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California is a community property state. All property acquired during the marriage is presumptively CP, regardless of the name on the title. Separate property includes property acquired before marriage, after marriage, or by gift, bequest, or devise, as well as profits or income derived from the SP. Courts will use the source of funding and tracing to determine the character of property.

### **What are Henry and Wendy's respective rights in the house?**

#### **Inheritance**

SP includes property acquired by inheritance, gift, or devise, whether received before, or during marriage.

Here, W's aunt owned the house free and clear of any mortgage, and gave it to W. This shows that the house was an *inter vivos* gift to W from her aunt because W's aunt conveyed title to W while she (aunt) was still living. Therefore, the house was W's SP upon receiving it as a gift.

#### **Transmutation**

Transmutation is an agreement to change the character of property between spouses. Since 1987, all such agreements must be in writing, express an intent to change the character, and be signed by the spouse who is adversely affected by the change in character.

Here, W added H to the title document for the house. This shows an intent to change the character of the house from W's SP to CP because the title was in W's name alone after the gift from her aunt, and she added H's name to the document, which was presumably the deed to the house. If the title document was the deed, the in writing element would be met because the deed is a physical document conveying title. If the deed was signed by W, the element requiring the adversely affected spouse would be met because W will have signed the new deed. If the document W executed to add H's name included language that expressed her intent to change the character of the house from her SP to CP, the intent to change character element would also be met. If it does not, then the house would remain W's SP as all elements of the transmutation must be present. There are no facts to indicate what exactly was in the document other than adding H's name. If W simply executed a quitclaim deed that added H's name as joint tenant, W may argue that she did not intend to change the character, but rather intended to ensure the house would pass to H upon her untimely death.

On balance, it is likely the document W executed to add H's name likely contained the required elements of a transmutation.

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### **Primary Residence**

Where a couple claim a home as the primary residence during the marriage, the home will generally be deemed CP.

Here, W and H lived in the home after W received it. This shows the house was their primary residence because they both lived in it. Some years after they both began living in it, W began singing in a band and traveling with them. The band was profitable and W sent money to H and stayed with him at the house periodically. This shows that even though W only stayed in the home periodically after that, her community earnings from singing went toward the community expenses for the house, and she did still stay in it periodically. But it also shows that H continued to use it as his sole residence.

Thus, the house will be deemed CP.

### **What are H and W's respective rights in the bank loan?**

#### **Fiduciary Duty**

Marriage is a confidential relationship and each spouse owes the other the highest duty of loyalty and good faith. This means each may not take an unfair advantage of the other financially.

Here, H decided to purchase an auto garage and applied for a loan from a bank for the purchase, but because W was on the road, he forged her name on the application without her knowledge. This shows H may have breached his duty of loyalty to W because even though it may have been a matter of convenience, forging her name was adverse to W and encumbered her interest in the community home.

Thus, H likely breached his fiduciary duty to W because he forged her signature on the loan documents.

#### **Right to Manage and Administer CP**

Each spouse has the right to manage and dispose of CP freely without the other's permission. However, an exception exists to transfers of community real property. Such transfers generally require the signature of both spouses or the adversely affected spouse can void the conveyance.

Here, H may claim he had a right to collateralize the house without W's permission under this general rule. However, he did not convey the house, but simply encumbered it, and more importantly, he forged W's signature, which the general rule does not permit.

Thus, H breached his fiduciary duty to W by forging her signature, and even though the loan was incurred during the marriage, the court may deem it his separate obligation as a result. The bank will be able to reach the house as collateral if H gave them a mortgage.

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## **What are H and W's respective rights and liabilities in the auto repair garage?**

### **Source**

Where a business is acquired using CP, the business value will be deemed CP.

Here, H serviced the loan from earnings generated during the marriage, but the loan was based on the house as collateral. Because the house was CP, the garage will likely be deemed CP as well.

### **Pereira**

Where one spouse is an owner of a business, the court will use a balancing test to determine the character. When the growth in the business is attributable to the owner spouse's skill and labor, the Pereira test will be used and under this, the owning spouse will be entitled to the original investment value, plus a 10% return on that amount. The remaining balance will be CP.

### **Van Camp**

Where the growth is attributable to the nature and type of business, the community will be entitled to a reasonable salary and the remaining value will be the SP of the owning spouse.

Here, there are no facts to indicate whether the garage grew or decreased in value, or whether any growth was attributable to H's skills and effort. The garage will therefore be deemed CP.

The character of the garage will likely be deemed CP.

## **What are H and W's respective rights in W's investments?**

### **End of the Economic Community**

The end of the economic community occurs when one spouse dies or upon permanent separation. Permanent separation can be determined expressly or by conduct.

Here, W told H the marriage was over. This shows her intent was for the economic community to end at that point. She stopped returning home and sending money. This further supports that her conduct showed intent for permanent separation. She started making independent investments after that. This shows the investments were made with SP income because the economic community had ended.

Thus, the economic community ended when W told H the marriage was over even though W only filed for divorce afterward, and the investment account will be her SP.

### **Distribution Summary**

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The house will be CP, but the bank may foreclose on it if H gave them mortgage. The bank loan will be H's separate liability after the end of the economic community. The garage will be CP, but H will receive the ownership. He will also be responsible for the loan as his separate obligation. Wendy's investments will be deemed her SP.

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**END OF EXAM**