

Question 5

Harvey and Fiona, both residents of State X, married in 1995. Harvey abandoned Fiona after two months. Harvey then met Wendy, who was also a State X resident. He told her that he was single, and they married in State X in 1997. They orally agreed that they would live on Harvey's salary and that Wendy's salary would be saved for emergencies. They opened a checking account in both their names, into which Harvey's salary checks were deposited. Wendy opened a savings account in her name alone, into which she deposited her salary.

Harvey and Wendy moved to California in 1998. Other than closing out their State X checking account and opening a new checking account in both their names in a California bank, they maintained their original financial arrangement. In February 1999, Harvey inherited \$25,000 and deposited the money into a California savings account in his name alone.

In 2004, Wendy was struck and injured by an automobile driven by Dan. Harvey and Wendy had no medical insurance. Wendy's medical bills totaled \$15,000, which Harvey paid from the savings account containing his inheritance. In 2005, Wendy settled with Dan's insurance carrier for \$50,000, which she deposited into the savings account that she still maintained in State X.

Very recently, Harvey learned that Fiona had died in 2006. He then told Wendy that he and Fiona had never been divorced. Wendy immediately left Harvey and moved back to State X. The savings account in State X currently contains \$100,000. Under the laws of both State X and California, the marriage of Harvey and Wendy was and remained void.

1. What are Harvey's and Wendy's respective rights in:
 - a) The State X savings account? Discuss.
 - b) The California checking account? Discuss.
 - c) The California savings account? Discuss.
2. Is Harvey entitled to reimbursement for the \$15,000 that he paid for Wendy's medical expenses? Discuss.

Answer according to California law.

Answer A to Question 5

California is a community property state. Property acquired during the marriage is community property (CP), while property acquired before marriage, after the end of the marital economic community or by gift or inheritance is separate property (SP). When couples who are not domiciled in California acquire property in a non-community property state and then later relocate to California, such property is treated as quasi-community property (QCP) if it would have been CP had the couple been domiciled in California at the time of acquisition.

In order to determine the character of any asset, the court will look at (i) the source of the asset, (ii) any actions of the parties that may have changed the nature of the asset, and (iii) any presumptions affecting the asset.

With these general principles in mind, I now turn to the specific items of property.

1. Harvey's and Wendy's Respective Rights

Prior to determining Harvey's (H) and Wendy's (W) respective rights in the various items, it is important to determine the nature of their marital relationship, as well as the effect of their oral premarital agreement. Putative spouses are entitled to "quasi-marital" property (QMP) rights, while unmarried cohabitants' property rights are governed by contract. QMP rights are treated the same as CP.

Putative Spouse

In order to be considered a putative spouse, the spouse must have a good faith reasonable belief that he or she is lawfully married. While H knew that he had never divorced Fiona prior to marrying W, W had a good faith reasonable belief that she was lawfully married to H because H told her that he was single, and it appears that they married in 1997. Thus, W qualifies as a putative spouse. The putative marriage, and QMP rights accrue, until such time as the putative spouse learns that he or she is not lawfully married. Here, the facts indicate that H only told W in 2006 that he and Fiona had never divorced, at which time she learned that she was not lawfully married. Thus, the putative marriage existed from 1997 until 2006, at which point it ended when W learned that she was not lawfully married, and QMP rights ceased to accrue.

Oral Arrangement between H and W

While generally parties may orally agree how to handle their affairs, premarital or marital agreements and agreements changing the character of marital property rights must be in writing. Thus, although H and W orally agreed that they would live on H's salary and save W's for emergencies, this "oral transmutation" of their QMP rights is invalid. Further, if their oral agreement was akin to a prenuptial

arrangement, it would only be valid if (i) it was in writing, (ii) each had disclosed to the other the full nature of his or her property, and (iii) [each] was represented by independent counsel. None of these elements appear to be present. W may try to argue that she should still get the benefit of the oral arrangement, however, because her savings account has \$100,000, and she was the putative spouse and that H will benefit under QMP rights; however, the court can find that even if W's State X savings account was to be "saved for emergencies", this still indicates an intent to use it for the benefit of the putative marital economic community (and not keep it as W's SP). Thus, the court should not give effect to the oral agreement between H and W regarding the treatment of their QMP. All of the QMP should be treated as CP (for property acquired while domiciled in California) and QCP for property acquired while domiciled in State X.

