

Scott Pearce's
Master Essay Method

Community Property

COMMUNITY PROPERTY APPROACH

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Community Property

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Herb and Wendy, residents of California, married in 2001. Herb worked as an accountant. Wendy was an avid coin collector who hoped someday to turn her hobby into a profitable business. Prior to marriage, they had entered into a prenuptial agreement providing that each spouse's wages would be his or her separate property.

On Wendy's birthday in 2002, Herb gave Wendy a drawing by a famous artist. Herb paid for the drawing with \$15,000 that his parents had given him. Wendy hung the drawing in their bedroom.

In 2003, Wendy opened CoinCo, a shop specializing in rare coins. She capitalized the business with a \$10,000 inheritance that she had received when her grandfather died. Wendy worked at the shop alone every day. Customers appreciated her enthusiasm about coin collecting and her ability to obtain special coins at reasonable prices. Over time, Wendy learned that she had acquired a number of highly valuable coins. There was also a renewed interest in coin collecting due to the discovery of several boxes of old coins found buried in the area.

Although Wendy's services at the shop were worth \$40,000 per year, she took an annual salary of \$25,000. She also paid \$5,000 in household expenses from the business earnings each year.

In 2008, Herb and Wendy separated, and Wendy filed for dissolution of marriage. At that time, CoinCo was worth \$150,000, and the drawing was worth \$30,000.

In 2009, before trial of the dissolution proceeding, Wendy was disabled by a serious illness and had to be hospitalized. She closed CoinCo while she was in the hospital, and the value of the business fell to \$100,000 by the time of trial. Her hospital bill was not covered by health insurance.

In the dissolution proceeding, Wendy claims that the prenuptial agreement is valid and Herb claims that it is not.

What are Herb's and Wendy's respective rights and liabilities in:

1. The drawing? Discuss.
2. CoinCo? Discuss.
3. The hospital bill? Discuss.

Community Property – Outline of Issues

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Herb and Wendy's Marriage and Prenuptial Agreement

- I. The Drawing
 - A. Source: Herb's separate property
 - B. Actions: Gift to Wendy
 - C. Conclusion: Community Property but debatable

- II. Coinco
 - A. Source: Wendy's separate property
 - B. Actions
 - 1. Wendy's wages paid and her labor's actual value
 - 2. The Prenuptial Agreement
 - 3. Wendy paid \$5K a year in household expenses
 - 4. The value of Coinco fell after the separation
 - C. Conclusion: Community has an interest in Coinco

- III. The Hospital Bill
 - A. Source: Post-separation, most bills are Wendy's separate obligation
 - B. Actions:
 - C. Conclusion: 100% Wendy's obligation

Community Property – Answer
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Herb and Wendy's Marriage and Prenuptial Agreement

Herb and Wendy were California residents before and during their marriage. Accordingly, their rights and liabilities will be determined according to California community property law. Prior to marriage, Herb and Wendy entered into a prenuptial agreement providing that each spouse's wages were to be his or her separate property.

California enforces valid prenuptial agreements. To be valid, a prenuptial agreement must be in writing, or it must be fully executed. Consideration is not required. Technically, both parties should have independent counsel and a week to review the agreement if the agreement limits spousal support. We don't know whether or not these technicalities have been satisfied, but all we do know suggests that Herb freely entered into the agreement and likely has benefited from it. Herb's income as an accountant likely was larger than Wendy's income, though the facts are silent on this point.

In the dissolution proceeding, Wendy claims that the prenuptial agreement is valid and Herb claims it is not. No facts are present to suggest that Herb was the victim of fraud or undue influence. It is apparent that Herb's age and mental capacity were sufficient for him to enter into a contract. Furthermore, as a professional accountant, Herb had to understand the financial meaning of the prenuptial agreement he signed, probably at least as well or better than Wendy. There's nothing unconscionable about this agreement, nor could it be said to somehow encourage divorce.

The court will agree with Wendy that the prenuptial agreement is valid.

I. The Drawing

A. Source: Herb's separate property

Herb bought a drawing by a famous artist with \$15,000 that his parents had given him. This money was Herb's separate property, since it was a gift to him, apart from Wendy.

B. Actions

Herb gave the drawing to Wendy for her birthday in 2002, the year after they were married. Usually, when one spouse gives tangible personal property to the other spouse, that property is transmuted into the separate property of the recipient. Since 1985, California community property law requires a writing in order to effect a transmutation of property with a significant value. It is possible that a birthday card could satisfy this writing requirement, but the facts are silent on the point.

In this case it is likely that Herb did not intend for the drawing to be Wendy's separate property, but rather that it become a community property asset. The court will compare the value of the drawing to the net worth of the marital estate. The greater the relative value of the drawing the more likely it will be judged community property.

