1)

======== Start of Answer #1 (1936 words) ========

Community property is all property, real or personal, wherever located, acquired during marrige while the parties are domiciled in California.

Quasi community property is property acquired while married but domiciled outside California. It is treated as community property at dissolution in California.

Separate property is property acquired before marriage through descent, device, bequest, or gift, and the rents and profits thereof. It is not subject to distribution at dissolution.

The facts state that Mary [M] and Larry[L] lived together, but knew they were not married. Because they knew they were not married, neither one can claim putatve spouse status. Putitive marriages are those which are void or voidable due to mistake of fact or law. For fairness, a person who has a good faith belief that they are married will get the benefits of the marraige at the time the relationship is terminated.
Property acquired during a putative marraige is called quasi-marital property, and is treated the same as community property at dissolution.

There is no putative marriage, but M and L held themselves out to be domestic partners. Registered Domestic Partnerships [RDP's] are a way for couples to join their assets and liabilities,and gain some other benefits of marraige, without an actual marraige. It enetitles the partners to claim community property rights at the dissolution of the RDP. It is different than a common-law marriage, which California does not recognize unless the common law marriage originated in a jurisdcition which does recognize them.

For a registered domestic partenership to be valid, certain statutory requirements

must be met. The couple [same sex, or heterosexual with one partner over the age of 62] must reigster with the secretary of state, co-habitate, and adhere to other rules such as they cannot be close relatives. The facts here state that M and L did not reigster with the secretary of state, so they are not RDP's.

They opened a jointly titled bank account wihout much discussion. There is no explicit agreement that they would share all their assets, but it appears that was their intention. The account appears to have equal parts of M and L's money in it as the facts state they were both paid the same amount. All their earnings were put into the one account, and that money was used to pay their joint bills.

The money was eventually used to purchase stock and a house. Title was taken in Larry's name alone, but they 'each agreed' that mary would get her 'fair share' of any investments.

Although they were not married at this point, and were not domestic partners, they appear to have had an agreement that they would share all assets. And agreement such as this, called a Marvin agreement, can be implied instead of explicit, and can be enforced under contract law even if oral. Absent a marraige, M and L are still in a relationship which can give rise to rights under contract law.

The facts state they married in 2012. A marriage in CA requires consent, a license, and solemnization [ceremony]. all three were present here, so they were legally married in 2012.

The prenuptual agreement was drafted by Larry's attorney. There was no mention of the earlier Marvin agreement. There was a waiver of spousal support, which is not against public policy.

For a prenuptual to be enforceable, after 1987, it must be written, signed by both parties, and shown to the spouse at least seven days before signing. The facts

here do not state that Mary was told to obtain her own attorney. It appears she didn't give it much thought, as it was 'signed without detailed review.'

There are two defenses to prenuptual agreemtns: invlountariness and unconsicionability.

A prenup can be considered involuntary if the party against whom it is enforced was without private counsel at the time of the signing [unless they waive that right in a separate written form], and was not provided with the prenup at least seven days before signing it.

A prenup can be considered unconscionable as to spousal support if the person did not have counsel, or even if they did, it would be unconscionable to enfore that provision at the time of dissolution. As to other propety issues besides spousal support, a prenup can be found unconscionalble if there was no full dsiclosure of assets, and it was unconscionable at the time it was signed.

It appears that because Mary did not have her own counsel, was not told to get her own cousel, did not waive that right in writing, and did not have seven days before signing the prenup, it will be found invalid.

When separate property [such as an inheritance] and community propery are comingled in the same bank account, the person claiming a separate property interest must trace their separate property or the law presumes that all the money in the joint account is community property.

There are two ways to trace separate property funds: direct tracing, and exhaustion tracing.

With direct tracing, the sepratizer keeps records of all money going into and out of the account so they can prove with certainty what amount is there separate

property. With exhausing tracing, also called 'family expense' tracing, the law presumes that community property is used to pay community expenses even if there is separate property available in the account. Either method requires exact recordkeeping or the presumption of community property applies.

Here, at the time of marrige, the account had $150k in it, and at the time of separation, it had 100k. The facts are silent as to the amount of the inheritance that Mary is claiming. If she had a large amount, such as $100k in the account, and she has records to prove that the balance neer went below that amount, and that community property money was depoisted and used for eommunity expenses, she may be able to prove that some or all of the remaining funds were her separate property. It appears that neither party has records, however, so this will not be the case. The court will most likely assume that all the money in the account is commuinty property.

Because M and L had a Marvin agreement based in contract law, and becuase the prenuptual agreement is not valid, all the assets acquired since the opeing of the bank account will be most likely consisderd community property at dissolution. Because of the agreement, the money in the bank at the time of marraige was shared equally, and this appears fair because they both put the same amount of money in the bank.

