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48 good

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Question 1:

Property acquired prior to marriage is separate property. Marriage does not change the character of the property. Property acquired during marriage is presumed CP unless it is my gift or inheritance.

On or after 1/1/85 all transmutations of property had to be in writing with an express declaration, intention to relinquish all property rights, and signed by the party to be charged. This was to eliminate pillow talk and problematic dissolutions with just oral agreements to try to enforce. Transmutations need no consideration.

Oral agreements are not upheld in court for transmutations after 1/1/85.

3 Married couples have a fiduciary duty to one another, similar to a business partnership as of 1/1/93. They must act in the highest good faith and fair dealing with one another. They must act this way until the dissolution is final.

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(extra) When H signed the deed over the W on 3/1/2003 it was an express declaration with the intent to transfer and he signed it. He believed the oral side deal agreement to be valid, even though it was oral and might be unenforceable because of the statute of frauds. And, although W should abide by it, the effect of the transmutation stands, if he truly intended to transmute it, regardless of the purpose in the back of H's mind to only transmute if she paid the buy in agreement. A transmutation is valid for all purposes, not just the purpose the want it to be for. H could argue that he did not intend to relinquish all interest because he was asking her to pay half of the equity- so it appears he did not really want to transmute it. But he signed the deed and this is pretty strong support that the transmutation is valid.

So, as of the date of the deed W has an ownership interest in the house. The house is CP.

2 H could argue that he should be reimbursed his separate equity interest in the house, which was \$300k when she was put on title. Using Moore/Marsden you could apportion the amount of appreciation and interest he has when he put her on title. But once she is on title, all the appreciation is CP.

3 The court can look at the oral agreement that W and H made, but there is no documentation and trying to prove the terms would be difficult. The terms of this agreement have nothing to do with the valid transmutation that took place when H transferred the deed to CP- it is separate and most likely unenforceable.

3 H could argue that W has breached her fiduciary duty to him by not abiding by her promise, an indeed she did renege on her promise, but this will not qualify as a breach because there is not writing of the terms. H would need to show that there was an agreement and so facts, but this will be hard to do.

H can also argue that the lack of writing, which is required because of the statute of frauds for a real estate transaction, is cured because W partially performed the promise, thus showing the court that it did exist.

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(extra) Partial performance can be seen by the fact that she paid part of the money and some of the payments. She did perform and that might be enough to prove there is contract. But Family

Court will look at the transmutation as valid with the terms of the agreement if they conclude that the agreement was made or the parties stipulate to it. Oral agreements are hard to prove and this is very problematic which is exactly why the transmutation legislation required an unequivocal writing to transmute. Pillow talk is completely disfavored.

The house is CP as of the date of the deed being signed and the contract is not enforceable as to W-

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W will not have to pay the buy in agreement in the house and H should argue that the entire transmutation should therefore be invalidated due to breach of fiduciary duty. The court will try to do equity in this case and most likely invalidate the transmutation as it appears H really didn't intend to transmute when he tried to get her to sign an agreement that reduces the transmutation to begin with.

Question 2:

Family code 721: marriage couples have a fiduciary duty to one another as of 1/1/93. Fiduciary duties include acting with the highest good faith and fair dealing. Including full disclosure, reasonable management of assets, not ripping off the community, confidentiality, getting consent when you are transferring CP, etc.

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H can argue that W breached this duty when she promised to pay for the buy in and did not in good faith adhere to it, therefore since this agreement was signed not in good faith the transmutation is also invalid.

The problem with this argument is that H ratified W's behavior by not ^{set} making W pay the mortgage even when she started working again. He could have ~~side~~ set aside the deal when he first learned she wasn't going to pay. At least 2-3 years went by and he didn't try to enforce it other than talking to her about it- he ratified her behavior and should be estopped for arguing she should pay now. (*Spreckels*)

H should argue that W used undue influence and thus the transmutation should be set aside because of fraud. Under *Delaney*, if there is a unfair advantage taken it is **presumably** fraudulent. The person trying to argue that there was no fraud must show that there was full disclosure and no undue influence; further that the other party fully knew and understood what they were doing. W can show that they were acting in good faith with each other and she did not intend to fraud H, merely she lost her job. She can show that he understood what he was doing and knew the results of his actions. He didn't verify her words and he could have. Further, when she got money she used it for the benefit of the Community by remodeling the house. It is doubtful that actual fraud can be shown- worse case it is innocent bad conduct. If W knew that she wasn't going to receive such a big inheritance that she told him she was this could definitely be fraud because she led him to believe that she would have a lot of money in which to satisfy the agreement. But, this is not shown in the facts. H should look for actual fraud on W part then this argument would be stronger.