Had Wendy hung the drawing at her store, that would have suggested she considered it to be her separate property, but instead Wendy hung the drawing in their bedroom. This fact supports the idea that Wendy and Herb intended to share this valuable asset.

C. Conclusion

It is likely the court will judge the drawing to be community property.

II. Coinco

A. Source: Wendy's separate property

Wendy opened Coinco in 2003 with a \$10,000 inheritance she got when her grandfather died. California community property law considers inheritance proceeds to be the separate property of the beneficiary.

Ordinarily, a business started by a spouse during marriage is deemed to be a community asset. In this case, although Herb is likely to lose his argument about the prenuptial agreement, it is probable that Coinco will be judged to be a community asset.

B. Actions

1. Wendy's wages paid and her labor's actual value

Wendy took an annual salary of \$25,000 a year. She worked alone at the shop every day. Customers appreciated her enthusiasm and her ability to obtain special coins at reasonable prices. Clearly, Wendy's labor was a big part of the success of Coinco, although she did benefit from a renewed interest in coin collecting caused by a discovery of several boxes of buried coins. The actual value of Wendy's services at the shop was \$40,000 a year.

2. The Prenuptial Agreement

As discussed above, the court is likely to uphold Herb and Wendy's prenuptial agreement. Not only would this mean that Wendy's \$25,000 salary would be deemed her separate property, it would likely mean that she would be entitled to recoup the \$75,000 she earned but was not paid during the five years Coinco was in business before Herb and Wendy separated.

3. Wendy paid \$5K a year in household expenses

During the five years in question, Wendy paid \$25,000 in household expenses from the business earnings each year. We do not know how much Herb paid in household expenses during these years, but it is hard to imagine it was not at least as much as Wendy's contribution. No facts are present that suggest Wendy be reimbursed for these expenses, but the court could award this sum to her if equity would be served by doing so.

4. The value of Coinco fell after the separation

Coinco was worth \$150,000 in 2008, at the time Herb and Wendy separated, but its value fell to \$100,000 because Wendy had to close it while she was in the hospital. For dissolution purposes, the value of Coinco will be fixed at the value at the time of separation, however the court can take into account the fall of the value of the asset at the time of trial if the equity would be served.

It is worth noting that, although the facts surrounding Coinco suggest a *Van Camp – Pereira* analysis, these cases do not apply. Wendy's work was not community labor being expended to enrich a separate property asset, because the prenuptial agreement turned her labor into her separate property. A reverse *Van Camp – Pereira* analysis also is not helpful, since Wendy's labor after separation did not increase the value of Coinco. In fact, the value of the business fell because of Wendy's hospitalization.

C. Conclusion

The court would consider Coinco to be a community asset. In the long run, there is no reason to think that the company will not be successful. The court would award Wendy \$75,000 in unpaid salary as her separate property, and would divide the remaining value of Coinco between Herb and Wendy. It is likely Wendy would be awarded ownership of the business because she was the sole manager and employee. The court has broad discretion to divide the marital estate fairly, in light of the prenuptial agreement.

III. The Hospital Bill

A. Source

Wendy was disabled by a serious illness and had to be hospitalized. Her illness occurred after she and Herb had separated but before trial of the dissolution proceeding. Generally speaking, contract obligations post-separation are the separate obligation of the contracting spouse.

B. Actions

Wendy's hospitalization was not covered by health insurance. During marriage, each spouse has a responsibility to contribute to providing necessities of life to the other spouse. Fortunately for Wendy, she and Herb did not cease to be a married couple for these purposes at the time of their separation. This means that Herb will be responsible for making up any shortfall, should Wendy's separate property be insufficient.

C. Conclusion

We do not know the total amount of Wendy's hospital bill, but we do know Wendy will be primarily responsible for this debt. Should her separate property be insufficient, Herb will be liable for the rest of the expense.

Community Property

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Husband and Wife married in 1997 in California. Neither of them brought any significant assets to the marriage, and they were both employed. Husband and Wife agreed that Husband should go to law school after they had saved up some money. Husband put his earnings in a savings account in his name alone. Wife deposited her earnings into a joint checking account in both of their names, which was used for their living expenses. Husband had a child support obligation from a previous marriage. Every month, Husband paid his child support by check from the joint checking account.

Husband began law school in 1998. Wife continued to support the couple. Husband took out a student loan to pay his tuition. Husband graduated in 2001 and obtained his law degree. He passed the bar exam and got a position with a large law firm.

In 2004 Husband became a partner in the firm. Husband's partnership earnings were substantial. He paid off his student loan with these earnings. Although the actual value of Husband's share of the firm's goodwill was substantially greater, the partnership agreement provided that its value was \$3,000 for purposes of valuation as marital property in the event of a dissolution of a partner's marriage.