Because the house was titled in L's name alone, and it was obtained before marraige, the law will presume that it is Larry's separate property. Mary will be able to rebut this presumption by showing that they had a Marvin agreement to share all investments if they separated. At the time of the purchase, the hosue was purchased with half her money. Houses are ususally considered investments. In the dissolution of the marriage, the house will probably be divided equally.

Question 2

The stock options

Stock options present many interesting issues for courts to decide. If Bill [B] and Pat [P] decide to use a Marital Settlement Agreement [MSA], they can decide to split the options however they want. MSA's must be written and signed by both parties, or declared in open court.

Assuming instead they are going through a court procedure, all assets must be divided evenly.

The original stock options given to P by Apple were to thank her for her past work, and also to gve incentive for continued employement with Apple. They were to mature in 2012. Stocks given in recognitition of past performance or employement are considered community property because time and effort of each spouse during the marraige are condiered commuity property. However, the facts state that Pat was hired by Microsoft in 2011. We can imply that Pat terminated her employemnt at Apple at that time, being as Microsft and Apple are major rivals and the probability that she worked for both as an employee is almost nill.

Assuming she quit Apple and went to work for Microsoft, even if Microsoft offered her the same terms for the stock options, they could not have been in recognitition of past employemetn because she had jsut started working. If options are given as an incentive for future performance, they are considered community property only as much as the community gave time and effort to get the options.

The facts state that Pat was granted five yearly options, which were not assignable. After the third option was exercised, P and B separated. Because P took three options while married, the court could grant B a community property claim to those options if they found that they were all for work done while married. Becuase they were not assignable, P may be made to pay B half the value of the stocks at the time of the trial.

The two options that had not yet been earned could be considered separate property if the court found that they were given for the years worked there at Microsoft.

Options II, which were granted after separation, are P's separate property because the facts state that Microsoft granted the to retain employees, not as compensation for past employement.

Family law courts are focused on fairness and equity. They have great leeway on how to approach issues like stock options. In general, if the options are granted for past employement during the time of the marraige, they will be apportioned as commuinty property. If instead they are as an incentive for work not completed during the marriage, they will be characterized as separate property

The student loans

When community property pays for schooling for one spouse, the community is entitiled to reimbursement for the amount of tution, books, and supplies, if the education substantially increases the earning potential of the spouse. If the spouse went to school more than ten years before the dissolution, the court will presume that the community has gained the benefit of the educaiton and there is a presumption against reimbursement.

Here, the commuity did not pay for tution and other expenses. Bill instead took out student loans during marriage. He did not work while going to college, and did spend some of the loans on community living expensess.

When a loan is made during marraige, the intent of the lender can determine who the loan belongs to. If the loan is given to a married, person, usually the lender is looking to the community for repayment absent any facts that show the lender specifically intended to only seek repayment from one spouse. Community property is liable for repayment of separate loans of one spouse obtained prior to marraige, and for any loans taken out by either spouse during marriage.

Here, B graduated in 2008 or 2009. The dissolution occurs in 2014. B has not been employed since graduation. No wonder they are getting divorced. The facts state that he is considering another career.

Because B's earning capacity was not substantially increased, the money paid by the community to pay down the student loans is probably not reimbursable to the community. The court can, in its discretion, divide community debt unequally on divorce, depending on the ability of the parties to pay, and the facts indicate that P is doing pretty well at Microsoft. However, because B went to school and took out the loans, and he will forever have the degree he earned, he also probably will be liable for that debt on separation.

======== End of Answer #1 ========

2)

======== Start of Answer #2 (1521 words) ========

Question 3.

In Marital Settlement agreements, signed by both parties or stated in open court, Carlos [C] and Lola [L] could decide amount themselves how to equitibly allocate the community property house and the pension. However, because the experts have a disagreement about the value of the pension, they will most likely end up in court.

The courts have leeway to decide how to divide community assets, but they must be divided equally. In this case, there are two assets: the pension and the house. The facts state the house is most likely all community property, with each spouse entitiled to $50k of equity. The house could be sold, with the equity divided. The equity could also be used to offset the pension if Carlos wants to just buy out Lola so their property could be settled and not subject to ongoing litigation or negotiation while they wait for the monthly pension benefits to kick in.

The pension is a more delicate subject. Because time and effort are community assets, the non emplyee spouse gains a community property interest in pensions obtained as a result of one spouse's efforts during the marraige.

