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Re: Harry's + Wanda's rights and liabilities:

California (CA) is a community property (CP) state. Any property acquired during marriage is presumptively CP. Any property acquired after or during separation, and any property acquired by will, gift, or inheritance is presumptive SP. The characterization of assets, debts and liabilities are established on the basis of (1) the source (2) any statutory presumptions that may affect the property, and (3) any actions the parties took that may alter the characterization of the particular asset.

Hereinafter, the analysis is according to CA community property law.

1. The condominium:

Source?

H used his salary to buy the condominium in 2004 (after they married in 2003) and took title in his name alone. Both H and W moved into the condo. Since the condo was purchased during marriage and with H's salary, which is presumed to be CP, the condo is presumptively CP unless rebutted.

Actions by the Parties?

Prenuptial Agreement

A prenup agreement is a contract entered into prior to marriage that indicates the parties intend to keep all or some of their property as SP and not CP. The requirements that must be met in order for a prenup to be valid are that it must be voluntarily entered into by the party which it is to be enforced against. A prenup is presumed involuntary **unless**: (1) the party is advised to seek independent legal counsel, and has reasonable time to do so, or waives the right in writing, (2) the party is fully informed in writing and understands all that the agreement entails and affects, (3) the party which the prenup is to be enforced

against must have at least 7 days to read all of its disclosures and prior to signing, and finally (4) the same party must sign the agreement. If all elements are met, then the presumption the agreement was made involuntary is rebutted and thus, enforceable.

Independent Legal Counsel:

Here, Harry (H) and (W) prepared a prenuptial agreement after discussing how they could each own and control their respective salaries after they get married. The prenup stated "after we marry, W's salary is her property and H's salary is his property" and that they do not need legal advice. This shows that the parties were likely advised to seek independent legal counsel and waived their right or need to do so in writing. Thus, this first element is met.

Fully informed in writing + Understands:

Here, both H and W wanted to enter into the prenup agreement as they both wanted to own and control their respective salaries, which shows intent of entering and that they were fully informed and understood the affects of the agreement. The facts do not indicate that the parties were provided will full disclosure in writing, however, since both H and W prepared the document themselves, this element does not need to be established. The intent factor is likely sufficient. Thus, this second element is met.

At least 7 days:

Here, there is no indication that the parties took at least 7 days to read, understand prior to signing the agreement. The facts just indicate that they both signed and dated each document. Thus, for purposes of analysis, we can assume this element has also been met. In addition, the intent factor and that the couple prepared the document themselves, may suggest that this element is not necessary under these circumstances.

Signature:

Here, both H and W signed the document. Thus, this element is met.

In conclusion, the presumption that the agreement was entered into involuntary has been rebutted and is enforceable against both H and W. Thus, their wages will be kept as SP during their marriage, unless, once again altered and can be proven.

Condo: Therefore, the action taken by the parties of entering into a prenup agreement to keep separate their wages as SP means that H's purchase of the condo is also SP because he purchased it with his salary, which has been agreed upon to be SP.

In conclusion, the condo is H's SP.

2. Joint Saving Account:

Actions by the Parties?

Commingling CP funds + SP funds

When CP funds are commingled with SP funds and property, the presumption of the commingled acquired property or commingled funds are presumed to be CP unless it can be proven otherwise that such was not the intent.

Here, the couple opened a joint saving account at the page in 2005, where they each deposited \$5,000 from their salaries (SP) into the account. The commingling of the SP funds into a joint CP savings account changes the salary characterization from SP to CP funds. The action of opening a joint saving account shows that the couple intended to make the \$5,000 of SP each month into CP.

Thus, the money in the joint savings account is now CP, despite the prenup

agreement.

In conclusion, at dissolution, the couple will each receive 1/2 of the CP funds.

3. The rental property:

Source? / Actions taken?

Tracing Commingled Funds

Tracing can be used to trace back to how much SP funds were commingled with CP funds in order to acquire a particular asset. If such can be done, then the SP or CP may be reimbursed if applicable.

Here, W used money from their joint account, which is now CP, to buy a rental property. This shows that the purchase of the rental property is also CP by method of tracing to its source of funds used to purchase the property. Even though W used part of her wages, which are agreed to be SP, the joint savings made both parties' wages into CP.

Thus, the rental property is also now CP. At dissolution, both parties will have 1/2 interest in the rental property.

Title

Title taken in one's own name does not control the characterization of the asset. The sources must be traced or proven by intent or a writing showing such intent.

Here, W took title in her own name, which will not control its characterization to be SP. Since the rental was traceable to the joint saving account, which is CP, the rental property is also CP despite that fact that W took title in her name

alone.

Thus, title does not change the rental property's character as a CP asset.

In conclusion, both H and W have a 1/2 CP interest in the rental property.

4. The hospital bill:

Presumptions?

Economic Community Duration

The marital economic community ends when a couple permanently separates and intends for the marriage to be over. At this point on, any property acquired or liabilities incurred are presumptively SP.

Here, H and W permanently separated in 2016 when she moved out of the condo, which shows her intent for the marriage to be over. At this time, W incurred a medical bill of \$50K due to a required emergency surgery, which is after the economic community had ended.

Thus, the medical bill is presumptively a SP liability.

Medicial Necessity / Undue Hardship = CP Funds

Necessities of one spouse paid by CP funds are not required to be reimbursed at dissolution. However, the court may find that SP funds when available should be used first; then the party may look to CP funds available.

Here, W will be required to pay this hospital bill to the extent that she is capable of doing so with her SP funds, as she should have from her salary over the years. However, since she likely can not work during her recovery time after the

surgery, she will be allowed to use half of the CP funds that she receives at dissolution, which H files for soon after in 2016. The court will find that the joint savings account by this time has approximately \$110,000 in total saved up over the last 11 years (\$55K deposited by each party, every year starting in 2006). W may use half of the \$110K to pay for the medical bill, which is \$55K and thus, covers the entire medical bill.

Moreover, although the (up to)\$50K of CP funds used to pay for her medical bill will be deducted from her CP total when distribution occurs at the final dissolution, she will not be required to reimburse these funds to the CP account even though it was used for a SP liability, which was incurred during separation. The court will find that the surgery to be a necessity as it was an emergency and required. As such, an exception to the reimbursement rule will apply.

In addition, the court will consider fairness factors at dissolution for one spouse who is unable to earn a livelihood for a reasonable and legitimate reason. The CP rules do not intend to harm one spouse over the other, but rather provide a fair division of properties at dissolution and death.

Therefore, the hospital bill will be SP paid by both W's SP and her CP 1/2 of her distribution, with no need to reimburse the CP.

In conclusion, the hospital bill is SP liability first, then CP.

Question #2 Final Word Count = 1514