In 2006, Husband and Wife filed for dissolution of marriage.

1. Is the community entitled to reimbursement for
 - (a) The child support? Discuss.
 - (b) The payments on the student loan? Discuss.
2. Does the community have an interest in
 - (c) Husband's law degree? Discuss.
 - (d) The goodwill in Husband's law firm and, if so, is the community bound by the firm's valuation? Discuss.

Answer according to California law.

Community Property – Outline of Issues

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- I. Is the Community entitled to reimbursement for the child support?
 - A. Source
 - B. Actions
 - C. Conclusion

- II. Is the Community entitled to reimbursement for the payments on the Student Loan?
 - A. Source
 - B. Actions
 - C. Conclusion

- III. Does the Community have an interest in Husband's law degree?
 - A. Source
 - B. Actions
 - C. Conclusion

- IV. Does the Community have an interest in the goodwill in Husband's law firm?
 - A. Source
 - B. Actions
 - C. Conclusion

COMMUNITY PROPERTY
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In 1998, Henry and Wilma, residents of California, married. Henry purchased shares of stock before marriage and kept these shares in his brokerage account. The shares in the account paid him an annual cash dividend of \$3,000. Henry deposited this income in a savings account in his name alone.

In 1999, Wilma was hired by Tech Co. Wilma was induced to work for Tech Co. by the representation that successful employees would receive bonuses of company stock options. Later that year, Wilma was given options on 1,000 shares of Tech Co. stock. These stock options are exercisable in 2006, as long as Wilma is still working for Tech Co.

In 2003, because of marital difficulties, Wilma moved out of the home she had shared with Henry. Nevertheless, the couple continued to attend marriage counseling sessions that they had been attending for several months. Later that year, Henry was injured in an automobile accident. Afterwards, Henry and Wilma discontinued marriage counseling and filed for dissolution of marriage.

In 2004, Henry settled his personal injury claim from the automobile accident for \$20,000. The settlement included reimbursement for \$5,000 of medical expenses that had been paid with community funds.

Henry had a child by a prior marriage and, over the course of his marriage to Wilma, had paid out of community funds a total of \$18,000 as child support.

1. When making the final property division in Henry and Wilma's dissolution proceeding, how should the court characterize the following items:
 - a. Henry's savings account? Discuss.
 - b. Henry's personal injury settlement? Discuss.
 - c. Wilma's stock options? Discuss.
2. Should the court require Henry to reimburse the community for his child support payments and, if so, in what amount? Discuss.

Answer according to California law.

COMMUNITY PROPERTY
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Outline

- I. Henry's savings account should be characterized as his separate property.
 - A. Source: Annual cash dividends of \$3,000 paid on shares in brokerage account
 - B. Actions: None that would change the separate property character of the account
 - C. Conclusion: The savings account is Henry's separate property, subject to the child support reimbursement discussed below.

- II. Henry's personal injury settlement should be characterized as community property.
 - A. Source: Injury occurred before the couple quit counseling
 - B. Actions: None that would change the community property character of the settlement
 - C. Conclusion: Award the settlement to Henry in the interest of justice

- III. Wilma's stock options should be characterized in part as community property.
 - A. Source: Wilma's earnings
 - B. Actions: Separation, couple file for dissolution
 - C. Conclusion: Pro Rata Distribution

- IV. Harry should be required to reimburse the community for the funds paid as child support.
 - A. Henry's child support obligations were established before his marriage to Wilma
 - B. Henry had sufficient separate property to pay the child support order
 - C. Conclusion: The community is entitled to reimbursement.

COMMUNITY PROPERTY
Copyright February 2004 State Bar of California

In 1989, Herb and Wendy married while domiciled in Montana, a non-community property state. Prior to the marriage, Wendy had borrowed \$25,000 from a Montana bank and had executed a promissory note in that amount in favor of the bank. Herb and Wendy, using savings from their salaries during their marriage, bought a residence, and took title to the residence as tenants in common.

In 1998, Herb and Wendy moved to California and became domiciled here. They did not sell their Montana house.

In 1999, Herb began having an affair with Ann. Herb told Ann that he intended to divorce Wendy and marry her (Ann), and suggested that they live together until dissolution proceedings were concluded. Ann agreed, and Herb moved in with her. Herb told Wendy that he was going to move into his own apartment because he “needed some space.” Ann assumed Herb’s last name, and Herb introduced her to his friends as his wife. Herb and Ann bought an automobile with a loan. They listed themselves as husband and wife on the loan application, and took title as husband and wife. Herb paid off the automobile loan out of his earnings.