Here, Carlos had already started working when he met Lola. He worked for three years, and paid into STRS for three years, before they were married. The facts state the pension would vest after 10 years, and would be payable when he was 55 or had worked for 20 years. The facts are a bit inconsistent, in that they state he started working at age 42, was married three years later [at 45] then they 'separated after twelve years when he was 52.' This makes my analysis a bit more difficult. Let's assume they separated when he was 52, which would be <u>seven</u> years after marriage. Thanks for bearing with me. His benefits vested when he was 52, as he started working when he was 42. The facts also state that at early reitrement, in three years, at age 55, he could get monthy pension, or wait until he had worked both 20 years and was 65, and would get a higher

pension.

To determine the community share of pension benefits, courts sometimes use the 'time rule.' The numbers of the marriage go on the numerator, and the years of employment go in the denominator. Here, they were married for seven years, and the benefits could be collected when he was 55 [or when he had worked 20 years].

The math to determine community property in the monthly pension once it matures would be: 7 years of marriage, divided by total years worked until pension was paid, which was 13 years= 7/13=54%. So, the pension, if paid out at early retirement, would be 54% community property each month. If instead Carlos waited to retire after 20 years of work [AND age 65], the community interest in the retirement would be seven years of marriage out of 20 years of work= 7/20=35% community property.

The facts also state that there is a present cash value. Of course, the husband's expert values these lower than the wife's expert does. Because he has been working for ten years, and married for seven of those ten years, the present interest in the cash value of the pension is 7/10=70% community property.

The court [or the wife] can choose whether to try to claim the wife's community property portion of the cash value of tehe pension [half the community property interest], or, instead Lola can wait and claim her community property interest in the monthy pension once it is payable.

The benefit of claiming her community property interest in the cash value is that 1. she knows exactally how much she will get [once the experts battle it out], 2. the parties can go thier separate ways and not worry about having to divide the monthy pension later. As said before, if the house is a community asset, the value in the house can be used to pay off Lola's community property interest in

the pension plan cash value.

Lola could also wait and claim her community property interest in the monthly pension. If she decides to do this, she can force her share at the earliest time possible [in three years, when Carlos is age 55]. She can do this even if Carlos does not want to retire at that point. If he does not want to stop working, Lola can force him to pay her community share out of money he gets while still working. If she does this, her monthly recovery is fixed at the lower rate. If Carlos keeps working, his separate contribution to the pension plan after dissolution will allow him to take the higher monthly pension without giving Lola any of the additional monthly money.

If the house is out of the picture, it of course cannot be used to buy Lola out of her community property share of the cash value of the pension plan. Becuase of this, she may choose to wait those three years until the monthy pension beenfits kick in, and take her portion monthly as discussed above.

Another option is that STRS may be able to divide the cash value of the pension plan and put half in Lola's name.

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Question 4:

David and Carol's Houses

The Moore/Marsden formula is used to determine how to reimburse community property used during marriage to pay off a note on separate property real property. In this case, David's house was purchased before marriage, and title was in his name alone. The house was his separate property because property obtained before marriage keeps its characterization as separate property even

during marriage.

After they married, they lived in the house together. The facts are silent, but we can assume that the mortage was paid using community funds during marraige, because money earned during marraige is community property [absent an express written agreement to the contrary]. There are no facts to support any contention that the morgage was paid by separate funds during marriage.

In applying the Moore/Marsden formula, the community is given a proportional share of the increase in equity in proportion to the amount of principal paid by the community during the marriage.

The simple formula is CP=PPCP + (CP% x MAPP)
where CP=community property value
PPCP= principal payments made with community property
CP%= PPCP divided by the original purchase price of the house
MAPP= appreciation in value of the house [equity] during the marriage

In this case, the PPCP is the amount of mortgage at the time of marriage [170,000] minus the amount of mortgage at the time of separation [160,000]= 10,000

the CP% is 10,000 divided by the original purhcase price [200,000]= 5%

the MAPP is the value of the house at the time separation [300,000] minus the value of the house at the time of marriage [250,000]= 50,000

CP= 10,000 + (50,000/.05)
CP= 10,000 + (2,500)
CP= 12,500

The community property interest in the house at the time of separation is $12,500

The facts state that the house was sold and put into turst accoutns divided according to the community property shares.

It says the house was sold. If the house was sold for the value at the time of separation, then it netted $300,000.

The commuity property share of $12,500 was split evenly between both spouses.

Carol's trust fund got half of the CP 12,500= $6250
and David got the remaining $287,500

Because David owned the house, he was liable for paying of the remaining morgage of $160,000, so he ended up with $133,750.

