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California is a community property ("**CP**") state. Any assets and earnings gained during a marriage by the married couple is considered to be their joint assets and earnings. Anything acquired prior to marriage, after a permanent separation, and received as a gift, bequest, or devise is considered to be a separate property ("**SP**") of the one spouse. When determining if a property falls into CP or SP, courts consider many aspects such as the following: (i) what was the source used to purchase the property (SP or CP); (ii) where there any substantial improvements made to the property, if so were they done using SP or CP; and (iii) if it mainly benefitted the spousal community, or if there was an intentional and willing transfer of SP to CP.

Harry and Winona got married in CA in 2015. At the time Harry had a savings account of \$10K, which would be considered his SP since it is before his marriage to Winona. After the wedding he continued to use the same savings account to deposit his salary of \$3K, which is considered a CP since it is his income made during the marriage. He used \$2K for rent and \$2K for living expenses from this account, which are \$1K more than his salary, and used for the benefit of the spousal community as it is to provide shelter, food and whatnot for the couple. From this analysis we can conclude that Harry was using both the CP (salary of \$3K), and his SP (savings account of \$10K) for the remaining \$1K for the benefit of the CP. Depending on the circumstances this can most probably be considered his gift to the CP, but Harry can qualify it to be an SP he was expecting to be returned at some point.

1. At issue here is the Acme stocks that Harry bought after marrying Winona. Although these stocks are only under Harry's name, because they are bought during the marriage, Winona can claim that they are CP. However, considering that Harry was already using \$1K over the CP income (salary of \$3K), the source used to purchase these stocks were most probably Harry's savings of \$10K, which would be **considered his SP** since it was an account opened up and deposited amount was sourced from Harry's prior dealings/salary/job/etc. before his marriage to Winona. Stock options purchased through work would make us look at Marriage of Hug, and Marriage of Nelson calculations and find the fair and just solution for Harry and Winona, however, here it looks like the purchase of the stocks was just a tangible purchase rather than an option through work, which would deem these two theories and calculations irrelevant as to the issue in hand

here.

2. Second issue is Winona's disability insurance. Winona purchased the insurance out of her salary but during the marriage, therefore the source used to purchase the insurance is CP. Her becoming disabled afterwards and receiving the insurance payments *in lieu of a salary*, makes these payments *CP* as well.

3. When Harry started his gambling habit, the couple was living separately, but still counseling with the hope to reconcile, therefore this would not be considered as a permanent separation, since it is not definite and there is still hope on both parties to get back together. It is indicated that Harry was using his earnings to gamble at the casino, and since the couple was not permanently separated at the time, what he was using was a CP. Thus, his earnings resulting from the gamble which was *sourced by the CP* would be *considered CP* as well. He can claim that without his luck and talent in gambling the earnings would not occur and therefore it is his personal time, and skills that made it possible. Here the theories/tests of Prairie and Van Camp would not be applicable as these are used to determine what is CP, and what is SP when one spouse brings in a company that was founded with SP into the marriage union, and grows it during the time of marriage, where community has some expectation from that income/growth.

4. Finally, at issue is the loan Harry took out to purchase a sailboat after the filing of the dissolution. Once the dissolution is filed, the couple is permanently separated, the marriage is dissolved, therefore the SP comes back into play. The loan Harry took out should be considered as an *SP, supported by SP*. While Harry gets to use the loan himself as his separate funds, he is also the only one liable to pay it back, and Winona not being in the marriage community anymore is not personally, or through CP's responsible to pay for the loan that has been taken out after the dissolution.

Question #2 Final Word Count = 799

END OF EXAM