In the meantime, Herb continued to spend occasional weekends with Wendy, who was unaware of Herb’s relationship with Ann. Wendy urged Herb to consult a marriage counselor with her, which he did, but Herb did not disclose his relationship with Ann.

In 2003, Wendy and Ann learned the facts set forth in the preceding paragraphs. Wendy promptly filed a petition for dissolution of marriage, asserting a 50% interest in the Montana house and in the automobile. At the time of the filing, the Montana bank was demanding payment of \$8,000 as the past-due balance on Wendy’s promissory note which has been reduced to a judgment. Also at the time of filing, Ann had a \$15,000 bank account in her name alone, comprised solely of her earnings while she was living with Herb.

1. What rights do Herb, Wendy and Ann each have in:
 - a. The residence in Montana? Discuss.
 - b. The automobile? Discuss.
 - c. The \$15,000 bank account? Discuss.
2. What property may the Montana bank reach to satisfy the past-due balance on Wendy’s promissory note? Discuss.

Answer according to California law.

COMMUNITY PROPERTY
Copyright February 2004 Scott F. Pearce, Esq.
Outline

- I. Quasi-Community Property

- II. Residence in Montana
 - A. Source: Herb and Wendy take title as tenants in common in Montana
 - B. Actions: Herb and Wendy domicile their marriage in California
 - C. Conclusion: 50-50 split based on Quasi-Community Property principles

- III. Automobile
 - A. Source: Herb's earnings during marriage
 - B. Actions:
 - 1. Herb and Ann applied for the loan as husband and wife
 - 2. Herb and Ann took title as husband and wife
 - 3. Herb and Wendy were not permanently separated
 - C. Conclusion: The automobile is the community property of Herb and Wendy.

- IV. \$15,000 Bank Account
 - A. Source: Ann's earnings while living with Herb
 - B. Actions:
 - 1. Putative marriage between Ann and Herb
 - 2. Ann's name alone was on the account
 - 3. Herb and Wendy were not permanently separated
 - C. Conclusion: 100% to Ann

- V. Montana Bank v. Wendy
 - A. Source: Pre-marital obligation of Wendy
 - B. Actions: None that change the status of Wendy's obligation
 - C. Conclusion: Wendy has enough property to pay this obligation

COMMUNITY PROPERTY
Copyright February 2003 State Bar of California

Henry and Wanda married in 1980 when both were students at State X University. State X is a non-community property state. Shortly after the marriage, Henry graduated and obtained employment with a State X engineering firm. Wanda gave birth to the couple's only child, and Henry and Wanda agreed that Wanda would quit her job and remain home to care for the child. They bought a house in State X using their savings for the down payment and obtained a loan secured by a twenty-year mortgage for the balance of the purchase price. Mortgage payments were subsequently paid from Henry's earnings. The title to the State X house was in Henry's name alone.

In 1990, Henry accepted a job offer from a California engineering firm. The couple moved to California with their child and rented out the State X house.

In 1992, Wanda's uncle died and left her an oil painting with an appraised value of \$5,000 and a small cabin located on a lake in California. Wanda took the painting to the cabin and hung it over the fireplace.

In 1993, after reading a book called "How to Avoid Probate," Henry persuaded Wanda to execute and record a deed conveying the lake cabin to "Henry and Wanda, as joint tenants with right of survivorship." Wanda did so, believing that the only effect of the conveyance would be to avoid probate.

In 1995, after three years of study paid for out of Henry's earnings, Wanda obtained a degree in podiatry and opened her own podiatry practice. Her practice became quite successful because of her enthusiasm, skill, and willingness to work long hours. Henry continued to work for the engineering firm.

In 2002, Henry and Wanda separated and filed for dissolution of marriage. Wanda had the painting reappraised. The artist, now deceased, has become immensely popular, and the painting is now worth \$50,000.

Upon dissolution, what are Henry and Wanda's respective rights in:

1. The lake cabin? Discuss.
2. The painting? Discuss.
3. The State X house? Discuss.
4. Wanda's professional education and podiatry practice? Discuss.

Answer according to California law.

COMMUNITY PROPERTY

Outline

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Introduction: Quasi-Community Property

I. The lake cabin

- A. Source: Wanda's inheritance from her uncle - separate property.
- B. Actions: Wanda executes deed converting cabin to joint tenancy to avoid probate
- C. Conclusion: The cabin is community property.

II The painting

- A. Source: Wanda's inheritance from her uncle - separate property.
- B. Actions: Hung over fireplace in cabin; reappraised for \$50,000
- C. Conclusion: The painting is Wanda's separate property.

