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California is a Community Property ("CP"), which means that all property acquired during marriage until separation/divorce is presumed CP. Separate Property ("SP") is all property that was acquired before marriage and after separation or property acquired by gift, devise, or bequest. All property is presumed CP unless the presumption can be rebutted with evidence of title, tracing, or transmutation.

Separation begins when one of the spouses indicates or demonstrates through conduct that they no longer intend to be married.

1. The Acme stock

Presumption

Here, the presumption is that the Acme Stock is CP because it was purchased after the wedding, with CP funds.

Thus, the Acme stock would be CP, unless the presumption is rebutted.

Tracing

If tracing of the money leads to SP monies used for purchase, then the asset can be characterized as SP.

Here, the bank account that was used to purchase the \$1,000 of Acme stock was one in which Harry ("H") already had \$10,000 in savings, the \$10,000 is SP. H then deposited his \$3,000 salary check, the salary is characterized as CP because it was after marriage. However, H then paid \$2,000 for rent and another \$2,000 for living expenses, at which point he had exhausted the CP money (\$3,000) in the account and used some of his SP (\$1,000) to cover for the amount needed. By the time H purchased Acme stock there were no more CP funds left, which means that tracing would indicate that the Acme Stock was purchased with SP funds.

Thus, the Acme stock is H's SP.

2. Winona's ("W") post-separation disability insurance payments

Presumption

The presumption on disability insurance payments take the character depending on what funds were used for the purchase.

Here, W purchased the disability insurance with CP funds because it was purchased after the marriage and using her salary, which is CP during marriage. The facts tell us that she later became disabled and was no longer making payments to the fund, but rather was taking in monthly disability insurance payments, and will do so until 65.

Thus, the presumption is that these are CP funds since she used CP funds to purchase the insurance.

On the other hand, W will argue that even though she used CP funds, the monthly funds received are hers to keep. H will argue that at the very least he is entitled to half of the payments made to purchase the insurance policy, since those funds used were CP funds.

Thus, H may be entitled to half of the cost of the policy as a refund for CP used, but W can keep the disability insurance payments.

3. The investment accounts

Presumption

The presumption is that the investment account is CP if it was acquired during marriage.

Here, the investment account was acquired while H and W were still married. H will argue that they were living separately and thus the account is his own SP. W will argue that even though they were not separated because they were going to counseling with the hope of reconciling. H will argue that he had moved out of the house and thus technically separated. However, even though H had moved out the actions H and W were taking in going to therapy in hopes of reconciliation do not indicate that there was an official separation.

Thus, the investment account is presumed CP.

Title

The title of the account may indicate that it is SP, however, title alone is not sufficient when it is evident that the property was titled in their own name.

Here, H opened the investment account in his own name which would indicate that it is his SP, however, even though he titled it so does not conclusively rebut the fact that it was opened during marriage, on the contrary, it evidences that H just wanted to hide this from W. W did not gift this to H and H merely opened it in his name alone because W did not approve of his gambling and would have to tell her what he did to come upon this money.

Thus, the fact that H opened the investment account in his name alone does not rebut the

presumption that it is CP. W is entitled to half.

Breach of Fiduciary Duty

Spouses owe each other the duty to act fairly with one another and not deceive and be honest.

Here, H breached his fiduciary duty when he gambled his earnings knowing that W did not approve of this and he also breached his duty by not telling her about the winnings and the investment account.

Thus, under a breach of fiduciary duty W would also be entitled to half of the investment account.

Separation

On the other hand, if the court deems that H and W were separated at the moment that he moved out, then the account may be considered SP.

4. The loan from the sailboat

Presumption

The presumption is that any property acquired after marriage or separation is SP.

Here, H acquired the loan of the sailboat after H filed for dissolution and a conclusion that they would not reconcile, which means that this was a clear demonstration that they were separated.

Thus, the loan from the sailboat is H's sole responsibility.

Question #2 Final Word Count = 885

END OF EXAM