a. The State X Savings Account

The source of the \$100,000 State X savings account is W's earnings and [a] \$50,000 settlement with Dan's insurance carrier (resulting from a 2004 injury W suffered when she was struck and injured by an automobile driven by Dan). Earnings during marriage are CP, which would be considered QMP in the present case. Further, the \$50,000 settlement would also be considered CP, or QMP in the present case, because the cause of action arose during the putative marriage and H was not the tortfeasor. Thus, the entire State X savings account is QMP.

The court will then look to the actions of the parties to determine if they have changed the character of the asset. W may then try to argue that because the bank account is in her name alone that it is her SP. However, taking title in one spouse's name alone does not defeat the QMP interest. Nothing indicates that H intended the savings account to be W's SP, only that they intended it to be available for "emergencies." Plus, as discussed above, the court will not enforce the oral agreement regarding the treatment of the QMP. Thus, the State X savings account is QMP, and should be treated as QCP (for earnings deposited while not domiciled in California) and CP (for earnings and tort settlement deposited while domiciled in California).

Upon the end of the putative marriage (similar to divorce), QCP and CP are treated the same and each spouse generally has an equal undivided $\frac{1}{2}$ interest in the QCP/CP. However, an exception to this general rule exists for tort settlements and judgments, which the court will award solely to the injured spouse unless the interests of justice require otherwise. Here, nothing indicates that it would be unfair to let W keep the \$50,000 tort settlement, subject to reimbursing H for the \$15,000 expended (see below). Thus, of the \$100,000 in the State X savings account, W will take \$50,000 (as the injured spouse taking the tort settlement), subject to reimbursement of \$15,000 to H, and will take \$25,000 as her QCP/CP interest and H will take the \$25,000 as his QCP/CP interest.

b. The California Checking Account

The source of the California checking account is H's salary checks (and presumably the funds from their State X checking account, which were also H's salary checks). As noted above, earnings are CP and thus the source of the California checking account is CP/QCP and would qualify as QMP.

The court will then look to see if the parties have taken any actions to change the character of the assets. Here, H and W have done nothing to defeat the putative marital economic community interest in the property. As discussed above, the oral agreement will be given no effect. Moreover, even though the oral agreement of the parties won't be given effect, the oral agreement is evidence of an intent that H and W intended H's earnings to be used to benefit the putative marital economic community. Further, H and W took title to the checking account in both their names. Thus, the California checking account is QMP.

As noted above, as QMP will be treated like CP upon end of the putative marriage. Thus, each of H and W has an undivided $\frac{1}{2}$ interest in the California checking account.

c. The California Savings Account

The source of the California savings account is H's \$25,000 inheritance. Inheritance is SP. Thus, the California savings account is H's SP. Because the parties have taken no actions that would change the nature of H's SP to CP (or QMP in this case), the California savings account remains his SP. This is further evidenced by the fact that H took title to the account in his name alone. Upon the end of H's and W's putative marriage, H takes the remaining funds in the California savings account as his SP and W has no rights in the California savings account.

2. Reimbursement to Harvey of \$15,000 for Wendy's Medical Expenses

When a spouse (or putative spouse) expends SP on the medical expenses of the other spouse, he or she is entitled to reimbursement to the extent that the community had sufficient funds available or that the debtor spouse had sufficient SP available at such time. Here, it appears that H expended \$15,000 of his SP, while the putative marriage may have had sufficient QMP funds to handle the "emergency" medical expenses in the State X savings account (which now has \$100,000 [only \$50,000 of which is the insurance settlement]), or even in the California checking account (QMP), for which we have no information. To the extent that there was sufficient QMP available or that W had sufficient SP available at the time H paid the \$15,000 of medical expenses out of his SP, H is entitled to reimbursement.

