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1. Acme Stock

In order to determine the character of property, the court looks to whether 1) a presumption applies 2) the source of the property and 3) the parties have taken any actions to change the character of property.

Basic Presumption

California is a community property state which means property acquired during marriage is community property and property acquired before marriage, after marriage, or by gift or inheritance is separate property. Here, Harry (H) married Winona (W) in 2015. Shortly afterward, he acquired \$1,000 in Acme stock. Since the stock was acquired during marriage, then it is presumed to be community property.

Source

If a bank account is commingled with community and separate funds, then the parties must trace the source of the property. However, if the funds are commingled and cannot be properly sourced, then the property will be deemed community property. Here, H acquired the stock with funds made up of both premarital savings and earnings he acquired during his marriage to W. Unless H can trace the source of the stock back to a separate property source, such as his premarital savings, it will be deemed community property.

Actions

Jointly-owned property is presumed to be community property. Here, H acquired the stock in his own name. However, this fact alone will not overcome the basic presumption in this case since the stock was acquired with commingled funds during marriage.

Conclusion

Upon divorce, the stock will be deemed as community property.

2. Post-Separation Disability Insurance Payments

Basic Presumption and Source

A spouse's earnings are community property if the earnings are earned during marriage. Here, W used her earnings to acquire disability insurance using. Since a spouse's earnings are community property, the disability insurance payments are presumed to be community property.

Actions

The facts does not illustrate any actions, such as a transmutation agreement, which may have changed the character of the disability insurance payments.

Conclusion

Disability insurance belongs to the community if it was acquired during marriage. However, upon divorce, the court will assign the payments entirely to the disabled spouse. Therefore, the court will award the payments to W, the insured spouse.

3. Investment Account

Basic Presumption

Here, H acquired the investment account while he was still married to W. Since H acquired the investment account during his marriage to W, it is presumed to be community property.

End of the Economic Community

The basic presumption can be overcome by evidence that the property was acquired after the economic community had already ended. The economic community ends when a spouse dies or there is permanent physical separation and at least one spouse intends to end the marriage. Although H and W decided to live separately, they did so while attending counseling in hopes of reconciling their marriage. As such, the economic community was not over at the time H acquired the investment account and the account will be presumed to community property.

Action

The fact that H did not tell W about his investment account does not change the character of the account. Such changes require evidence of a valid, written transmutation agreement between the spouses, which the facts do not illustrate.

Conclusion

Upon divorce, the account will be deemed as community property.

4. Loan

Basic Presumption

Here, H acquired the loan for the sailboat while he was still married to W. Therefore, it will be presumed to be community property.

End of the Economic Community

H acquired the loan after filing for dissolution. Since H and W further concluded that they were not going to reconcile their marriage after attending counseling, the economic community was already done by the time H took out the loan.

Actions

In this case, the facts do not illustrate any action which may have changed the character of the loan.

Conclusion

The loan for the boat is H's separate property.

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END OF EXAM