

QUESTION 5

In 2003, while planning their wedding, Harry and Wanda, a California couple, spent weeks discussing how they could each own and control their respective salaries. Sometime before their wedding, 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. They subsequently married.

In 2004, Harry used his salary to buy a condominium and took title in his name alone. Harry and Wanda moved into the condominium.

In 2005, Harry and Wanda opened a joint savings account at their local bank. Each year thereafter, they each deposited \$5,000 from their salaries into the account.

In 2015, Harry discovered that Wanda used money from their joint account to buy rental property and take title in her name alone.

In 2016, Harry and Wanda permanently separated and Wanda moved out of the condominium. Wanda thereafter required emergency surgery for a medical condition, resulting in a hospital bill of \$50,000. Harry later filed a petition for dissolution of marriage.

What are Harry's and Wanda's rights and liabilities, if any, regarding:

1. The condominium? Discuss.
2. The joint savings account? Discuss.
3. The rental property? Discuss.
4. The hospital bill? Discuss.

Answer according to California law.

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Prenuptial Agreement

Harry and Wanda marry in 2003, so the 1991 Bonds ruling regarding informed consent to prenuptial agreements applies. They jointly prepare a document agreeing that each spouse's salary during the marriage will remain separate property. They prepare a separate document stating "we do not need legal advice." Although neither party is required to consult a lawyer, this situation seems to violate the requirement of providing the other party seven days of informed notice prior to signing the prenup. Moreover, the fact that the agreement is presented and signed not long before the wedding suggests undue influence in entering into the agreement.

While H and W are not currently contesting the agreement's validity, the dispute will inevitably arise when they begin tracing the sources of property to overcome the community presumption. Strictly speaking, the prenup is not enforceable due to the lack of 7-day notice.

Condominium

Harry

Harry took title to the condo in his name alone, and used his salary to purchase it. He will try to argue that this means the condo is his separate property, defeating the community property presumption. The court's application of Van Kamp accounting and Perreira tracing methods are contingent on other findings -- the court will either honor the prenup and find the condo to have derived from separate funds, or invalidate the prenup in which case Harry's post-wedding salary constitutes community property. Because the condo was purchased a year after the wedding, Harry may be able to prove that his separate funds from before the marriage were used to buy the condo. Indeed, Harry did not open a joint savings account with Wanda until a year after the condo purchase,

demonstrating he was using a personal account at the time of the purchase. But even if Harry succeeds in showing the condo was purchased with separate funds, the case for the condo as his separate property is not entirely in his favor.

Wanda

Wanda will want to argue that the prenup was invalid in order to reinforce the presumption that Harry's post-wedding salary constituted community property. Even still, Harry might be able to show the condo derived from separate funds he brought into the marriage. Although Harry took title to the condo is only his name, both he and Wanda began cohabitating in the condo that very year. They seem to have continued doing so for over a decade. Wanda can argue that the circumstances demonstrate Harry did not intend the condo as separate property. The 10+ years of cohabitation in the condo without Harry's collection of rent or other means of distinguishing the condo as separate property will likely work in Wanda's favor for the designation of the condo as community property.

Joint Savings Account

Property acquired by the couple during the course of the marriage enjoys the presumption of being community property. Whether or not the prenuptial agreement is enforced, the joint savings account will be determined to be community property. Either party might try to argue that the prenup allows for the court to apply Van Kamp accounting/Perreira tracing to determine their entitlements from the joint savings account, but the circumstances also do not support this argument. Both parties deposited the same amount of money at the same intervals in the account.

Even if one party argues that their disproportionately high earnings entitles them to more of the account, this will not be entertained by a court, as disparate earnings is only taken into consideration for child support payments.

Rental Property

To overcome the presumption of community property, Wanda will have to show that the rental property was taken and treated as separate property. Wanda will argue that she took title of the rental property in her name alone, and the fact that Harry took the condo title in his name alone demonstrates that each party intended to keep these respective properties separate. Unlike the condo, however, Harry never lived in the rental property, nor did Wanda discuss it with him.

But under *Van Kamp-Perreira*, the rental property is clearly traceable to community funds and Wanda will not likely be able to convince the court that it is separate property. Up until the dissolution petition, Wanda may have lived in the rental property for about a year, and try to use this to support her claim of separate property. But this only occurs for the duration of around a year and begins only after Harry discovers the rental property, so the court is unlikely to grant such a claim.

Hospital Bill

Harry

Harry will likely emphasize his permanent separation with Wanda prior to her incurring the \$50K hospital bill in order to have it treated as separate debt. Harry might try to demonstrate that Wanda purchased a faulty rental property with community funds against Harry's wishes, and that the faulty rental property is to blame for Wanda's medical woes. Ultimately, he is likely to prevail on this issue by virtue of his prior, permanent separation from Wanda.

Wanda

In order to support a community property finding for the hospital bill Wanda can argue that the medical condition arose before the separation in 2016, or that the

separation was never meant to be permanent. If the rental property is found to be community property, Wanda can argue that the medical condition was a result conditions in the jointly owned rental property. Wanda may also try to show that the medical condition was a result of Harry's actions and/or her cohabitation with Harry. Ultimately, the permanent separation tends to establish that the hospital bill was separate, rather than community property.

Question #2 Final Word Count = 930