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Preliminary Issues:

California is a community property state (CP). All property acquired during the course of a valid marriage is community property. All property acquired before or after the marriage, or, acquired through inheritance, gift, or devise is presumed separate property (SP). Property acquired outside of the state of CA in a non-community property state is Quasi Community Property (QCP).

Marital Community

The community begins when there is a valid marriage and is terminated when there is a physical separation with no intent to resume marital relations.

Here, Wilma and Hal married in 2012. Thus, all property, assets, and liabilities acquired after this time will be presumed community property. The marital economic community ended in 2016 when Harry and Wilma permanently separated and when Harry moved out of the townhouse. Due to the separation, any property acquired after 2016 is presumed separate property, though Harry and Wilma would still be liable for necessities until a divorce. Here, Harry filed for divorce in 2018.

1. The Townhouse

Source of Funds used:

Courts will trace back the source of the funds used to determine whether a property is a community or separate property asset. Here, Wilma's salary from her work as an accountant was used to purchase the townhouse.

Pensions:

Whether a pension is deemed community or separate property depends on whether employment occurred before, while, or after the marriage. Pensions that are acquired for work that is done during the existence of the marriage will be community property. Generally, the amount of years worked during the marriage will

be divided by the years worked total. The community will be entitled to the funds for each year the marriage existed.

Here, the funds used to purchase the townhouse were derived from Wilma's pension awards from the work she did as an accountant until 2010. Wilma and Harry married in 2012, 2 years after Wilma had already retired. Thus, Wilma's pension would be separate property for the amount of funds she received in a "lump sum" share for the years she worked before the marriage. However, because only half of the pension was provided for, it is likely that the remaining pension amount that Wilma received in "monthly installments" was for the purposes of replacing wages. Because Wilma continued to receive the monthly installments after she was married, any installments that she did acquire will be deemed community property, unless she can prove otherwise. However, the lump sum was used as a down payment on the town house. Thus, Wilma's separate property was used for this amount. Any funds acquired from the "monthly installments" after the marriage, as well as any funds subsequently to pay off the remaining balance, will be presumed community property.

Thus, the funds used to acquire the townhouse were separate and community property funds. Thus, the community would be entitled to reimbursement for any funds it provided.

Married Women's Special Presumption:

Prior to 1974, any title taken by a married woman alone was presumed separate property. However, this presumption no longer exists. Here, title was taken by Wilma in 2010, before she met Harry. Thus, the presumption would not apply.

Mortgage Funds:

Generally, any mortgage that is acquired before the existence of the marriage is presumed a separate property debt. However, when community funds are used to pay off this debt, the community is entitled to the principal amount it contributed.

Here, Wilma used the lump sum payment she received from her pension to purchase the property. However, once she and Harry married, the couple used the funds that were received from Harry's salary to pay off the remaining balance. Harry

would argue that this is separate property, since it was his salary alone that contributed. However, because the funds used to pay off the mortgage were acquired by Harry during the marriage, the amount of salary Harry received during from 2012 until 2016 will be community property. Because the community made payments for the mortgage, the community will therefore be entitled to reimbursement for the amount used. Generally, this is the principal amount. The amount of the mortgage that was remaining will be divided by the amount of the mortgage paid off by the community.

Title in One Spouse's Name:

Title taken in one spouses name during the existence of the community is nevertheless deemed community property, unless there is an express effort to change the characterization as such.

Here, Harry's salary acquired during the marriage will be presumed community property, since skill, efforts, and other personal traits are deemed community efforts after the existence of the marriage. Though these funds were deposited in an account that was not jointly titled, the funds would nevertheless be community property since they were acquired during the marriage. Furthermore, these funds were used to benefit and provide for the community.

Thus, title alone in Harry's name will not change character of the account change to separate property.

Transmutation:

A transmutation changes the character of the property from community property to separate property, or vice versa. Since 1985, all transmutations are required to be in writing, with a signed declaration by the party that is adversely affected by the transmutation. However, this may be excused if the value of the gift or item in question is not of substantial value.

Here, there was no transmutation that occurred to change the character of the property from separate property to community property. Therefore, the character of the townhouse would remain as such, less any community contributions to increase the value or pay off the mortgage.

Accordingly, the town house is likely Wilma's property, though Harry may seek reimbursement for the community funds used to pay off the mortgage.

2. The Motorboat

Character:

Here, the motorboat was acquired in 2013 while Harry and Wilma were still married. Accordingly, the motorboat will be presumed community property.

Source of Funds:

The funds used to purchase the motorboat were funds from Wilma's account. However, since Wilma exhausted the lump sum payment she acquired from her pension, any funds used to purchase the motorboat that were acquired after the marriage, such as the monthly installments, as well as the salary she acquired from her freelance work, will be community property, despite the fact that they were taken in Wilma's name alone.

Here, the funds to purchase the motorboat were derived from Wilma's work as a freelancer, as well as the remaining monthly pension installments. Furthermore, title was taken in Wilma's name alone, though the motorboat was acquired during the marriage. While title in one spouse's name alone in addition to funds of one spouse alone would imply that only one spouse owns the asset, the community presumption is not defeated on this claim alone. Since the installment payments for Wilma's pension, as well as the salary she obtained from her freelance work were community property funds, the source of funds used would be deemed community property.

Community property funds used to purchase motorboat.

Exhaustion and Direct Tracing:

Wilma will likely claim that she is entitled to the motorboat since she took title in her name alone and further provided the funds for the purchase. To succeed on this claim, Wilma will have to show that community funds existed to purchase the item, and she nevertheless purchased it with her "separate property." However, she

would likely not prevail on this basis, since Harry was still working. Since the funds used from Harry's salary were allocated to pay off the remaining debt of the mortgage, Wilma would not be able to succeed in a claim on exhaustion. Though she could directly trace the funds back to her own separate funds, her claim to the motorboat would still be unlikely to succeed since she could not afford the mortgage payments and therefore paid the household expenses and eventually the purchase of the motorboat.

Transmutation:

Here, there was no transmutation in writing, nor a written declaration from Harry to effectuate the change of community property character into Wilma's separate property. Since the motorboat was likely of substantial value, this would have been necessary.

Thus, the motorboat is community property. Each spouse is therefore entitled to 1/2 of the property.

3. The Personal Injury Settlement Funds

Personal Injury Awards:

Personal injury awards for injuries that occurred during the marriage are presumed community property, regardless of when the settlement is in fact distributed. However, personal injury awards for injuries that occurred before or after the end of the marital economic community are deemed separate property.

Here, Harry was injured in 2014, while Harry and Wilma were still married. Harry acquired the funds in 2017 for \$30,000. Though the economic marital community ended when Wilma and Harry permanently separated in 2016, the settlement funds will be presumed community property since the injury occurred during the marriage.

Because the injury took place during the marriage, the settlement is community property.

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