When a party acts in a way they renders them self at a serious disadvantage the courts view it with suspicious eyes. H transmuted the house to W he was acting to his disadvantage, especially if the buy in is not enforceable.

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The court is a court of equity and fairness and under *Hafner*, it's duty to equity first ^{→ good} if the court sets the agreement aside then it could also set the transmutation aside due to undue influence and breach of fiduciary duty. If this happens then the property will be SP of H.

Question called for a more definite response

IF it is SP then H will have to reimburse W for the improvements she made to the property with her SP funds. Also, although it is very slight, she will have bought into title buy her three 1/2 of the mortgage payments, however the amount would be so slight it could hardly amount to anything. If it does amount to something, then the Moore/Marsden approach will be used to see what very small portion will be W's.

Question 3:

Agreement enforceable against W: If the agreement is enforceable then W will have to pay out of her SP the 100,000 that she owes and part of the mortgage payments they she missed. She will be reimbursed for here SP contributions to the CP asset without interest as long as she can trace.

Assuming that the house is part hers because of the transmutation then she is on title, and she used her SP funds to improve the property acquired during the marriage..

Under 2640 SP contributions to improvements are reimbursable if they can be traced and there is no signed waiver of right to be reimbursed. Reimbursement will be the exact amount without interest or appreciation.

She contributed \$175 K to remodel the house.

However, if the agreement is enforceable then she owes the Community \$100 K plus the amount of 1/2 of the mortgage payment and the other terms of the agreement that she did not fulfill.

7 It seems like the amount she contributed is equivalent to what she would have had to pay. The courts could add up the total amount owed on the agreement and reduce it by the amount of SP W spent on the improvements.

The values are not given, but if the remodeled house is worth a lot more because of the improvements then W could be reimbursed a pro rata apportion of the value increase rather than a straight reimbursement.

why? If she does have to pay for the agreement and the ~~but the transmutation is invalid~~, then she could argue for a pro rata proportional interest under Moore/Marsden for the amount of principle paydown from her contributions. Only principle paydown on the loan amount buys into title. HOA fees, taxes, etc will not be considered as they are carrying costs and do not add value.

Question 4:

If the agreement and the transmutation is considered invalid because of the breach of fiduciary duty on the part of W, then she could be out of luck except for the argument above about receiving a proportional interest.

IF she is not on title then the property would be SP of H.

Reimbursement:

10 Until 1/1/2005 SP contributions to spouses SP were not reimbursable and were presumed to be a gift. 2640(c) added in 2005 and it most likely would not be applied retroactively, under the Heikes ruling because is would disrupt a vested interest and thus would be a due process violation. However, she used the SP funds in 2008 so it would not be a presumed a gift- it would be reimburseable as long as she can trace it.

W will receive the money she spent on the improvements from him unless there is not enough equity to reimburse her.

H could make the argument that the remodel was not an improvement, it just made it fancier. However, the remodel was most likely intended to improve the house for the benefit of the community and she will be reimbursed as long as she can trace and didn't sign a waiver.

Question 5:

Not all assets are reimbursable-

SP used for the benefit of the community is considered a gift. This was not SP used for an acquisition or improvement, if was for the benefit of either of them.

After 1975 both spouses had equal management and control of assets. W could have used CP for the trip, but she did not. She elected to use her own money.

When W used her SP to take a vacation it benefited both spouses, herself included. She will not be reimbursed for choosing to spend her money this way unless they signed some agreement saying he would pay her back, which they did not. This money will not be reimbursed.

If she had purchased him something real expensive for his personal use- usually this is jewelry, clothing, personal items and it was from SP it would still not be reimbursable. If it were CP funds that paid for the gift then maybe the community would be reimbursed to the is gift because if it was a substantial amount for the community and there is not writing it would not be a valid transmutation. But, this was a vacation and it will not be reimbursed. It is not the type of asset that can be reimbursed.

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4)

Question 1:

As of 1975 both spouses have equal management and control of community assets. Creditors rights are coextensive of management and control of the assets. Creditors stand in a position higher then the spouse of the debtor. Public policy supports creditors being paid from CP during the marriage.

When you marry someone, you marry them for love maybe, but you also get to share all their debts during the marriage. Upon dissolution the separate debts of each spouse goes with them without offset, but while they are married creditors can collect from the SP of the debtor and the CP. The creditor cannot collect for the SP of the non debtor spouse as long as these funds remain separate and are not commingled. Also, if the non debtor spouse puts their earnings, which are CP, in a separate account in which the debtor spouse in not named and cannot withdraw from, this represents a safe haven from the ex - wife creditor.

