; classify the profit as all Husband's SP since he did all the work post-separation.
- B. Alternatively, apportion using the reverse Pereira formula which results in more profit being allocated to Husband's SP while the community gets the CP contribution back plus a reasonable return. Court has discretion to use any apportionment method they want.

20 ACRES:

Wife's arguments:

- A. Characterize: Transmutation from H's SP to Wife's SP per FC 852
- B. If transmutation is valid, the asset is awarded to Wife in its entirety.

- C. Possible Gift if the transmutation argument fails- unlikely since it is a gift of substantial value between spouses

Husband's arguments:

- A. Characterize- FC 770=SP acquired prior to marriage
- B. Transmutation from H's SP to W's SP
 - a. Invalid transmutation? FC 852
 - b. Breach of fiduciary duty? FC 721
 - i. Unfair advantage to Wife?
 - c. Fraudulent transfer to avoid creditor (although should Husband benefit as a result of his own unclean hands?)

FUN ACCOUNT:

Wife's arguments:

- A. Characterize-W's SP after date of transmutation or all CP since the deposits made during marriage
 - a. Titled in Husband's sole name but no facts to determine if the account was acquired during marriage or pre-marriage;
 - b. Deposits from rental income=Possible commingling if transmutation is valid. If so, the rental income will also be W's SP. If mixed with other income prior to transmutation, there might be commingling. Both parties will have to prove up their respective SP claims.
 - c. Possible claim for breach of fiduciary duty if Husband kept rental income from Wife after the transmutation.

Husband's arguments:

- A. Characterize- H's SP: Titled in H's sole name
- B. FC 770(3) rents, issues and profits of SP are SP; campground rental income is directly traceable to the 20 acres.
- C. Invalid deed should be set aside and therefore all rental income is H's SP.

CHILD SUPPORT DEBT:

Wife's arguments:

- A. FC 915a- characterize debt incurred before marriage
 - a. SP-define
- B. FC 915b-Child support paid with CP funds when SP funds from the fun account existed. Reimbursement to community.

Husband's arguments:

- A. No available separate property with which to pay child support. The facts do not say whether there were sufficient funds on deposit in the fun account each month to pay

- the child support. Husband may contend that the fun account money was spent each month and nothing left over to pay child support, except for CP earnings.
- B. If the transmutation is upheld and the rental income from that date forward is determined to be Wife's separate property, then there clearly is no separate property belonging to Husband that could have been used to pay his child support
 - C. No reimbursement to the community

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Issue outline for Question #2

Threshold issue: When was date of separation? Marriage of Davis, now abrogated

Harley Davidson proceeds:

1. Characterization of Harley: Acquired pre-marriage; titled in H's sole name = H's SP per FC 770
2. Sale proceeds commingled in joint checking account (FC 2581); commingled; then subsequently used to purchase home; tracing back to source of funds
3. 2641 Reimbursement to H if adequately traced to sale proceeds of Harley
4. Harley acquired prior to marriage but while living together (Marvin and/or putative spouse—no facts to suggest either)

Home:

1. Characterization: Acquired during marriage in joint name (FC 760 and 2581)= CP
2. Down payment: H has 2640 SP reimbursement claim if he can trace his \$10,000 from the commingled account back to the sale of his SP Harley.
3. Loan for purchase: community credit is CP
4. Refinance of home loan: Fiduciary duty; breach by Wife when she had Husband sign the deed putting her name solely on title; deed will be set aside per unfair advantage as set forth in FC 721b.

Government Pension:

1. Acquired during marriage=CP;
2. Divided by time rule (number of marriage years divided by total years of participation in the plan); no federal preemption any longer (ERISA); Wife will get ½ of the CP interest in H's plan.
3. Alternatively the parties could have the plan valued and agree to a cash buy-out of Wife's interest in Husband's plan.

Social Security:

1. Not divisible due to these benefits being federally preempted.
2. No offset allowed either. Wife gets 100% of her social security.

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Issue outline for Question #3

PERSONAL JURISDICTION

Wife's Arguments: No minimum contacts: only one short visit to CA

Husband's Arguments:

1. Wanda came to CA and therefore established minimum contacts. Additionally, Wife responded to the Petition. She should have objected to personal jurisdiction if she did not agree to CA; residence 3 month in county, 6 months in state before filing

VALID MARRIAGE

Wife's arguments:

1. No consent; hallucinogenic material rendered her incapable of consent; FC 300.

Husband's arguments:

1. FC 308 recognizes marriages from other jurisdictions so long as the marriage would be valid in the jurisdiction where marriage took place; Facts state the parties "followed all of the marriage requirements of Country X"

DISSOLUTION OR NULLITY

Wife's arguments:

1. Wife will claim that the marriage was bigamous (FC 2201) and therefore void.
2. Wife may also claim she lacked consent to enter into the marriage because she was high on hallucinogenic material. In this case, the marriage is voidable.
3. Wife may also try to claim fraud since she was not told of Husband's prior marriage until she was too intoxicated to understand what was happening.

Husband's arguments:

1. Husband will not want any history of fraud to support the nullity so he will likely request a dissolution of marriage.
2. Husband will not want to admit bigamy to support a nullity for fear of prosecution in a criminal matter.

The court will likely grant the nullity based on lack of consent and/or bigamous marriage.

LOTTERY TICKET WINNINGS

Wife's arguments:

1. Did Wife disclose the lottery ticket winnings to Husband?
2. Breach of fiduciary duty.

3. Trace the lottery ticket purchase funds to a separate source, she might be able to claim that winnings are her SP because there was really no time for either party to earn any community income since they were just ending their vacation. If she failed to disclose the ticket, then she might lose all of the proceeds per Marriage of Rossi.

Husband's arguments:

1. The winnings are CP because the ticket was purchased during marriage; If no marriage, putative spouse status for wife? Quasi marital property?
2. Marriage of Rossi: Husband possibly gets all winnings due to failure to disclose.