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======== Start of Answer #1 (4296 words) ========

Essay Question 1:

The facts state that Harold and Wanda, while not married until 2010, agreed in front of their friends to share all of their assets equally. Such an agreement would be classified as a Marvin agreement, or a cohabitation agreement. Marvin-type agreements are enforceable contracts between couples in which couples may, orally or in writing, agree to treat assets and income as if they were married. Generally, all defenses and contract relates issues are applicable to Marvin agreements. A Marvin type agreement may not, however, be solely or in large part based on sex for consideration.

Here, Harold and Wanda seem to have a valid and enforceable Marvin agreement from the date of their party onward. Further, the agreement does not seem to be based on sex as a major part of consideration, because both "pledged their undying love" to each other. The Marvin agreement can also be evidenced by their subsequent conduct and evidenced by testimony of their friends and family at the party. Thus, all property acquired thereafter would like be treated as if it were community property, or, in this case, jointly owned.

Here, the proceeds held in the couple's CRU account is likely treated as joint property, regardless of how much is one person's salary or the others. Thus, when the couple thereafter uses money from the account for a down payment, this is, for all intents and purposes, considered equal property of the couple. Upon discovering the joint loan required a valid marriage, the couple decides to marry. Then, they used the $20K from their joint account and obtained a loan to purchase the Residence in Petaluma.

Now, although it is unclear, the couple seems to be at trial regarding the status of the Property; although, it's not clear what the trial concerns, whether it be in a dissolution proceeding, etc. I will assume, however, that the trial is in a dissolution proceeding, in which the disposition of the Petaluma property is at issue. In all likeliness, Wanda, who made the more substantial payments into their CRU account, from which the down payment was paid, would be arguing at trial that she is entitled to a separate property contribution under Section 2640 of the Family Code for the portion of the down payment she made towards purchase of the Property. A threshold issue would require Wanda to use either direct tracing or exhaustive tracing to show how much of the down payment was paid by her from the CRU account.

Regardless of Wanda's position, Harold is likely to argue that the funds in the account were 100% joint funds from the outset, as if they were community property, under their Marvin agreement. Additionally,

Harold would argue that there is no right to reimbursement under Section 2640 which would cover income under a Marvin Agreement and, thus, Wanda is entitled to NO reimbursement for her "separate" property contribution. Simply put, the income was treated as community property under their Marvin agreement, and the down payment would be treated as such in a Marvin agreement, with no right to reimbursement later realized in a subsequent marriage.

Ultimately, the Court is likely to determine that the funds in the CRU are joint (in light of the Marvin agreement) and that there is no right to reimbursement given the facts. Thus, assuming this is indeed a dissolution proceeding regard disposition of the property, there would be an equal division, barring no exception, of the Residence. Each party would receive 50% of the equity in the Property.

Alternatively, and though unlikely, if the Court found a valid reimbursement, Wanda would be entitled to her separate property contributions without interest, from which the remaining equity would be divided equally.

Essay Question 2:

The first question is whether a valid transmutation exists regarding the transfer of title of Blackacre from separate property to community property. A post-1985 transmutation requires an express writing signed by the negatively affected spouse to be valid. Generally, signing a grant deed transferring interest would constitute a valid transmutation as an express writing. The facts indicate conflicting evidence regarding Paul's intent, however. On one hand, we have an express declaration and the facts state it is transferred "as a sign of their love," but on the other hand Paul subsequently contends it the sole reason for the transfer was executed to keep property away from his first wife. In all likeliness, his subsequent claim is not likely to undue an otherwise valid transmutation in and of itself, particular because he also told his wife it was a gift "for having to pur up with that horrible woman." Thus, it is likely an otherwise valid transmutation. Additionally, parole evidence is not considered regarding the existence of a valid transmutation--only the relevant writing. Thus, intent would likely be discerned from the deed anyway.

There is a corollary issue that the transmutation, however, is a fraudulent transfer. Generally, the right to allege a fraudulent transfer rests with a creditor, or someone in the shoes of a creditor. In this case, such a "creditor" is likely Paul's ex-wife. If she does not assert a fraudulent transfer, which would undue the transfer, the transfer is likely to remain a valid transmutation.

