

**FEBRUARY 2000 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Community Property

QUESTION

H and W were married in 1985 in Franklin, a non-community property state. H worked as an engineer for Texco beginning in 1975. W worked as a bookkeeper. During his employment with Texco, H received annual bonuses in the form of Texco stock. By 1990, H owned 1,000 shares of Texco.

In 1990, H accepted a job offer from Calco, a California-based engineering firm, and H and W moved to California. In 1991, H and W purchased a condominium for \$200,000, taking title as "H and W, husband and wife, as joint tenants with right of survivorship." W paid the \$50,000 down payment with money she had recently inherited, and H and W obtained a \$150,000 loan secured by a deed of trust for the balance of the purchase price. H made the monthly principal and interest payments on the loan out of his Calco earnings.

In 1999, W, who had found a bookkeeping job shortly after moving to California, was charged with embezzling \$50,000 from that employer. W admitted spending the \$50,000 on cocaine. W retained Lawyer, who negotiated a plea bargain pursuant to which W pled guilty, was placed on three years probation, and was ordered to make full restitution. W also underwent treatment at DrugStop, a drug treatment facility, at a cost of \$10,000. Lawyer charged W \$5,000 to handle her case.

H had no knowledge of either W's embezzlement or cocaine habit until her arrest. H has filed for dissolution of the marriage. The condominium is currently valued at \$300,000 with a \$50,000 balance on the mortgage.

What are H and W's respective rights and liabilities with regard to:

1. The 1,000 shares of Texco stock? Discuss.
2. The condominium? Discuss.
3. The attorney's fee, restitution, and expenses for the DrugStop treatment? Discuss.

Answer according to California law.

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ANSWER A

1. California is a Community Property State

California is a community property state. This means that all property acquired during marriage is presumed to be community property, and all property acquired before or after marriage is presumed to be separate property. If assets are acquired by gift, bequest or inheritance, they are presumed to be separate property.

Quasi-Community Property

Quasi-community property are those assets acquired in a non-community property state that would have been characterized as community property had the couple been domiciled in California. Upon divorce, quasi-community property is treated exactly like community property in California.

H and W were married in Franklin, a non-community property state. Thus, assets acquired while they were domiciled in Franklin will be characterized as quasi-community property if such assets would have been characterized as community property in California.

Texco Stock

Stock is considered incentive wages and therefore treated the same as regular earnings. Regular wages are considered community property if they were earned during the marriage.

H worked for Calco starting in 1975. H and W married in 1985. Therefore, any stock H received during marriage is considered community property and all stock earned before the marriage is considered separate property.

H earned a total of 1000 shares of Texco stock between the years of 1975 through 1990. H and W were married for one third of that time (5 years of marriage/15 years of total service). According to the Time Rule, therefore, one-third of the Texco stock is quasi-community property.

Since California treats quasi-community property the same as community property upon divorce, one-third of the Texco stock will be treated like community property.

In California, community property assets are divided equally, 50/50, among the spouses, unless special circumstances would warrant granting one asset wholly to one spouse. Here, there are no such special circumstances. Therefore, the one-third portion of the Texco stock (approximately 333 shares) will be divided equally between H and W.

Condominium

Source Rule

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Generally, in California, assets are characterized according to the source of funds used to acquire such assets.

In 1991, H and W acquired a condominium for \$200,000 using \$50,000 that W had recently inherited and a \$150,000 loan secured by a deed of trust. Since the \$50,000 was originally inherited, by W, it is considered separate property thus. H will argue that one quarter of the value of the house is her separate property.

Loans are characterized according to the primary intent of the lender. It is presumable from the facts that the lender was looking to the creditworthiness of both H and W when it made the loan. Therefore, three-quarters of the purchase price is community property.

Anti-Lucas Rules

The property was taken in with a joint written title, after January 1, 1984, so the Anti-Lucas statutes will apply.

Under the Anti-Lucas statutes, an asset that is taken with written title in joint and equal form will be presumed to be community property.

