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===== Start of Answer 5 (1459 words) =====

What are Harry's (H) and Wanda's (W) rights and liabilities?

Community Property

California is a community property state. All property acquired during marriage is presumed to be community property. There is also separate property. Separate property is property obtained by gift, bequest, or devise. Married couples can also change the status of the community property during the marriage by transmutations. Even if couples were not married in California, upon divorce in California, the property acquired out of state will be quasi-community property and be treated as regular community property. Here H and W married and divorced in California. therefore the rules of community property will apply.

Prenuptial Agreement

Prior to marriage, couples can sign prenuptial agreements dictating their separate property. In order for an agreement to be valid, it must be in writing, voluntary, and each party must be represented by counsel. Prior to 1985 an agreement could be oral, but after 1985 it must be in writing. Here, H and W attempted to create a prenuptial agreement. They prepared a document in which they stated, "After we marry, Wanda's salary is her property and Harry's salary is his property." At the same time, they prepared a separate document in which they stated, "We agree we do not need legal advice." They signed and dated each document before they married.

Writing

The agreement between H and W was in writing. Since the couple were married in 2003, they were required to have an agreement in writing. Thus, the agreement satisfies the writing requirement.

Voluntary

Pre-marriage agreements must be voluntary. One party cannot coerce the other party into signing an agreement. Furthermore the agreement must not be one sided. Meaning one party cannot force the other party to assent to an agreement with grossly unfair terms. Here, the terms of the agreement are quite short. Although the terms of the agreement are short, they are not coercive or grossly favor on party over the other. The facts do not indicate that this agreement was signed under duress or is a result of undue influence. Thus, the agreement is voluntary.

Counsel

Each party must speak with counsel prior to entering into a pre-marital agreement in order for it to be valid under California Law. Here, H and W both signed that they do not need legal counsel. Although it was probably signed in good faith, it does not waive the counsel requirement of a prenuptial agreement. Generally the parties must seek separate counsel, but in some instances, they

are allowed to speak with the same attorney. However, neither party spoke with any counsel prior to entering into this agreement.

Thus, the agreement is invalid.

Cohabiting non-married couples

In CA, contract laws govern non-married couples that are cohabiting. CA does not recognize common law marriage. This means, if the couple had a joint banking account or owned a house together prior to marriage, the court will use contract law to determine how to split the property upon dissolution after the couple eventually marries (if they ever do).

Dividing the CP

CP ends when one party moves out of the home with the intent to never come back. Upon divorce, community property will be distributed EQUALLY between the married couple. This does not necessarily mean forcing the sale of a house and dividing the proceeds. As long as the property divided is equal, it is fine. Meaning one party could obtain a house worth 100k and the other party could obtain a business worth 100k. Furthermore, a party is only able to convey via a will, their half of the community property. Generally the other spouse is entitled to the other half of the community property when their spouse dies. However, if the spouse is accounted for in another area of the will, then they will have to choose whether to take what they are willed or their entitled half of the community property of the other spouse.

1. The Condominium

Salaries and wages earned during marriage is community property. Here, H used his salary to buy a condominium and took title in his name alone. Because H purchased the condo with his salary during marriage. He used CP funds to purchase the condo and thus it is CP. The facts do not indicate that H used a certain amount of SP funds as a down payment for the property. If he did use SP for a down payment, he would likely be able to recover the amount of money he used for the down payment as long as it was separate property. Thus, the condo is community property and must be split equally between H and W.

H will argue that because he purchased the condo with his earnings which are deemed SP by the agreement, it is his SP and not CP. However, the agreement is invalid, so it is CP because it was purchased with his salary during the marriage. H will also argue that because title is in his name alone, that it is his SP. However, the facts indicate that H and W both lived in the condo and it was their marital home. Furthermore, having his name as the only one on the title is irrelevant because there are no facts to indicate that the parties intended to create a transmutation. If for instance, H inherited the money used to purchase the condo and used only his inheritance money to do any substantial repairs, then the court would probably agree that this is his SP. However, it was purchased with CP funds and the marital home. Thus, the Condo is Community Property.

2. The joint savings account

Joint savings accounts are presumed to be CP unless the money is traceable SP. For instance, if W had stocks as her SP and placed the income the stocks earned into a joint account with H and those funds were traceable, then it would be considered SP. However, the general notion is that salaries are community property and placing them into a joint savings account with a partners salary earnings makes the joint account CP.

Here, H and W did just that. They both placed 5k yearly from their salaries into an account at their local bank. They opened the account in 2005 which is after marriage. The salaries are CP and placing them into a joint account is just another factor which adds to the notion that the funds are CP. Upon dissolution the joint account should be spit equally.

H and W will both argue that per their agreement, the salaries they earned are SP. Again, the agreement is invalid. However, even if the agreement was valid, placing their SP salaries into a joint account changes the funds into CP because both of their names appear on the account and they have equal access to it.

3. The rental property

The purchase of a rental property during the marriage is generally CP. It is assumed that the couple also split the revenue.

Fiduciary Duty

A spouse owes the other spouse a fiduciary duty. This means that each spouse has a fiduciary duty to act as a reasonable partner when spending funds from the community property. This means that the non-breaching spouse is generally not liable for really bad investment decisions made by their spouse. For example, if H had a really bad gambling problem and spent 10k from the savings on gambling, he would owe that money to W because the funds were not used to benefit the community.

Here, W bought a rental property in 2015 without the consent of H. This is a breach of W's duty to H because she bought it with CP funds without his knowledge. Furthermore, she probably received revenue from the property which she hid from H for a year. Because W breached her fiduciary duty when she purchased the rental property she will not be unjustly enriched by being allowed to keep it. The rental property will be considered CP and the proceeds from its sale will be split between H and W.

4. Hospital Bill

Medical and necessity expenses that arise during the marriage are considered CP. Here, in 2016, H and W permanently sperated and W moved out of the condo. This means that from this point forward, all income earned in SP. However, prior to the filing of divorce by H, W required emergency surgery for a medical condition resulting in a hospital bill of 50k. The facts do not indicate that this medical condition arose while they were married. Regardless, this hospital bill is likely to be CP because it was so close to their separation.

Debts are distributed just as CP, equally. Thus, since the hospital bill is CP, each spouse will be liable for 25k.

Question #2 Final Word Count = 1459

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