Additionally, Paul is still entitled to his separate property contribution under Section 2640 to the acquisition

costs of Blackacre. Here, that amount is $200K, which he will be paid without interest. After acquiring substantial equity, the couple then take out a loan against Blackacre, which is now community property, and use the proceeds to purchase three other assets, discussed hereinbelow. Additionally, *Walrath* provides a basis for Paul to trace his separate property contribution from the down payment of Blackacre to the purchase of all other property purchase with proceeds from such community property. The discussion below takes this into consideration.

a) As to the condo in Hawaii, $100K of the $200K initial investment is automatically reimbursed as set forth in *Walrath* as Paul's separate property contribution, which can be directly traced from the loan proceeds. After payment of the $100K reimbursement, the balance will be split 50/50 between the spouse's community interest. Thus, Paul gets $350K, and Annette gets $250K.

b) As to the Electric Seagull investment, which is now valueless, both parties share in the loss and neither receives anything. This is because the reimbursement claim may not exceed the net value of the property under Section 2640.

c) As to the PG&E stock, again, $50K of the property would be Paul's separate property for his reimbursement claim. The balance of which would be split 50/50. Thus, Paul would receive $75K and Annette would receive $25K.

As to the residence, the facts state that "there is the same amount of equity in the house there was when the parties married." And, because the reimbursement claim has already been satisfied, the property would be evenly divided as community property, and the debt remaining evenly divided.

Lastly, there is a question relating to disposition of the Ferrari, and another potential transmutation. Here, Annette used community property to purchase a gift for Paul. Generally, transmutations require an express writing, as set forth above; however, there is an exception for gifts when a gift is 1) for personal use, and 2) is reasonable in light of the couple's marital financial situation. Here, it seems fairly clear that the vehicle is for Paul's personal use, to the extent that it has been registered in his name alone and he was the sole driver. The facts are not clear whether the vehicle was used to drive to work, or anything of that sort, which might counter his evidence. Assuming not, the gift probably satisfies the personal use component for the exception requiring an express writing. There is still a question as to whether the gift is reasonable in light of their financial situation. There are no facts as to their income, etc. This is a question of fact for the Court, that would be considered in order to determine whether the property is community property, or whether a valid transmutation exists and the property is separate property. Assuming it is reasonable, which seems probable in light of their assets (but it could easily go the other way) Paul is

entitled to keep the property as his separate property. Otherwise, if the value is not reasonable in light of their financial situation, the property will be divided as community property and split 50/50, with Paul getting $25K and Annette getting $25K from the sale proceeds.

Essay Question 3:

In a dissolution proceeding, a spouse may seek a deferred sale in order to keep and maintain a main dwelling and residence post-dissolution judgment upon a showing of need based on welfare of the children and upon a showing of financial feasibility as to the "out-spouse." Generally speaking, the out-spouse is entitled to their apportioned interest, as to community and separate property interests, plus the increase in any equity during the deferment period.

Wendy, in seeking the deferred sale, would argue and use the following facts to support her arguments. In particular and as to the welfare of the children (important aspects in the consideration of a deferred sale) Wendy would argue that the residence is close to the Children's school and would permit the children to stay in their school. One main consideration looked at by courts is the ability to maintain the childrens' schooling from the home that has been their primary residence and at the school where they have primarily attended. Thus, these considerations would be very helpful in showing that a deferred sale is best for the welfare of their children. Additionally, Tim's condition might show that moving could adversely impact him, and thus, a deferred sale is important to his welfare in particular. The fact that Wendy's boyfriend stays with her often is probably inconsequential to either party's argument given current legal precedent. Harry could not offset anything based on the boyfriend living there.