Here, the written title stated that the condominium was being taken by "H and W, husband and wife, as joint tenants with equal right of survivorship." It may be argued that this title created a one-half separate property interest in a joint tenancy, but under the Anti-Lucas statutes, this title created a presumptively community property asset.

The community property presumption can be overcome by a clear statement in the title stating that the property was separate property or a separate written agreement stating that the property is separate property (e.g. transmutation). However, here, there are no such facts. Therefore, the house is community property.

Reimbursement for Down Payment

Under the Anti-Lucas statutes, W is entitled to a reimbursement for her down payment of \$50,000, exclusive of any interest or any increase in the value of the house. Therefore, when the community property assets are divided at divorce, W will get a \$50,000 reimbursement.

Change of Characterization due to Later Actions

Under the Pro-Ration rule, the characterization of an asset may be changed by the parties' actions. Here, H made the monthly principal and interest payments using his earnings from Calco. H may try to argue that this changes the nature of the condominium.

Wages earned during the economic community are community property. Therefore, the payments made using H's Calco earnings do not change the nature of the condominium.

The house will be divided equally, 50/50, unless special circumstances warrant awarding the entire house to one spouse with an offsetting payment of assets of equal value to the other.

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Often, the presence of minor children will warrant awarding the house to one spouse. Here, there are no facts indicating a special circumstance so the house, with its increased value (\$300,000) will be divided equally and W will get a reimbursement for her original \$50,000 down payment.

Attorney's Fees

Equal Management Powers

Spouses have equal management powers over community property. Therefore, each spouse can buy and sell assets (except those personal property assets in the dwelling) or assume debts on behalf of the community.

H will argue that he is not responsible for W's attorney's fees since he was not aware of her drug problems. However, because H and W both have equal management powers over the community property, H's argument will not prevail.

H's and W's community property will be subject to the attorney's bills. H's own separate property, however, are not reachable by W's attorney since he was not personally liable.

Upon divorce, the court will award W's attorney bill to W, unless the interests of justice would provide otherwise.

Restitution Money of \$50 000

Community property will be reachable if a spouse commits a tort or crime. Here, W committed embezzlement during the marriage so H and W's community property will be reachable.

However, in instances where a spouse commits a tort or crime while acting not in the benefit of the community, that spouse's separate property will be used first to satisfy the debt or judgment.

Here, W was acting solely for her benefit. She embezzled for the purpose of getting cocaine. H did not participate at all in the cocaine use. Therefore, W's separate property will be used first to satisfy the judgment and the community property will only be seized if there is a deficiency. H's separate property is not reachable at all.

Drug Rehabilitation = \$10,000

A spouse is always liable for the other spouse's contracts for necessities. W entered a drug rehabilitation program to get medical treatment. This is a contract for a necessary.

ANSWER B

1) Community Property Presumption

California is a community property jurisdiction. Thus, property acquired during marriage is presumed to be community property. However, California recognizes the designation of

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property as separate property if: 1) it was obtained by the spouse by gift, descent or devise; 2) earned/acquired prior to marriage; 3) rents or profits on separate property; 4) changes in form of separate property, not commingled; 5) separate property by valid transmutation.

2) When the Community Terminates

The marital community terminates when there is an intent by one spouse to separate and there is an actual physical separation. The intent must be a determination to end the marital venture. Thus, property acquired after the termination is separate as long as it was not earned during the marriage. In the instant case, H has filed for a dissolution of marriage. This demonstrates his (H) intent to terminate the marital relationship. However, depending on the circumstances of the dissolution, H may also have to manifest his intent to separate by physical separation. There are no facts stipulated that his intent wasn't to separate or if he manifested it in a physical separation. However, it will be assumed that the marital relationship ended in 1999.

3) 1,000 Shares of Texco Stock/Part Community Property
Time Rule

H worked for Texco beginning in 1975. H and W married in 1985. It is stipulated that the shares were earned as a bonus, and 1000 shares currently exist. Based on the fact that some of the shares were earned during the course of the marriage as a result of the labor (a community asset) of one spouse, the community has an interest in the Texco stock.

