

2)

Community property generally

California is a community property state. Where there is a valid marriage between two people, any property acquired during the marriage is presumed to be the property of the community (the two married partners jointly). A valid marriage is one that conforms with the proper formalities which is usually via a license with the state. Property that is acquired prior to marriage is that spouse's separate property. Property obtained during the marriage by one spouse by gift, devise or bequest is that spouse's separate property. Property bought with separate property is separate property.

1. Acme stock

The issue is what are Harry and Winona's rights and liabilities regarding the Acme stock.

See above definitions. Also, where there is a question of the characterization of property such as in instances of commingling in accounts tracing may be required to establish whether property is community or separate in nature. Salaries earned during the marriage are considered community property.

Here, we are told that Harry had a premarital savings of \$10,000. This would be characterized as separate property. After the marriage, Harry deposits his \$3,000 salary check into his personal savings account. The \$3,000 is community property. Thus, at this point, there is \$10,000 separate property and \$3,000 community property in Harry's personal savings account. Harry pays \$2,000 in rent and \$2,000 in living expenses from his account. This exhausts the \$3,000 that was community property and he is now drawing from his own premarital separate property when he purchases the \$1,000 of stock. Because he is purchasing the stock with separate property, the stock is separate property. Any additional value/profit from the stock is Harry's separate property.

As a result, the Acme stock is Harry's separate property.

2. Winona's post-separation disability insurance payments

The issue is what are Harry and Winona's rights and liabilities regarding the post-separation disability insurance payments.

Disability insurance payments paid after separation are the property of the disabled spouse. This is true despite the fact that the disability insurance was bought with a community property salary.

Here we are told that Winona purchased disability insurance out of her salary. She later became disabled and could no longer work. This entitled her to monthly disability payments. While the payments that

---

---

occurred during marriage would likely be community property, the payments that she receives after separation are her own separate property.

Because Winona received her insurance payments after separation, the payments are her own separate property.

### 3. The investment account

The issue is what are Harry and Winona's rights and liabilities regarding the investment account.

Community property ceases to be communal in nature when spouses decide to end their marriage or evince an intent to do so. Many times this is seen with the decision to live separate and apart but there must be some desire or action that signals that the relationship is over and there is no wish to revive it.

Here, we are told that Harry and Winona decided to live separately but that they decided to go to counseling with the hopes of reconciling. This desire to potentially remain together as partners may be enough evidence to state that the community was not in fact over but still in effect when Harry opened the investment account with winnings from the casino. If this is the case, then the money that Harry put in the investment account is actually community property because despite their living separate and apart they did not intend to be permanently separated at that time.

Because Harry and Winona had hopes of reconciling even after they lived separate and apart it is likely that the investment account could be considered community property.

### 4. The loan for the sailboat

The issue is what are Harry and Winona's rights and liabilities regarding the loan for the sailboat.

See above rules. Property acquired or debts incurred after separation are separate property.

Here, we are told that after a period of counseling Harry and Winona concluded that they would not reconcile and Harry filed for a dissolution. At this point it is clear that there is no intent by the two parties to remain married. As a result, any property acquired by either spouse or any debts incurred are separate property and obligations. This means that Harry's loan is separate property and Winona is under no obligation to pay for the sailboat.

Because Harry took out the loan after he filed for dissolution, the loan is his separate obligation and Winona will not be liable for the loan.

Question #2 Final Word Count = 763

**END OF EXAM**