Answer B to Question 5

General community property rules

California is a community property state. Under California law, all property acquired during marriage is presumed to be community property (CP). All property acquired before marriage, after marriage, or during marriage through inheritance, bequest, or devise is presumed separate property (SP). Three factors determine the characterization of property as CP or SP: the source of the asset; what actions the parties took that may have changed the asset's character; and what special presumptions apply, if any, that might change the asset's character.

Quasi-community property

Under California law, quasi-community property (QCP) is any property acquired during marriage that would have been CP had the acquiring spouse lived in California at the time of acquisition. The QCP designation generally only becomes relevant at divorce or death. At divorce, QCP is treated like CP; at death, the surviving spouse has a ½ interest in the deceased acquiring spouse's QCP, but a nonacquiring spouse who predeceases an acquiring spouse has no rights to QCP.

Here, because H and W acquired property while married but living outside California, any such property that would otherwise be designated as CP will be designated as QCP.

W's status as putative spouse

California does not recognize common-law marriage, but recognizes putative spouses. For a party to claim putative spouse status, the aggrieved party must have been acting under the good faith belief that she was married during the period claimed. As soon as the party becomes aware that the marriage is invalid, or upon dissolution of the relationship, her rights as a putative spouse terminate. California treats all property acquired during putative marriage as quasi-marital property (QMP), which is treated the same as CP for purposes of disposition at death or divorce.

Here, W was under the mistaken good-faith belief that she and H were validly married. H told her he was single, and they had some kind of marriage that led W to believe they were married. Thus, between 1997 and "very recently," W will have putative spouse rights from their putative marriage through the time she found out that H and Fiona had never been divorced. Thus, all property acquired by W and H during this period that would otherwise be QCP or CP under California law will be designated as QMP.

It should be noted that while some states bar a non-innocent putative spouse from any recovery of QMP, California law permits both spouses to recover their respective shares of QMP notwithstanding fraud or bad faith of one of the parties. Thus, if QMP should be treated as CP, H will recover his share accordingly.

1. Harvey and Wendy's rights

a. State X savings account

Source: W's QMP earnings

W opened a savings account in State X during her putative marriage to H. She deposited her salary earned during her putative marriage into this account. Because all earnings acquired during marriage are presumptively community property if the couple lives in California, this property would be QCP/QMP and treated as CP for purposes of divorce.

Form of title

W would argue that because she opened the savings account in her name alone, the form of title should make the deposits her SP, rather than community earnings. If W could prove that H knew that she took title in her name alone and consented to it, such a showing could strengthen a presumption that H intended to make a gift to W of community earnings. However, H would successfully rebut any potential gift presumption through evidence of their oral agreement that the earnings were to be used "for emergencies"; i.e., this was intended to be a community nest egg in the event of an emergency.

Oral transmutation

A transmutation is an agreement by a married couple to change the form of property from SP to CP or vice versa. Any oral agreements by a married couple before 1985 are admissible to prove transmutation; however, after 1985 a writing is required. Here, because the oral agreement is one that supports an argument for CP, W would not be able to use this evidence to strengthen her SP assertion. Additionally, because the property is presumptively CP under California law, H would not need to introduce this oral agreement as evidence of transmutation.

Married woman's special presumption

The married woman's special presumption states that any property taken in a married woman's name alone before 1975 is presumed to be her SP. However, here, no married woman's special presumption applies, because the property was taken in W's name after 1975. Additionally, the presumption does not apply to bank accounts.

Personal injury award

As a general rule a personal injury settlement for a cause of action that arose during the marriage is considered CP unless the other spouse was the tortfeasor.

However, upon divorce, the proceeds are awarded to the injured spouse unless the interests of justice require otherwise.

