

JULY 2002 COMMUNITY PROPERTY QUESTION

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.

ANSWER A TO ESSAY QUESTION 6

1. Hank (H) and Wanda's (W) Rights to the Parcel of Land and the Sculpture

Hank and Wanda's rights to the parcel of land and the sculpture will be determined according to their status as married couples.

Putative Spouse

A putative spouse is one who reasonably believes they are married to another but for some reason their marriage is invalid. Here W believed she was married to H because she believed a common-law marriage was permitted in Illinois. Because H lied to W only he knows they were not really married and thus W's status as a putative spouse should be established.

The courts have yet to determine whether H would be considered a putative spouse under these circumstances because he knew no common-law marriage was established, however in this case the court should find that H and W are in a Putative Marriage because of W's reasonable belief that she was married in Illinois via a common-law marriage due to H's (an attorney) representation that they were married. California recognized Putative Marriages as an alternative to common-law marriages, and because H and W are currently domiciled in California a putative marriage is established.

Quasi-Marital Property (Q-MP)

In California all property acquired during the putative marriage is deemed marital property and treated the same as community property. Such property acquired by gift or inheritance during the marriage is the spouse's separate property (SP) as well as any property acquired before the putative marriage and after permanent separation is the SP of the acquiring spouse.

In determining the character of any property the court will consider the above general presumptions as well as the source of funds used to acquire any property, any actions taken by the parties, and any special presumptions that may apply to the property. Property acquired outside California is treated as quasi-marital property and the court will treat it as community property or marital property [f] such property were to be community property if acquired in California.

With these general principles in mind we can now examine the properties at issue.

Illinois Parcel of Land

The source of the Illinois parcel of land was the \$40,000 W had earned from her earnings during marriage to buy the land. Thus, since the earning[s] were earned during the marriage it is Q-MP earnings and so the parcel is Q-MP in which both H and W have a ½ interest in.

Wanda took title in her name alone which could be deemed as a valid transmutation, which after 1985 requires a writing expressly stating that such property is the spouse's SP. If H knew and consented to W taking title in her name alone this could be SP, however, absent such consent the land would still be Q-MP.

Married Women's special presumption gives W a presumption of SP if title is taken in her name alone, however, such a presumption would not apply here because it is only applicable to property acquired before 1975 by W. Here the general presumption would apply and since the source was Q-MP and it was acquired during marriage the land should also be Q-MP.

Sculpture

The source of the sculpture was W's inheritance and so it should be deemed her SP under the general presumptions. W's statement to H that the sculpture was "our sculpture" could suffice as a valid transmutation. However, this was not in writing and a transmutation to be valid after 1985 requires that there be a writing clearly expressing a transmutation. Since there was no writing the general presumption will control and the sculpture is entirely W's SP.

2) Which Property Set Forth in the Facts Can Be Reached to Satisfy the Obligations to Pay Child Support and the Attorney's Fees?

Child Support Claim

Generally creditors' claims against either spouse are determined to be SP or Q-MP of the liable spouse depending on when such claim arose.

If the debt is SP debt then the creditor must satisfy his claim from the spouse's SP first before seeking satisfaction from the CP (here Q-MP). If the debt is a MP debt then the creditor will seek satisfaction from any MP (or Q-MP) first before seeking satisfaction of the claim from the SP of the debtor spouse.

Singe Hank's obligation to pay child support of \$800 per month was a debt of H's personally and was not acquired for any benefit to the marital community such obligation is H's separate obligation. The child support claim must be satisfied from H's SP before seeking the MP.

If H is unable to pay from his SP, woman can seek satisfaction from the land as MP. However, an exception to reaching the MP earnings of the nondebtor spouse (W) arises if she has kept her earning separate with no accessibility to H.

Here W's earnings uses to buy land were deposited in an account in her own name of which presumably H had no access to, then such earnings were used to buy the land which was titled in W's name alone. Thus under this exception the claim of child support could not be reached by woman.

However still another exception arises when the debtor spouse's debt[s] are for "necessaries" which the court could deem child support payments to be. Spouses are liable to each other for necessary debts because of their duty to support each other.

Thus under this exception the child support could be satisfied from the land even if the court determined the land was entirely W's SP. She could still be liable if the child support claim were a necessary debt obligation of H.

Otherwise, if the debt is not necessary it could not be satisfied from the land because of the action's taken by W to separate her MP earning or if it was deemed entirely W's SP.

Attorney's Fees

The court provides that attorneys' fee's can if not paid give the attorney a right to a real property lien and any of the SP of the debtor spouse of the MP of the spouses. This is known as the family lawyer's real property lien.

Further if such debt were deemed necessary the fee could be satisfied from either the sculpture or the land.