III The State X house

- A. Source: Wages of Henry; title in Henry's name alone
- B. Actions: move to California
- C. Conclusion: The State X house is quasi-community property

IV Wanda's professional education and podiatry practice

- A. Source: Henry's community property earnings paid for the education.
- B. Actions - Practice is a success because of Wanda's effort and talent.
- C. Conclusions:
 - 1. The community is entitled to reimbursement for Wanda's education.
 - 2. The podiatry practice is community property.

COMMUNITY PROPERTY
Copyright July 2002 State Bar of California

In 1997, Hank and Wanda, both domiciled in Illinois, a non-community property state, began dating regularly. Hank, an attorney, told Wanda that Illinois permits common-law marriage. Hank knew this statement was false, but Wanda reasonably believed him. In 1998, Wanda moved in with Hank and thought she was validly married to him. They used Hank's earnings to cover living expenses. Wanda deposited all her earnings in a savings account she opened and maintained in her name alone.

In February 2000, Hank and Wanda moved to California and became domiciled here. By that time Wanda's account contained \$40,000. She used the \$40,000 to buy a parcel of land in Illinois and took title in her name alone. Shortly after their arrival in California, Wanda inherited an expensive sculpture. Hank bought a marble pedestal for their apartment and told Wanda it was "so we can display our sculpture." They both frequently referred to the sculpture as "our collector's prize."

In March 2000, a woman who claimed Hank was the father of her 6 year-old child filed a paternity suit against Hank in California. In September 2000, the court determined Hank was the child's father and ordered him to pay \$800 per month as child support.

In January 2002, Wanda discovered that she never has been validly married to Hank. Hank moved out of the apartment he shared with Wanda.

Hank has not paid the attorney who defended him in the paternity case. Hank paid the ordered child support for three months from his earnings but has paid nothing since.

1. What are Hank's and Wanda's respective rights in the parcel of land and the sculpture? Discuss.
2. Which of the property set forth in the facts can be reached to satisfy the obligations to pay child support and the attorney's fees? Discuss.

Answer according to California law.

COMMUNITY PROPERTY
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Outline

- I. Hank and Wanda's Relationship
 - A. Hank's Fraud - lying about Illinois allowing common law marriage
 - B. 1998 - Relationship domiciled in Illinois, a non-community property state
 - C. 2000 - Relationship domiciled in California, a community property state
 - D. Conclusion
 - 1. Hank will be estopped from profiting from his fraud.
 - 2. This relationship will be treated as a non-California marriage domiciled in California.

- II. Hank and Wanda's respective rights in the Land Parcel
 - A. Source: Wanda's separate property account with her separate property Illinois earnings.
 - B. Actions
 - 1. Bank account and land title in Wanda's name alone
 - 2. Hank and Wanda moved to California
 - C. Conclusion: The parcel is quasi community property.

- III. Hank and Wanda's respective rights in the Sculpture
 - A. Source: Wanda's separate property inheritance
 - B. Actions
 - 1. Hank bought a marble pedestal.
 - 2. Hank and Wanda refer to the sculpture as "our collector's prize."
 - C. Conclusion: The sculpture is Wanda's separate property.

- IV. Property available to pay the Child Support Order and the Attorney Fees
 - A. Rule: Separate property of the parent liable first, community property second.
 - B. Actions
 - 1. The child was conceived three years before Hank and Wanda's relationship.
 - 2. Hank's liability is established in September 2000.
 - 3. Hank made three payments of \$800.
 - 4. Hank and Wanda separate in January 2002.
 - C. Conclusions
 - 1. Hank has sole liability for the support payments after he and Wanda separate.
 - 2. Land Parcel and Sculpture
 - 3. Attorney Fees

COMMUNITY PROPERTY
Copyright February 2001 - State Bar of California

In 1980, Herb married Wanda, and the couple took up residence in a California home, which Herb had purchased in 1979.

Herb had bought the home for \$50,000 by making a \$5,000 down payment and signing a promissory note for the balance. At the time of the marriage, the outstanding balance on this note was \$44,000. During the next 20 years, the couple paid off the note by making payments from their combined salaries. The home now has a fair market value of \$200,000.

In 1985, Wanda sold for \$10,000 a watercolor she had painted that year. She and Herb orally agreed that the \$10,000 would be her sole and separate property. Wanda invested the \$10,000 in a mutual fund in her name alone. The current value of the mutual fund is now \$45,000.

In 1985, Herb and Wanda bought a vacation cabin on the California Coast for \$75,000. They made a down payment of \$25,000 with community property funds, and both signed a note secured by a deed of trust on the cabin for the balance. Title to the cabin was taken in the names of both Herb and Wanda "as joint tenants."