Here, W was injured by Dan, a non-spouse, and ultimately received a \$50,000 settlement, which she deposited into the State X savings account in 2005. H would argue that the settlement was QMP, and thus should be split equally between H and W. However, as noted, at divorce, the \$50,000 will be awarded to W unless the interests of justice require otherwise. Here, no facts indicate that the interests of justice require otherwise, so W should be entitled to the \$50,000.

Disposition

Thus, W should be entitled to \$50,000 of the State X savings account unless the interests of justice require otherwise. W and H each have a ½ QMP/CP interest in the remaining \$50,000, so they should get an additional \$25,000 each.

b. The California checking account

State X earnings

H's earnings in State X occurred during his putative marriage to W; thus, these earnings would be considered QCP under California law, characterized as QMP, and treated as CP upon dissolution of his relationship with W.

California earnings

H's California earnings also occurred during his putative marriage to W; thus, these earnings would be considered CP under California law, characterized as QMP, and treated as CP upon dissolution.

Form of title

Here, there is no form of title to rebut the presumption that all marital earnings are CP. The bank account was in joint and equal form, and as such, strengthens the presumption that his was a community asset.

Presumptions

No special presumptions apply.

Disposition

Because all of the contents of the California checking account were either QCP or QMP under California law, they will be treated as CP upon dissolution to the extent the money was earned during H and W's putative marriage. Thus, H and W are entitled to a ½ share each of the balance of the account as of the date of W's departure/the dissolution of the putative marriage.

c. The California savings account

H's inheritance

H inherited \$25,000, which he deposited in the California savings account. Property acquired during marriage through inheritance is considered the inheriting spouse's SP; thus, the \$25,000 is considered H's SP.

Form of title: In H's name alone

H kept his inheritance separate in an account in his name only and did not commingle any QMP earnings during the putative marriage. Thus, the form of title combined with the source of the account funds will be sufficient to sustain a finding that the property remained H's SP at all times.

H's expenditures for W's medical bills

H expended \$15,000 of his SP for W's benefit during their putative marriage. The effect of this expenditure on H's potential rights to reimbursement is discussed below. For purposes of the remainder of H's California savings account, this expenditure will have no effect on the characterization of the asset.

Presumptions

No special presumptions apply.

Thus, H retained an SP interest in the California savings account and is entitled to the entire contents. Because H expended some of his SP for community benefit, he may be entitled to reimbursement from the community. Regardless, H takes the remaining \$10,000 as his SP.

2. H's potential right to reimbursement for W's medical expenses

As a general rule, all debts incurred during marriage are community obligations. Where one spouse expends SP to pay a community obligation, he may be entitled to reimbursement from the community if he did not intend a gift and there were sufficient CP funds available at the time, and no other special presumptions apply.

Here, H expended \$15,000 of his SP to pay W's medical expenses. H will argue that he is entitled to reimbursement from the community because W's expenses were a community obligation.

To the extent CP funds were available at the time to pay W's medical expenses, H will be entitled to reimbursement from the community.

However, a spouse's SP may be reached to the extent the other spouse incurs expenses for "necessaries" during marriage. The contributing spouse remains liable for expenses for "necessaries" until the dissolution of the marriage.

Here, H would argue that because W's savings account was expressly created as a community asset "for emergencies," and because the balance after receiving W's settlement deposit was \$100,000, sufficient CP funds existed at the time W incurred her medical expenses and he should be reimbursed for his SP expenditures.

In the alternative, H would argue that because W subsequently received a \$50,000 settlement, which was considered QMP during marriage and which would more than cover her direct medical expenses, the interests of justice should require that \$15,000 of that \$50,000 should be treated as the community's property to pay her medical expenses and he should be reimbursed.

Thus, under either argument, because sufficient QMP funds existed at or near the time of W's medical expenses, H should be entitled to reimbursement for his \$15,000 payment of W's medical expenses.