Conversely, Harry would argue that Ursula is entering a new school anyway, and, thus moving isn't as big of a deal for her. Plus, she will need money to for her music program, which is expensive. Additionally, Victor will be going to the Marines, and the same fact applies, that he is welfare is not really at stake. Thus, welfare isn't as important as one might think on looking at the facts from the outset. Additionally, Tim's condition hasn't been worsened by the dissolution in light of shared custody; thus, the court could infer that moving from his home may not be as detrimental as one might inially think. With respect to Harry's financial considerations as the out-spouse, he could show that he won't be living free with his uncle for much longer, in light of his uncle selling the home. Additionally, he could also show that he can barely make ends meet if the sale doesn't occur. Those facts, coupled with the fact that rentals near the old house are scarce, would likely be sufficient to show that deferment is not financially feasible and that the deferred sale is not, necessarily, in the best interest of the welfare of the children.

Further, in a deferred sale (if granted), there would be an offset in some manner regarding spousal support and/or child support in light of the benefit that Wendy would receive in maintaining the residence. This would be an offset of approximately $750/month, 50% of Harry's community property interest relating to the fair market value of the rental. This fact, in addition to the fact that Wendy can barely survive on her present support payments, might assist Harry in showing that keeping the property isn't even feasible for her financially. Alternatively, the offset could tack itself on to his interest in the home--which would make this less of an issue.

Ultimately, and in all likeliness, the Court is likely to deny the motion for deferred sale given the discussion of the facts above. It does not, necessarily seem to be in the best interests of the childrens' welfare, and the financial difficulties presented to the out-spouse would be high.

Essay Question 4:

Section 2033 of the Family Code permits a party to retain an attorney in a family law proceeding if such a party is unable to otherwise pay for representation by conveying an interest in community property via a lien. Essentially, Mary is seeking to give the firm a Family Law Attorney Real Property Lien (FARPL), against the residence, which is community property. Generally speaking, FARPL's are complicated and involve many rules and various procedures that must be followed very carefully. Essentially, the lien may only be perfected against Mary's 1/2 interest in the Residence (whatever that might be--see discussion below), as it is community property.

Here, the FARPL may be contested by Harvey in light of any potential separate property interest compared to community property interests that exist in the Residence. This is because the firm will be asserting a lien against the community property and could, potentially, affect his interests. Harvey may object to the FARPL under Section 2034 of the family code to Mary's obtaining the FARPL on the property. In all likeliness, the FARPL, if the rules are properly followed, is usually granted. Thus, the larger issue being what exactly are the parties' interests, and to what extent the FARPL encumbers the property--discussed below.

Additionally, and as to the firm, the FARPL creates a conflict of interest between the client, which could hurt their relationship with Mary. The larger risk for the firm is whether substantial equity exists in Mary's 1/2 community property interest in the property. Thus, again, the same issue largely affects the firm, in that they are interested in the amount of Mary's 1/2 interest, which is important in determining what exactly is the value of their collateral and whether it is sufficient to justify representation.

In determining the value of each party's interest, and effective reach of the FARPL, all relevant facts will be considered. In particular, there is, at a minimum, $500K in equity in the property. The question then becomes what percentage is community, and what percentage is each spouse's separate property.

On one hand, Harvey contends that he has made "all payments on the mortgage, separate from the down payment." The facts indicate, however, that Harvey is unable lo prove this with evidence other than his own declaration. If his statement is to be believed, he is entitled to a reimbursement claim under Section 2640 for separate property contributions (i.e. principle payments on mortgage) to community property. Generally, such payments would constitute an unreimbursable gift under *Lucas;* however, the gift exception in *Lucas* does not apply in dissolution proceedings where a spouse is entitled to their separate property contributions without interest. Also, it would be within the court's discretion to not believe this testimony. And, even if believed, the amount is presently unknown given the facts.