2 All time, energy and skill of either spouse used during the marriage is CP. So even the earnings of the non debtor spouse can be reached by a creditor, unless they use the safe haven stated above in certain situations.

1) VISA levy:

This debt is SP debt of H because he had the debt before he got married, even though the default judgment happened after the marriage. A debt is characterized when it occurs.

2 Although the debt does not change character when H got married VISA can levy the SP account of H and the CP bank account or CP assets to collect this debt. The creditor has a wide reach which to collect money owed. If this weren't the law then people could get married and put there money in a joint account to defraud creditors. It is a law which should put people on notice of who they are marrying before they tie the knot it anything. Any CP fund can be

accessed for repayment of this debt.

2) Child support and spousal support back pay:

This is the SP debt of the husband even though they reduced the debt to a judgment after he married. Debt is characterized when the obligation occurs. This was already in arrears when they finally made it a judgment. He owed this debt prior to the marriage. Even as SP debt, the Community assets can be reached to pay it, but only if H doesn't have SP **income** available.

3 Ex-wives are considered creditors. They have the same rights as creditors to collect from the community. Dorothy **cannot** go after any SP of new wife, but if appears she doesn't have any anyway.

Ex-wife can collect from the SP of H or the community.

If H has enough SP **income** to pay the support then these funds will be used first.

This is not SP money, it is SP income only. The CD was H property when he got married so it is SP. The CD is worth 50,000 and can be used first in the amount that it makes only.

5 Currently, it is invested at 2% simple interest. That is \$1,000 a year. This \$1,000 should be used first, then the Community will have to pay these obligations.

But, the wife can use the safe haven, explained above, for her separate earnings to protect them from the ex-wife. Then the earnings of H will be used out of the CP to repay this debt only.

The ex-wife will not be able to collect from SP of the wife if she had any. Further, if the wife finds out that H had SP income to pay this but used CP instead, she can file a motion for reimbursement within one year.

3) Hospital:

3 This is the separate debt of the husband even though they did not obtain the judgment until after marriage. A debt is characterized when it occurs. This debt occurred when he had the surgery and didn't pay the first bill. It says he had the surgery before the marriage. This is his debt. Despite this, the hospital can collect from CP or the SP of the husband.

All the above stated debts are separate debts and would go with H if he were to divorce, but until he divorces all CP can be reached.

4) Victim:

8 This is Community debt, even if H had the accident. The accident happened when he was married and it was for the benefit of the community because he was on his way home from work. All time, energy and skill is community property and he was working for the community when he got in his accident. Torts are characterized when they occur and H was married when this occurred. W was unfortunate in her choice of a husband it appears, because he has a lot of debt.

The hospital will need to look for insurance first, which they did.

Second, because H was driving home from work they will look to the Community second.

Third they will look to the SP of the tortfeasor. They can try to get the money from his CD or the profits from the CD.

If this was an intentional act and it did not benefit the community then the community would not have been held responsible for it. But the facts say it was an accident. The community does not have to pay for the intentional torts of the spouse.

5) W earnings:

While married all earnings are CP. The creditors can therefore go after her earnings because they are a community asset.

The only way to protect her earnings is to put it in a separate account which doesn't have H's name on it and which he has no access to, and not commingle the money with any other CP. But this only protects her money from the Ex-wife. The rest of the creditors can go after CP funds, so she is not protected.

insignificant amount of other \$ is OK

6) Victim:

If this tort happened prior to the marriage it would be an SP debt of the spouse. He would bring the debt to the marriage like all of his other debt. The difference is that the Community would not have to pay before his SP. The victim would need to collect from the SP CD's that H has first. Judy's earnings, which are CP would be after that.

7) Dissolution:

If W separates from H before the creditors levy on H that would have been a very short marriage and probably the best thing she could do.

Separate debt goes with the debtor in the dissolution of the marriage.

The SP debt from VISA, Ex-wife, and the hospital would go with H without offset.

Unfortunately if the accident happened while they are married the community is liable for it.

The courts, under 2550, equally divide all assets- except for a couple of different exceptions which the W fits in.

If the community has more debt than assets to divide the court is not obliged to divide them evenly. This is because debt is not a community asset. In this case, the community does not have any assets but some old furniture and cars of no value. The debt will be apportioned to whom ever can repay it best. Both H and W make good salaries- either of them would be able to pay the victim for this debt. Although W makes more in earnings, H has a CD worth 50,000. Also, this tort was his tort. Most likely the court will use its discretion to allocate this debt to the husband who would be able to repay it, unless he has too much debt already and the courts sees fit to give some to W. Even receiving all of the SP it is under \$50,000. H has a CD that is worth 50,000. The court should allocate this debt to H.

END OF EXAM