It should be noted, however, that generally creditors' claims cannot reach the SP of the nondebtor spouse unless such was a necessary debt, thus as to the child support claim the sculpture which is W's SP should not be subject to the child support claim unless it is deemed necessary. The same rule would apply to any Attorney's fees owed by H.

ANSWER B TO ESSAY QUESTION 6

CA is a community property state. All property acquired while domiciled in CA is presumed to be community property. All property acquired before marriage and when the economic community has come to an end and all property acquired by gift and inheritance is separate property.

Property acquired while a married couple is domiciled in a non-community property state, becomes quasi-community property when the couple moves to California so long as it would have been community property if acquired while domiciled in California.

Before discussing Hank and Wanda's respective rights, it is important to determine the status of their relationship.

In 1997, Hank and Wanda, both domiciled in Illinois, a non-community property state, began dating. Hank told Wanda that Illinois permits common-law marriages. Hank knew the statement was false, but Wanda reasonably believed him. In 1998, Wanda moved in with Hank, thinking they were validly married. As a result of Wanda's mistaken belief that she was validly married to Hank, Wanda is a putative spouse.

Because Wanda is a putative spouse, quasi-marital property law will apply. Quasi-marital property law will apply. Quasi-marital property law is the same as community property law. As a result, the moment Wanda and Hank moved to California, all the property acquired by either of them while living in Illinois will be quasi-community property (so long as if it would've been community property if acquired while domiciled in California).

1. Hank's and Wanda's Respective Rights In The Parcel of Land and the Sculpture

Parcel of Land

Wanda used \$40,000 from a savings account to purchase the parcel of land. The source of the money in the account was all of Wanda's earnings acquired while domiciled in Illinois. Because the \$40,000 would have been community property if it was acquired while the couple was domiciled in California, it is considered quasi-community property.

The \$40,000 of quasi-community property was used to purchase the parcel of land. In order to determine the character of a piece of property, a party must trace to the source. The land was purchased with quasi-community property and is therefore quasi-community property.

Wanda, however, took title in her name alone. Because this took place post-1974, Wanda will not be entitled to the Married Women's Special Presumption (applies pre-1975 and presumes that property is the woman's separate property so long as title is in her name alone). Wanda will try to argue that it was a gift of quasi-community property to her as separate property. The gift argument will fail, however, because she made the "gift" to herself.

Moreover, all property acquired during marriage is presumed to be community property. Unless Wanda can rebut the presumption, the parcel of land is quasi-community property. At separation, Wanda and Hank will each take ½ of the land (or proceeds from the sale of the land).

The Sculpture

Wanda inherited the sculpture. As a result, the sculpture was Wanda's separate property in the beginning. However, Hank bought a marble pedestal and told Wanda it was "so we can display our sculpture." Moreover, both Hank and Wanda referred to the sculpture as "our collector's prize."

Hank will argue that the parties' actions transformed the character of the sculpture from separate property into community property. By referring to the sculpture as "ours," Wanda intended that the sculpture be a gift to the community.

If the court finds that Wanda intended the sculpture to be a gift to the community, then Wanda and Hank will each take ½ of the value of the proceeds.

However, any transmutation that takes place post-1984 must be in writing. There is an exception, however, for interspousal occasions, etc. Because this alleged transmutation took place in 2000, a writing is required. Because there is no writing and the sculpture was not given as a birthday or

anniversary gift (and is likely to be very valuable), then transmutation was not valid. As a result, Wanda will take the entire sculpture.

2. Which Property Can Be Reached to Satisfy the Obligations to Pay Child Support and The Attorney's Fees?

Child Support

Quasi-Community Property can be reached to satisfy the obligations to pay a creditor even when the obligation arose prior to the marriage. However, if the nondebtor spouse placed his/her earnings into a separate account in his/her name alone, creditors cannot reach the money in the account so long as the account is not accessible by the debtor spouse.

Hank's child support obligations arose 6 years ago when his child was born. Wanda and Hank were not together at the time the obligation arose. However, because the parcel of land is quasi-community property, it can be reached to satisfy the child support obligations. Wanda's sculpture, however, is her separate property. Then nondebtor spouse's separate property can't be reached to pay an obligation that arose prior to marriage.

Attorney's Fees

The attorney's fees were incurred in 2000, (during the period of time Hank and Wanda were "married"). All debts incurred during marriage may be satisfied by quasi-community property (and of course community property), the debtor spouse's separate property, and the nondebtor spouse's separate property, so long as the debt was incurred for necessities.

Because the parcel of land is quasi-community property, it can be reached to satisfy the attorney's fees. The sculpture, however, is Wanda's separate property. The issue is whether the attorney's fees were incurred for "necessaries." Hank will argue that defending himself if in a child paternity suit should be considered a "necessary". A necessary of life, however, is [sic] food, clothing and shelter. As a result, the sculpture cannot be reached to satisfy the attorney's fees.