Mary, on the other hand, would firstly argue that she is entitled to a separate property contribution for contribution of an alleged down payment on the property. Because the account is joint and includes commingled funds, Mary would need to use the direct or exhaustive tracing method to show that her separate property, at least in part, went towards the down payment on the house. Under the exhaustive method, used primarily in cases involving commingled funds, Mary would need to show that after exhaustion of all community funds in the account, then from which separate property funds (from her inheritance) were then used to pay for, at least, part of the down payment. Given the facts, it is unclear what portion, if any, of Mary's separate property went towards the down payment. She could, of course, hire an expert to review the account records and do the above-referenced tracing method to determine the amount. Given that, at some point, the account was overdrawn, it is almost assured that some portion of the inheritance paid for the down payment--even though the amount is unclear. Given that, she is entitled to some separate property contribution. This amount, however, is subject to offset of Harvey's interest.

Ultimately, given the facts, it's not possible to determine what exactly each party's separate property interest in the property is. It would be based upon a showing of Harvey's separate property payments on mortgage principle (if any), and a showing of Mary's separate property down payment (if any) which went towards purchase of the property. Then, after division of these interests, the balance of the equity would be divided equally between the two.

Further, in light of the missing facts, it is difficult to say whether the risk for the firm is low or high. Ultimately, it depends on each party's separate property reimbursement, as well as any related offset, and then a full division of each spouse's interest. If the amount is relatively high in relation to expected

attorney's fees, then the FARPL may be a decent investment for representing Mary. Otherwise, it is probably not.

Essay Question 5:

Rudimentary Gifts, such as stock, which are intimately related to employment occurring during marriage are considered community property--so long as the gift/award is primarily for work that has occurred during marriage. Here, the facts state that one company gave the gift to Gordon for doing a "great job," all of which occurred, it appears, 7 years after marriage. Thus, from the facts, the stocks are likely community property and Yevette is likely entitled to at least her 50% interest in the stocks--subject to the below issues and proceeding.

Firstly, Yevette must seek to set aside the judgment disposing of community property. In order to do show, she must show either extrinsic mistake, extrinsic fraud, or a breach of fiduciary duty by Gordon. Section 721 of the Family Code imposes various fiduciary duties between spouses. These duties include the duties to disclose assets in a dissolution proceeding, which extend beyond the date of separation and into discovery. In particular, there is a duty to volunteer all information in light of the imposed duties of good faith under this fiduciary duty between spouses. It is the highest duty of good faith and fair dealing. Thus, here, Yevette would argue that the judgment should be set aside in light of Gordon's breach of fiduciary duty in light of his failure to disclose. Her motion is likely to be granted in light of the obvious breach of fiduciary duty, coupled with the potential that there is some sort of extrinsic mistake that occurred for which the property was accidentally excluded.

Now, in order to obtain her interest in the property after setting aside the judgment,Yevette could potentially argue that Gordon breached his fiduciary duties in failing to disclose the stock.

Generally speaking, there is a defense for excusable neglect (such as standard negligence), with a breach of fiduciary duty arising out of gross negligence or recklessness. Gordon would raise the issue that he had merely forgotten about the stock and, in light of his neglect, punitive damages should not be issued. Given the facts of this case, and given that there does not seem to be any gross misconduct, fraud, or other intentional non-disclosure, the court is likely not going to issue punitives, which may only be acquired upon a showing of fraud, etc. Despite that, Yevette is still entitled to at least her 50% interest--just not likely not punatives.

Additionally, there is a potential issue with the Statue of limitations. There is a general rule that a breach

of fiduciary duty and motion to set aside the judgment may only be entertained either: within one year of the judgment, or within one year of discovery of the ommission--whichever is later. The facts are unclear at what point after she discovered the ommission. Assuming she has not waited one year, the defense is no good to Gordon. If she waited more than one year after discovery, she is barred from asserting a breach for non-disclosure. This should be a simple question of fact for the Court.

Generally speaking, the remedy for breach of fiduciary duty between spouses includes an automatic award of attorney's fees to the prevailing party, and the injured spouse being entitled to at least 50% of the undisclosed property, and up to 100% of the undisclosed property in punatives (see above). Here, given mere negligence under the standard, Yevette is likely entitled to at least half of the proceeds, plus attorney's fees.

