

ID: CALBAR_7-15_Q4-6) July 2015 California Bar Examination

4)

===== Start of Answer #4 (1352 words) =====

COMMUNITY PROPERTY

California is a Community Property State. All property acquired during marriage is presumed Community Property ("CP"). All property acquired before marriage or after divorce is presumed Separate Property ("SP). Property acquired by gift, devise, bequest or descent is presumed SP. A spouse's SP before the marriage will remain that spouse's SP after divorce.

To assess the status of a property courts will trace to the source of the funds used to acquire the asset.

On divorce, all CP will be shared equally in kind, unless there are special rules diverting from the equal division requirements, or the parties agree in writing, or by oral stipulation in open court.

Here, H and W married in California and assumingly lived there, therefore the California Community Property Laws will apply.

END OF MARITAL ECONOMIC COMMUNITY

The marital economic community begins on marriage and ends on permanent separation of the spouses. There is permanent physical separation when there is actual physical separation and intention not to resume the marriage. One spouse's unilateral intent is sufficient as long as it is communicated to the other spouse. Here, H and W permanent separated and H moved away in 2013. However W filed for dissolution in 2015. For purposes of assessing the spouse's CP and SP, the marriage would have ended in 2013, when there was actual physical separation and intention not to resume the marriage. H moving away was physical separation, and there is no evidence that either party acted or intended for the marriage to continue.

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Therefore we can look at W and H's respective rights to CP ending in 2013.

THE NECKLACE

The issue is whether the necklace Henry purchased with his inheritance money will be a gift to W.

SEPERATE PROPERTY

All property acquired during marriage is presumed CP; unless it is aquired by gift, bequest, devise or decent; is the rent, issue and profits of a spouse's SP; or is property aquired in exchange for SP. A transfer from one spouse SP to another spouse will be presumed to be a gift, absent an agreement evidencing otherwise. Here, H inherited \$100,000. Even though he acquired it during marriage it was a bequest and therefore will be presumed his SP. He later used \$25,000 of his \$100,000 SP inheritance to buy a necklace which he gave to W as a holiday present. Even though the necklace was aquired by W during the marriage, this will be presumed to be a gift of his SP to W.

TRANSMUTATION

Spouses may change the status of property from CP to SP, SP to CP, or one spouse's SP to another spouse's SP. These changes are called transmutations. Neither spouse may make a gift without the consent of the other spouse. For transmutations to be valid, there must be a writing, explicitly stating the change in ownership, and signed by the spouse whose interest are adverse. There is an exception to the writing requirment, a spouse may make a gift of personal property to the other spouse, if it is used solely by that spouse and it is not valuable, taking into consideration the financial circumstances of the marriage.

Here, H will argue that his gift of the necklace to W was not a valid gift, since there was no writing explicitly stating the change in status from his SP to W's SP,

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signed by him. And further that this was not a gift within the exception, since although it was personal property, a necklace, used solely by W, it was very valuable, given that their financial circumstances would not have afforded the exchange as a gift; neither had saved any money before the marriage, in 2008. However, this argument will likely fail since H used his SP property to make the purchase, and there is no agreement or evidence between H and W suggesting H did not intend the necklace to be a gift.

Therefore the necklace will likely be W's SP, and no share of its value given to H.

SETTLEMENT PROCEEDS

The issue is whether the car accident settlement proceeds are W's separate property

As mentioned, all property acquired during marriage is presumed CP. Personal injury settlements acquired by one spouse will be CP if the claim arose during the marriage. For tort claims it is when the cause of action arose, not when the settlement is made. At divorce, personal injury settlements will be the injured spouse's SP unless courts assess that justice will require otherwise. Here, W was injured in a car accident in 2012 and obtained the \$30,000 in settlement of her claim against the person responsible in 2014. W's cause of action thus arose in 2012, when the accident occurred, and at that time the spouses were still married, and thus the settlement proceeds was CP. However once they physically separated the settlement proceeds would become the SP of W. H may argue that it would be unfair if he does not share in the proceeds, however there are no facts to suggest that there would be injustice to H. Thus the \$30,000 settlement proceeds will likely be W's SP.

Therefore, W will retain all of the \$30,000 car accident settlement proceeds.

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STOCK OPTION PROFITS

The issue is whether W's stock option profits of \$80,000 awarded to her for her work at Company was community property.

A spouse's earning from labor earned during marriage are CP. At divorce the earnings will remain CP. However future earnings or stock options of a spouse to be earned at a later date after the divorce will be shared pro rata. The courts will apply the time rule, and proration calculation, by assessing CP portion as the number of years married divided by number of years worked as a fraction of the total profit earned, and the remainder will be SP.

Here, Wendy was granted stock options from Company in 2012, she exercised her stock options and earned a profit of \$80,000 in 2014. Here stock options were her earnings from her labor during the marriage therefore they are CP. However since the marriage economy ended in 2013 (as explained above), from 2013 to 2014 these earnings would be proportionately W's SP. Therefore to calculate the proration, W and H were married for 5 years before permanent separation, and W had worked 6 years till the time she exercised her option. Therefore CP will get 5/6 of \$80,000 and W's SP will get 1/6 of \$80,000. At divorce, the 5/6 of \$80,000 will be divided equally between W and H.

Therefore W and H will share proportionally in the \$80,000 stock options profit.

CHILD SUPPORT PAYMENTS

The issue is whether H will be required to reimburse the community for \$1000 monthly payments made for child support obligation since 2008.

Debts and liabilities of a spouse existing prior to the marriage will become liabilities of CP during marriage. Child support payments made by a spouse for a child from a prior marriage or relationship will be the debt of the CP. At divorce, if payments were made with CP, the community may be reimbursed, to the extent

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that SP was available at the time of the payments. Here, H made monthly child support obligations of \$1,000. The facts suggest that H did not save any money before the marriage, and only SP property he had was the \$100,000 inheritance money obtained in 2011. Thus since he did not have any SP from 2008 to 2011 to pay for the child support payments the community will not be reimbursed. However from 2011 onwards he had the inheritance money. However he used it all, for necklace and remaining \$75,000 to buy a municipal bond that paid him \$300 per month. The municipal bond and its profits would be H's SP, as explained above (profits and issue of SP property will be presumed SP). Thus H had \$300 per month SP available to pay his \$1000 child support obligations. This would be 2 years of \$300 per month, from 2011 to 2013, when he had SP property available.

Therefore H will have to reimburse the community for \$7200.

Question #1 Final Word Count = 1352

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