The facts then state that they reconciled and bought another house. Usually a reconcilliation voids any determination of community shares, and they act as if they did not ever separate. The facts also state that they bought the house 'as community property using funds held by the laywer.' It does not state whether they were commingled before purchasing the second house. If they were commingled and there were not records to substantiate a claim of separate property by David, then the house would be all community property.

It does not say specifically how much of that down was David's and how much was Carol's. Without that information, it is impossible to state with accuracy how much each person's separate share is in the second house. When people pool their separate money together to purchase community property, Family Code section 2640 states that at dissolution, each person is entitled to reimbursement of their separate property contribution to the purchase or imporvement of Community Property, without interest. The interest is retained by the community.

The assets are valued as close to trial as possible, unless there is some separate investment after separation to make it sensible to value it at separation. THere was substantial increase in the house after separation, but no separate property was invested during that time because all payments were made by tenants, not by one of the spouses.

David and Carol can recover their separate property investments, and the community will share in the increase in equity. David and Carol will probably split the morgage liablility.

======== End of Answer #2 ========
3)

======== Start of Answer #3 (796 words) ========

PART II

1. General Community Property Presumption

The general community property presumption affects the burden of proof for showing the character of property. The presumption states that any property acqured while married is presumed to be community property. The burden to rebutt this presumption is on the person claiming a separate property interest.

2. FLARPL

In general, one spouse may not encumber community property during the marraige without the consent of the other spouse. One excpetion is the FLARPL, where one spouse may encumber their community property inteset in real property to retain a family law attorney. FLARPLs are subject to many procedureal requierments, including notice to the other spouse, the court, disclosure of all assets, and approval by the court. The risk is on the spouse requesting a FLARPL and on the attorney who accepts one because not only does it create a potential conflict of interest between the attorney and the client, but the court may set aside the FLARPL if it encumbers the ability to equitably divide hte community prpoerty at dissolution, or if the FLARPL exceeds that spouse's community interet in the property.

3.

Equal Division

The court msut equally divide property at dissolution. They must equally divide every asset. If instead the couple decides to settle with a marital settlement agreement, they can decide how to divide prooperty, but it must be signed by both parites or stated in open court.

4.

Pereira/Van Camp

This is an approach the court uses to decide how to divide community time and effort that went into a separate property business during marriage. With Periera, wehre the community time and effort is the greater factor in the increase of the value of the business duing marraige, the separate proepty ownwer gets their initial investment in the business back, plus a fair return [stat. 10% or otherwise if that makes sense] on that investment, and the residual is COmmunity Property. WIth Van Camp, where the community effot is not the greater factor in the increase in the value of the business during the marraige, the community is awarded a fair salary for the work done by the separate spouse, minus the

amount that spouse paid separate property into community expenses, and the residual is kept by the separate spouse.

5.

Defined benefit plan

A defined benefit plan is where a worker and employer pay into a benefit plan, and the benefits are set in advace to be paid at a specified time. The accounts of the eomplyees are pooled. The benefit is that individual risk is lessened, and the pension benefits ususally continue until death so there is no risk that the person will run out of epnesion benefits during their lifetime.

6.

Legal separation occurs when at least one of the parties in the marriage have decided that the marraige is really over. It is evidenced as a 'final break with no hope of reconciliation.' This is measured by the subjectivce intent of that spouse, coupled with an objective manifestation of that intent.

7.

Date of valuation

The assets are valued as close to trial as possible, unless there is some separate investment after separation to make it sensible to value it at separation. This may occur when house imporvements are made by one spouse after separation. A business can be vlaued at the date of separation if one spouse put a lot of money, time, or energy into the business after separation.

8. Bifurcation of marital status

Bifurcation means that the status of the marriage is decided prior to the allocation and distribution of assets. the burden is on the person asking for the bifurcation, but the burden is slight. the bufurcator must make sure the other spouse is not burdeded by the burfurcation in any way, or the moving party must make it up to

them by reimbursment.

9. Fiducary duty

Spouses owe each other the duty of the highest good faith and fair dealing. Because community property is now jointly and equally controlled by both spouses, they have a duty to each other to not take advantage of their confidential relationship. The marraige is seen as a partnership, and the duties applied to partners, found in the corporations code, are applicable. Each spouse, must, without demand, inform the other spouse about the assets and liablitites of the community. Neither spouse may encumber influences arises whenever a transactions unfairly benefits one spouse only. At dissolution, this fiduciary duty continues, and failure to disclose assets or liabilities in a dssolution proceeding can result in a minimum 50% award to the other spouse, with mandated attorney fees, or, if malice is found, the court can awar 100% of the asset to the other spouse, with the option of adding attorney fees on top of that.

======== End of Answer #3 ========
END OF EXAM