Thus, after setting aside the judgment, Yevette would likely be able to show breach of fiduciary duty in light of Gordon failing to disclose, upon which she would be entitled to her community property interest in the stocks: 50% of $100K, which is $50K, plus attorney's fees.

Defined Terms:

Putative Spouse- If a marriage is void or voidable, a court may still find that all of the community property presumptions and benefits, rights, and responsibilities of a marriage apply, if 1) at least one of the spouses has a good faith belief that they are married and 2) there is a reasonably objective basis upon which to conclude the couple is married. Generally speaking, ignorance of the law is not a sufficient to find a putative spouse; thus, most often a ceremony of some type required in order to show a reasonably objective belief for there to be a finding of a putative spouse. More recently, the putative spouse doctrine seems to have been extended to registered domestic partners; although, there is a split of authority regarding this matter.

Quasi Community Property- Quasi community property is property which is purchased outside of California while a couple is married living outside of California, but that which would be community property had the couple been domiciled in California. Upon establishing domiciliary in California, such property would be referred to as quasi community property. Quasi community property is that which is, for all intents and purposes, considered community property for purposes of disposition in a dissolution proceeding.

Net Negative Estate- A negative net estate is one which community debts exceed the value of all

community assets. Further, a net negative estate is but one exception to the rule governing equal distribution of community property. In light of a net negative estate, a court may divide debts and/or community property in equity, taking into consideration various facts, including financial ability to pay debts between the spouses.

Domestic Partnership- Domestic partnerships are marriage-like relationships/contracts recognized by the State of California, which are permitted between same-sex couples and for couples who are 62 years or older (of age to collect social security). As of 2005, registered domestic partners (RDP's) are essentially treated, for all intents and purposes, with the same rights, duties, and responsibilities of married couples. The key differences being how one comes to be an RDP, which requires filing a statement with the Secretary of State, and who qualifies to be an RDP.

Defined Contribution Retirement Plan- A Defined Contribution Retirement Plan (DCRP) is but one type of two major types of retirement plans--the other being a Defined Benefit Plan. A DCRP generally involves an employee paying a percentage of their income over time (which may be matched by a percentage paid by their employer) into the retirement plan--like an IRA. The investment has a whole dollar amount and is much more easily divisible in a dissolution proceeding, much like a checking/savings account.

General Community Property Presumption- The general community property presumption provides that all property acquired while a couple is married is presumptively considered community property. The presumption may be rebutted upon a showing that the property was acquired prior to the marriage or after separation. Additionally, property acquired by gift, devise, or bequeath, or interest or income earned from separate property, is presumptively separate property.

Van Camp Approach- The Van Camp approach is but one approach used to provide guidelines for estimated the value of a business to be divided between separate and community property, if such business includes a mix of separate property capital and community effort. In particular, if the overall value of the business seems to mostly stem from separate property capital and/or market growth, then a reasonable rate of return is established for all community effort, and the remaining value of the business is considered separate property. The alternative approach is the Prereira approach. Neither approach is a formulae, but a guideline regarding such property.

Marital Separation- Legal marital separation occurs, and the community property estate ends, when 1) a spouse subjectively intends to end the marriage, and 2) when it is objectively evident that the marriage did in fact end upon a showing of some evidence to show that it ended. While it is good evidence to show that

spouses are no longer living together, it is not required, as a marriage may still objectively appear over upon a showing of other evidence. Thus, finding the date of separation is a very fact sensitive matter.

Moore-Marsden Interest- A Moore-Marsden interest is created in the community when the community contributes to a spouse's separate property. In particular, the community is given a "buy-in" interest apportioned as to the separate property interest. Such contributions to separate property include payments for improvements and payments on principal, but do not include payment of taxes or interest payments relating to the property.

Division of Personal Injury Awards- Personal injury awards are property of the community if the injury occurs while the couple is married. Generally, the injured spouse is entitled to all of the personal injury proceeds in a dissolution. There is an exception to the rule, in which the personal injury damages may be divided in equity between spouses, so long as the injured spouse is given at least 50% of the proceeds.

End of Answer #1

END OF EXAM