

Question 6

In 2003, Wendy and Hank were engaged to be married. They discovered that the \$10,000 monthly income Wendy derived from a trust fund would terminate upon her marriage or upon her reaching the age of 25, whichever came first. Therefore, they decided to postpone their wedding until Wendy's 25th birthday, in 2006, and instead began to live together.

Also in 2003, Wendy and Hank agreed that Wendy would pursue a master's degree in education and that Hank would quit his job and stay home, taking care of the household chores. Wendy opened a checking account in both of their names, into which she deposited her \$10,000 monthly trust income. Wendy used funds in the checking account to pay living expenses for Hank and herself. Wendy also used funds in the checking account to buy a new car. She put title to the car in both of their names.

In 2006, Wendy and Hank married. Wendy's \$10,000 monthly trust income terminated. Afterwards, Wendy began teaching at a local college.

In 2008, Wendy learned that her compensation was less than that of her male counterparts and made a claim against the college.

In 2009, Wendy separated from Hank and filed an action for dissolution of marriage. Shortly afterwards, she settled her claim against the college in return for additional salary in the amount of \$10,000 per year for the next three years.

Unbeknownst to Wendy, Hank had run up a gambling debt to a casino during their marriage. At the time of their separation, Hank owed the casino \$50,000.

Upon dissolution of marriage, what are Wendy's and Hank's rights and liabilities with respect to:

1. The car? Discuss.
2. The \$30,000 in additional salary under the settlement? Discuss.
3. The \$50,000 owed to the casino? Discuss.

Answer according to California law.

Answer A to Question 6

California is a community property state. The community property system applies to people who are legally married or registered as domestic partners. All property acquired before or after marriage or separation and all property acquired by gift, bequeath, devise, or descent is presumptively the acquiring spouse's separate property (SP). All other property acquired during marriage is presumptively community property (CP). This question involved the dissolution of a marriage. Upon dissolution, each spouse is entitled to all of their separate property and community property should be divided equally between them.

The Car

CP Principles do not apply

Unmarried cohabitants are not included under the CP system, even if they are engaged and plan to marry. However, under Marvin, cohabitants may have some rights under contract theories where there are agreements between the parties regarding income and expenses.

Here, H and W were engaged and postponed their wedding until she turned 25 so W would continue to receive payments under her trust fund. They then moved in together. As unmarried cohabitants, they are outside the CP system even though they were engaged and had planned to marry. There must be a valid marriage for any property to be CP. However, they may have contract rights under Marvin.

Contract Formed between H and W

An enforceable contract may be found between cohabitants when there is an agreement supported by consideration of each party and the consideration is more than sexual services.

H will argue that there was an enforceable agreement between him and W. H will show the joint bank account that the trust funds were deposited and the use of the trust funds to pay living expenses as evidence of this agreement. H may also argue that the agreement constitutes a valid contract as his household duties were consideration for

W's contribution of her income to support the couple so that W could attend school and earn her master's degree. This argument would likely be effective in most courts as it seems to be established under the facts that there was a meeting of the minds and the consideration on both sides was valid.

Interests in the Car under a valid agreement

Where there is a valid agreement between cohabitants, they may be able to acquire property interests under its terms.

W purchased the car while she and H were cohabitating before marriage. W paid for the car with her trust income, which is undisputably her SP as she has not yet married. The car was title in both H and W's names and the funds used were from a joint bank account. While certain title presumptions would control under CP system, here the interests in the car are governed by principles of contract and equity. H will argue that he has an interest in the car because he and W agreed that she would attend school and he would stay home and they would live off of her trust income until it expired when she turned 25. Further, the car was purchased with funds from a joint bank account to which H would have had a right to withdraw, showing an intent that the funds benefit both H and W. Further, W put the car in both names, confirming her intent that there be a joint interest. Therefore, H should be given an equitable interest in the car. W will argue that while they agree to use her income to support themselves, she never intended to agree to give H any interest in the car that would exist beyond their relationship and only put his name on the title for convenience while they were living together. At dissolution, then, the car should be treated as a gift and not as something to which H has an interest. However, because there is clear evidence of an agreement regarding the use of the trust income to support H and W in exchange for H's household duties and it was W who opened a joint checking account and deposited the trust funds there and then put the car in H and W's name, H will likely be found to have some interest in the car, likely one-half of its now depreciated value as the agreement and form of title indicate a desire to share equally, despite the fact that the purchase funds are traceable to W's SP.