Shortly afterward, Herb inherited a large sum of money from his mother and used \$50,000 of his inheritance to pay off the note on the cabin. In 2000, Herb and Wanda added a room to the cabin at a cost of \$20,000, which Herb paid out of the funds he had inherited. The current fair market value of the cabin is \$150,000.

In 2001, Wanda instituted a dissolution proceeding. What are Herb's and Wanda's respective rights to:

1. The home? Discuss.
2. The mutual fund? Discuss.
3. The cabin? Discuss.

Answer according to California law.

COMMUNITY PROPERTY
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Outline

I. The Home

- A. Source: \$5,000 Separate Property Down Payment
- B. Actions
 1. \$1,000 Separate Property Payments Pre-Marriage
 2. Community Property Payments from Salary: 1980-2000
 3. Fair Market Value = \$200,000
- C. Conclusion: Home is Community Property; H could get \$6,000 reimbursement if to do so would be just.

II. The Mutual Fund

- A. Source: \$10,000 sale of painting made by W during marriage - Community Property
- B. Actions
 1. 1985 Oral Transmutation
 2. \$10,000 Mutual Fund taken in W's name
 3. W did not actively manage the mutual fund.
 4. Fair Market Value = \$45,000
- C. Conclusion: Pro rata Interest

III. The Cabin

- A. Source: \$25,000 (33 1/3%) Community Property Down Payment
- B. Actions
 1. H and W both sign the loan note.
 2. Title to the property is taken as Joint Tenants
 3. H uses separate property inheritance to pay off the note (1985).
 4. H uses separate property inheritance to add a room (2000).
 5. Fair Market Value = \$150,000
- C. Conclusion: H gets reimbursement, the rest is Community Property

COMMUNITY PROPERTY
Copyright February 1999 State Bar of California

On July 1, 1991, Hank (“H”) and Wanda (“W”) married in Illinois, a non-community property state. W began law school in August 1991, and graduated in June 1994. During this period, H worked as a stockbroker and earned a graduate degree in art history. Of W’s \$60,000 in law school tuition, \$50,000 was paid with an education loan by H from Bank. The remaining \$10,000 was paid with H’s wages, as were H’s \$15,000 tuition and W’s \$40,000 in living expenses while attending law school.

H and W moved to California in 1994. W began work as an associate in a law firm, and H continued to work as a stockbroker. In 1996, H bought a Ming vase with his wages and gave it to W on her birthday. At W’s suggestion, H bought a Chinese-style table for the living room, on which to display the vase. They both frequently referred to the vase as “our pride and joy.”

In July 1998, H and W separated and filed for dissolution of their marriage. At the time, the balance due on the education loan was \$10,000. On December 31, 1998, W received a substantial year-end bonus from her firm. A judgment of dissolution was entered in January 1999.

In the distribution of property and allocation of liabilities of H and W, how should the court treat:

1. W’s legal education and law degree? Discuss.
2. The \$10,000 balance on the education loan? Discuss.
3. H’s art history degree? Discuss.
4. The vase? Discuss.
5. The bonus? Discuss.

Answer according to California law.

COMMUNITY PROPERTY

Outline

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Introduction: Quasi-Community Property

- I. W's legal education and law degree
 - A. Source: quasi community property earnings and a quasi community property loan by H
 - B. Actions: move to California
 - C. 10 year rule
 - D. Conclusion: W's education and law degree will be treated as quasi community property

- II \$10,000 balance on education loan
 - A. Source: education property loan by H
 - B. Actions: move to California
 - C. H was relied upon by Bank
 - D. The loan was intended to benefit the couple.
 - E. Conclusion: The debt is a quasi community property obligation.

- III H's art history degree
 - A. Source: wages of H
 - B. Actions: move to California
 - C. 10-year rule
 - D. Conclusion: H's degree is quasi community property

- IV The vase
 - A. Source: H spent community property wages on a birthday gift.
 - B. Actions
 - 1. Move to California already accomplished
 - 2. Transmutation?
 - 3. H buys a Chinese table
 - 4. H and W both call the vase "our pride and joy"
 - C. Conclusion: The vase is community property, not the separate property of W

- V. The bonus
 - A. Source: The bonus was paid by W's firm - a type of wages.
 - B. Actions
 - 1. The move to California had been completed years ago.
 - 2. H and W separate and file their dissolution action in July 1998.
 - 3. Judgment of Dissolution is entered in January 1999
 - C. Conclusion: The bonus is W's separate property.

COMMUNITY PROPERTY
Copyright February 1996 - State Bar of California

Hank and Wilma were married in California in June of 1981. In the fall of 1981 Hank entered law school. Until Hank's graduation from law school and admission to the bar in 1984, Wilma was the sole provider of their family, working as a school teacher and contributing all her earnings to support Hank and herself. These earnings aggregated \$80,000, about half of which went to pay Hank's law school expenses.