Under the Time Rule, the numerator is the number of years the parties were married over the contribution period. The denominator is length of total contributions.

Thus, here the formula is
$$= \frac{5 \text{ (number of years of marriage)}}{15 \text{ (length of contributions)}}$$

The result is the community stake in the Texco stock. Thus, the community has a 1/3 stake in the Texco stock.. Two-thirds of the stock is H's separate property since it was earned prior to the marriage. However, this calculation assumes that the shares were acquired evenly through H's 15-year period of employment at Texco. If W can demonstrate that the distribution was not even (e.g. more shares distributed during the marital period), the Time Rule method may be modified to take this into account. H may argue that the 1,000 shares are tantamount to a pension, and strict adherence of the Time Rule should be followed, not considering any potential uneven stock distributions.

4) Quasi-Community Property

H and W were married in a non-community property jurisdiction. However, for divorce dispositions, California will impose community property disposition laws on property that may have been separate property in the non-community property jurisdiction. Thus, H will argue that since H and W moved to California in 1990, all of the property is separate property regardless of the Time Rule. However, where one spouse is domiciled in California, California will treat such property earned during the course of marriage as community property. California imposed quasi-community property by execution in personam jurisdiction over H and forcing a

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conveyance or through alternative dispositions of property the court has jurisdiction over in favor of the other spouse.

5) The Condo

The condo was acquired in 1991 for 200K. Title was taken as joint tenants. However, Section 2581 Anti-Lucas Act presumes that all property acquired in joint and equal form is presumed to be community property. However, the presumption is overcome by: 1) the deed itself stipulates that the property is in joint tenants, or 2) a collateral written agreement designating it as such. Here, it is not stipulated that either of these two requirements were met, and it is presumed that the property is community property.

6) Section 2640 (W's Down Payment)

Section 2640 allows a spouse to recover down payment, improvement, and principal contributions to property acquired as community property through re-imbursement. Section 2640 is effectuated when such spouse uses her own separate property. Here, W used 50K from an inheritance. Thus, since the inheritance is separate property, section 2640 is enabled and W is entitled to re-imbursement of the separate property contribution.

Obviously, since the condo is now worth 300K, W will want a proportional share (25%). However, absent a signed written agreement between herself and H, she will not be entitled to a proportional share. Section 2640 only applies where there is no writing. It is not stipulated here that there was one.

7) H's Payment of Principal on Condo

H made payments from his wages on the mortgage. Since, these payments are from wages earned during marriage (and thus community property). H gets no re-imbursement.

8) The Mortgage on the Condo

H may argue that the mortgage was obtained on his credit. However, with mortgages, you look to the intent of the creditor in the loan extension. Note, even if this property were acquired on H's personal credit, under Marriage of Moore, the community would buy into the condo to the extent that the principal was reduced.

9) Community Benefit Due for Debts/Liabilities

Liability for the criminal attorney's fees and other fees are payable either 1) by who the divorce court assigns them to, or 2) whether they were obtained by the spouse.

Here, there has been no disposition stipulated, so we use the Community Benefit Rule.

If the community benefited from the W's criminal/tortious conduct, then community funds are used first to pay the debt. If that is not enough, then the W's separate property is used. Only if the debts are deemed to be necessities, is H liable for the debt.

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Conversely, if the community did not benefit from W's conduct, then we use W's separate property first, followed by the community property.

10) The Embezzlement

W embezzled 50K and is ordered to make restitution. If the community benefited from her criminal conduct use the formula outlined above. The community may have benefited by general ways of W's good feeling while on cocaine. However, this is very unlikely. Since all the funds were used for W's cocaine habit, it is likely the community has not benefited.

11) Lawyer Fees and Drug Stop Treatment

If these items are deemed to be necessities, then not only is the community and W's property liable, but H's separate property may be used as well to pay the liabilities. Necessaries are likely to be deemed here - since the treatment program was medical treatment. It is questionable whether the lawyer's fees are necessities - but hopefully, they are.