

4)

1) Townhouse

Separate Property - Townhouse

all property owned prior to marriage

Wilma purchased the townhouse prior to marriage, making the down payment from the lump sum of her pension and taking title and mortgage in her name alone

Therefore, the townhouse is initially Wilma's separate property

Separate Property - Valley Bank Account

defined supra

When Wilma met Harry in 2011 he was working in a store and placed earnings in a Valley Bank account, thus separate property account

Therefore the Valley Bank Account was initially separate property of Harry

Earnings During Marriage

Earnings from labor during the time of marriage are community property funds

After marriage in 2012 Harry continued to work in the store as he did prior to marriage, thus earnings from labor during the time of marriage.

Therefore, Harry's earnings after marriage in 2012 are community property

Comingling

Mixing separate and community property funds will cause a community property presumption of the entire account absent a detailed accounting otherwise.

Harry continued to put the funds from working at the store into the Valley Bank account just as he had prior to marriage, thus a mixing of separate and community funds.

Further, there is no indication in the facts of there being any sort of accounting as to what funds were separate and which were community, this no detailed accounting.

Therefore a comingling has occurred.

Community Property Contribution

When a separate property asset is paid or improved on by community property funds the community is entitled to reimbursement for the contribution.

After Harry and Wilma got married the mortgage payments on the townhouse were paid for from the Valley Bank account, thus community property as discussed supra.

Further, the townhouse was originally Wilma's separate property, discussed supra.

Therefore, there has been a community property contribution to the Townhouse.

Effect of Title

At common law title held by one person alone was determinative of ownership. Modernly title is one factor to consider.

Here title to the townhouse is held in the name of Wilma, thus one person alone. However, as discussed supra there has been a community property contribution to the townhouse by way of Harry's community property earnings being used from a comingled bank account, thus contribution contra title.

Therefore, the townhouse being in Wilma's name alone will not be determinative.

Effect of Mortgage

Who the lender considered when determining loan will effect the disposition of property

Wilma will argue that the mortgage was looked to her alone as the mortgage was taken prior to marriage, thus looked only to Wilma.

However, Harry will counter that during marriage it was his account which paid for the mortgage payments thus receiving a benefit from the community.

Therefore, ownership should be considered in Wilma's name but there is a separate property interest.

Conclusion

The community has an interest in the townhouse that must be divided. While the townhouse was Wilma's separate property be mortgage, down payment, and title, there was a contribution of community property funds to paying the mortgage. Wilma should retain title to the townhouse, and the community should receive a proportional reimbursement of house much of the mortgage was paid off and the value of the townhouse at time of separation in 2016.

2) The Motorboat

Community property presumption

all property acquired during marriage is presumed to be community property

The motorboat was purchased in 2013, a year after marriage.

Therefore, the motorboat is presumed to be community property.

Effect of Title

At common law title held by one person alone was determinative of ownership. Modernly title is one factor to consider.

Wilma took title to the motorboat in her name alone, thus title held by one person alone.

However, Harry and Wilma both sed the motorboat during marriage.

Moreover, the motorboat was paid in part from comingled funds, discussed infra.

Therefore, title will be a factor but appears rebutted.

Earnings During Marriage

Earnings from labor during the time of marriage are community property funds

Wilma worked freelance and deposited her earnings into Mail Street Bank

accounty, thus earnings during marriage.

Therefore, Wilma's earnings while married are community property

Separate Property

Property acquired prior to marriage or from separate property source.

Wilma's Main Steet account was owned before she got marriage, thus acquired prior to marriage.

Further, Wilma's monthly pension payments were placed into her Main Street Bank account, thus from separate property source.

Therefore, the Main Street Bank account originated as separate property

Comingling

Mixing separate and community property funds will cause a community property presumption of the entire account absent a detailed accounting otherwise.

Wilma deposited her earnings she made working freelance during marriage, discussed supra, into Main Street Bank account which she had prior to marriage, thus mixing separate and community property funds.

Additoinally, there is nothing in the facts regarding accounting, thus there is not detained accounting.

Therefore, the Main Street Bank account is a comingling of funds.

Transmutation

Converting of separate property funds to community property with donative intent.

The facts support some of Wilma's separate property funds may have been used in purchaing the motorboard by use of Wilma's bank account and her pension being deposited into the same account.

However, Wilma's community property earnings are also deposited into the same account, discussed supra, thus does not appear to be an intent to remain separate property.

Futher, the motorboat was purchased using funds from the Main Street Bank

account for which both Wilma and Harry used the motorboat after purchase, thus community property.

Finally, Wilma does not appear to have been intending to retain an interest or maintain accounting for reimbursement, thus it is possible to infer donative intent. Wilma may counter that taking title in her name shows a lack of such intent, however there can be multiple reasons for title being taken in one person's name alone.

Therefore there appears to be a transmutation of funds from separate property to community property

Conclusion

Wilma appears to have intended the motorboat to be for the joint use and enjoyment of Harry and Wilma. Her utilizing of a separate account in which she commingled funds further leads to such intent. Therefore, the motorboat should be considered community property

3) Personal Injury Settlement

Nature of Injury

If an injury is personal in nature settlement will be separate.

Here the facts state Harry was injured when Dana negligently struck him with her car. While not clearly stated it appears from these facts that the injury was of a personal nature to Harry, thus personal in nature.

Therefore, the injury was personal

Settlements

Settlement funds relate back to the time of the injury and nature of injury

Here while the settlement was in 2017 and after separation in 2016, the injury occurred in 2014, after Wilma and Harry married in 2012 and before they separated in 2016, thus during the time of marriage.

Moreover, as discussed supra, the injury itself was personal in nature.

Therefore, the settlement is Harry's separate proeprty.

Question #4 Final Word Count = 1158

END OF EXAM