After his admission to the bar, Hank opened his own law practice, and Wilma left the workforce to become a full-time homemaker. Each month Hank deposited his net earnings from his practice in a bank account, which stood in the names of Hank and Wilma as "joint tenants." Wilma has made no deposit into this account. The couple paid all their living expenses from this account.

In 1991 Hank bought a one-acre parcel of undeveloped land as an investment for \$25,000 which he withdrew from the joint bank account. Hank took record title to the parcel in his name alone.

In 1992 Hank's mother died and left him \$500,000. Hank deposited this money in the joint bank account.

In November of 1995 Hank and Wilma separated, and Hank sold the one-acre parcel to Paul for its fair market value, which was then \$50,000. Hank represented to Paul that he had never been married. He delivered to Paul a deed which only Hank had signed. Paul immediately recorded the deed. Hank used the proceeds of this sale to pay off a recent gambling debt that he had incurred in December of 1995.

In January of 1996 Wilma sued to dissolve her marriage and to obtain a settlement of property. The current balance in the joint account is \$750,000.

1. Is Wilma entitled to compensation for her contributions to Hank's education? Discuss.
2. Is Wilma entitled to any portion of the funds in the joint account? Discuss.
3. What rights, if any, does Wilma have arising out of the sale of the one-acre parcel sold to Paul? Discuss.
4. What rights, if any, does Wilma have arising out of Hank's payment of his gambling debt? Discuss.

Answer according to California law.

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Outline

- I. Hank's Education
 - A. Source: \$40,000 community earnings of Wilma
 - B. Actions: More than 10 years elapsed.
 - C. Conclusion: Wilma is not entitled to a reimbursement.

- II. The Joint Checking Account
 - A. Source: Perhaps \$250,000 community earnings, \$500,000 inheritance
 - B. Actions: Account taken as "joint tenants" and Commingling
 - C. Conclusion: Tracing may be possible.

- III. The One Acre Parcel
 - A. Source: \$25,000 from the joint checking account
 - B. Actions: Title taken in Hank's name only and the sale to Paul
 - C. Conclusion: Wilma can rescind the sale to Paul or recover money from Hank

- IV. Hank's payment of the gambling debt.
 - A. Source: sale of a community asset
 - B. Actions: Hank paid a post-separation gambling debt.
 - C. Conclusion: Hank's separate property is liable for this debt.

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In January 1992, Mike and Flo, who were not married but were living together in California, signed an agreement stating that they would "share" subsequent acquisitions and disbursements "just as if we were married." Shortly thereafter Flo was seriously injured and she had to quit her job.

The pair lived on Mike's wages as a bartender, from which he paid \$500 a month to support to his children from a prior marriage. In January 1993 Mike inherited \$20,000, which he put into a savings account in his name alone.

Flo received \$400,000 in settlement of her personal injury claims. Flo invested half of her settlement in diamonds and half in bonds in her name alone.

Recently Mike took the diamonds and sold them to Bud for \$100,000. Mike soon lost this money while gambling in Las Vegas. Flo was unaware of the removal and sale of the diamonds or of the gambling losses.

Mike has left Flo and has sued her to enforce their agreement. Flo has denied the validity of the agreement and has also asserted appropriate counterclaims. Flo has cross-complained against Bud seeking recovery of the diamonds.

The bonds Flo bought are still worth \$200,000, and Mike's savings account contains \$20,000. During the time Mike and Flo lived together, Mike paid \$18,000 from his wages in child support.

On what theory or theories may:

1. Flo assert rights against Mike because of his child support payments? Discuss.
2. Flo asserts rights in or to the \$20,000 savings account.
3. Mike assert rights in or to the bonds? Discuss.
4. Flo assert rights against Mike as a result of the taking and sale of the diamonds? Discuss.
5. Flo assert rights against Bud arising out of his acquisition of the diamonds? Discuss.

Answer according to California law.

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Outline

- I. Mike and Flo's Agreement

- II. Mike's Child Support Payments
 - A. Source: Mike's earnings during the time he and Flo lived together.
 - B. Actions
 - 1. Special rules govern child support payments.
 - 2. Mike's 1993 Inheritance
 - C. Conclusion

- III. The \$20,000 Savings Account
 - A. Source: Mike's 1993 Inheritance
 - B. Actions
 - C. Conclusion

- IV. The Bonds
 - A. Source: Flo's Personal Injury Proceeds
 - B. Actions
 - C. Conclusion

- V. The Diamonds
 - A. Source: Flo's Personal Injury Proceeds
 - B. Actions
 - 1. Mike sold the diamonds to Bud for half their value.
 - 2. Mike lost the sales proceeds by gambling.
 - C. Conclusion

- VI. Flo v. Bud Regarding the Diamonds

COMMUNITY PROPERTY
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In 1983, Tom and Sue married in California, where they have continually resided. In 1986, Sue started Compuco, a sole proprietorship that sold computer equipment, using community property savings. She devoted at least six days a week to this business during the marriage. She did not draw a salary and instead used Compuco's profits to expand the business. Tom performed no services for Compuco.

On Tom's birthday in 1990, Sue gave him a Picasso drawing which she had purchased with \$15,000 of community funds. Tom placed the drawing in his office where he was employed by XYZ Corp.

In 1993, Tom and Sue began to have marital problems. Tom moved his belongings from the home in May 1993. Tom and Sue continued to see one another, however, and they were consulting a marriage counselor. Tom sometimes would spend the night with Sue.

In July 1993, Tom was severely injured in an automobile collision. Tom incurred significant medical expenses which were paid with community funds. In November 1993, Tom settled a claim for his injuries and received \$100,000. In December 1993, Tom and Sue concluded that their marriage could not be preserved, and a dissolution action was commenced.

Compuco has prospered continuously from its beginning and is now quite valuable. The Picasso drawing is now worth \$30,000.

In the dissolution action, what are the rights of Tom and Sue to:

1. Compuco? Discuss.
2. The Picasso drawing? Discuss.
3. The personal injury settlement proceeds? Discuss.

Answer according to California law.

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Outline

I. Compuco

A. Source: Sue started Compuco with community property.

B. Actions

1. Sole proprietorship characterization does not change status of Compuco.

2. Sue's labor for Compuco is community property.

3. Sue and Tom separate in May 1993.

4. Sue and Tom decide the marriage cannot be saved in December 1993.

C. Conclusion: Compuco is a community property asset. Sue will keep it and give Tom a note or a set off with other property.

II. The Picasso Drawing

A. Source: The drawing was purchased with community funds during marriage.

B. Action: Did Sue's gift of the drawing transmute it into Tom's separate property?

C. Conclusion: The drawing will probably be considered a community asset.

III. The Personal Injury Settlement Proceeds

A. Source: Tom was injured in July 1993.

B. Actions: Did the parties cease living as husband and wife in May or July 1993?

C. Conclusion: Tom probably gets to keep all of the PI settlement proceeds.

COMMUNITY PROPERTY
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Harry and Wanda, lifetime California residents, married in 1982 and enjoyed a good marriage until 1989 when Harry was run over by a truck in a work-related accident. Harry sustained grave injuries and has been unable to resume any form of gainful employment. In 1991, his personal injury claim against the truck owner was settled for \$200,000. Harry deposited the award in an existing savings account held in his name only. The account contained only two previous deposits: a 1984 bequest from his late father and winnings from Harry's 1985 appearance on a television game show. No other deposits or withdrawals from this account have been made.

Harry and Wanda have been living on Harry's monthly disability benefits from his employer and Wanda's earnings as a waitress. From this income, they have made monthly mortgage payments on the house Harry bought in his name alone several years before their marriage.

Harry will be sixty-five in 1996, when he will be eligible to collect a company pension in lieu of disability benefits and social security retirement benefits. Wanda, also, will be sixty-five in 1996. She has no pension coverage from her employment.

In December 1992, Harry and Wanda permanently separated, and Wanda commenced dissolution proceedings.

What are their respective rights in:

1. The savings account? Discuss.
2. The house? Discuss.
3. Harry's disability benefits? Discuss.
4. Social security retirement benefits paid to Harry? Discuss.
5. Harry's company pension? Discuss.

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Outline

- I. The savings account:
 - A. Source: account opened in Harry's name after 1984 bequest.
 - B. Actions:
 - 1. Harry's 1985 game show winnings:
 - 2. The personal injury award:
 - C. Conclusion: The respective interests will be traced.

- II. The house:
 - A. Source: Harry bought the house in his name before marriage.
 - B. Actions: Mortgage payments made with community funds.
 - C. Conclusion: The community develops a pro rata interest.

- III. Harry's disability benefits:
 - A. Source: Harry's employer, in lieu of salary.
 - B. Actions: The couple separated in December 1992
 - C. Conclusion: The benefits are community property until the separation.

- IV. Social security retirement payments paid to Harry:
 - A. Source: the federal government.
 - B. Actions: federal pre-emption over California community property law.
 - C. Conclusion: Harry will keep the social security retirement payments.

- V. Harry's company pension:
 - A. Source: Paid by Harry's company, presumably based on time in service.
 - B. Actions: Harry married Wanda in 1982.
 - C. Conclusion: The community share is based on a pro rata interest.