The \$30,000 Salary Under the Settlement

Termination of the Marital Economic Community

The marital economic community is formed at marriage and terminates upon permanent separation, which occurs when the parties live separate and apart and at least one spouse does not intend to return to the marriage.

W separated from H in 2009 and filed for dissolution of marriage. This evidences an intent not to return to the marriage and thus constitutes permanent separation and terminates the marital economic community.

What to the proceeds of the settlement replace?

Any labor performed by a married person is considered community labor and any salary earned during marriage is CP. However, salary earned following permanent separation is SP. Courts have found that when funds received following permanent separation are intended to replace wages that were earned during marriage, those funds are CP because they are traceable to community labor.

Here, W began working at a local college in 2006, after marriage to H. All salary earned prior to separation is therefore CP. In 2008 she discovered she was being paid less than male colleagues and filed suit. In 2009 and post-separation, she settled for \$10,000 additional salary for the next three years. H will argue that the settlement is CP because it is intended to replace the salary that W should have been paid and was earning during marriage. W will argue that because the funds are going to be distributed as post-separation salary, they are her SP. Here, replacement analysis favors H and will result in the CP characterization as the settlement related to a claim for wages that should have been paid during marriage, as the claim was filed during marriage, and therefore are intended to replace CP earnings.

Distribution of Settlement Funds

In cases of personal injury settlement, courts have classified the settlement proceeds for injuries occurring during marriage as CP but strongly favor awarding such funds to the injured spouse upon dissolution in a rare exception to the presumption that CP should be divided equally.

W will likely try to analogize to these cases, arguing that the discrimination was an injury during marriage and even if the proceeds are CP she is entitled to them upon dissolution as they are compensation for her injuries. This argument will likely be unsuccessful. Personal injury funds are awarded because they typically compensate for the injured spouse's present and future suffering and medical expenses and as such should be given to the injured spouse both because he or she will have a continued increase in need and because the injury was personal to the spouse. Further, even with personal injury damages, the award will be divided to the extent equity requires, including when there has been loss to the community. Here, the loss compensated was entirely the community's as W was underpaid for her community labor and thus did not receive the salary she should have, which would have been entirely CP. Therefore, H and W will each have a one-half interest in the proceeds at dissolution.

Rights of H and W to the settlement

The settlement is CP and so H and W each have a right to one-half the amount, or \$15,000. This amount could be paid to H now by giving him a CP share in an amount that accounts for his \$15,000 or by imposing a remedial trust on the funds such that H and W are each entitled to one-half of the payments over the next three years.

H's Gambling Debt

Liability During Marriage

During marriage, debts acquired before or during marriage are community debts and any CP and the acquiring spouse's SP will be liable for the debt. Therefore, whether H acquired the debt entirely during marriage or not, the CP would have been liable during marriage.

Liability Upon Dissolution

At dissolution, the community property is divided and thus no longer exists. While CP is divided equally, courts have more discretion in the division of liabilities acquired during marriage. Where one spouse has acquired a debt and the debt was not for the benefit of the community, it would likely be assigned to the debtor spouse upon dissolution.

H ran up a gambling debt of \$50,000. This was without W's knowledge and not for the benefit of the community and therefore upon dissolution, a court would likely assign the remaining debt to H as that would be the equitable result and is within the court's discretion.

If a Creditor Makes a Claim post-separation and prior to property distribution

While separation terminates the marital economic community, it does not automatically terminate the CP estate. If a creditor makes a claim while the CP estate is still in existence, then the CP estate can be reached prior to the CP being distributed. In cases of contract debt, the creditor may opt to recover from the CP or the debtor spouse's SP.

In this case, even though W was not aware of the debt at the time of separation, the CP estate would still be liable. The casino could opt, at any time before property distribution, to seek recovery from CP or H's SP. However, any of W's SP would not be reachable to satisfy H's debt.

Answer B to Question 6

California is a community property state. All property acquired during marriage, other than separate property, is presumed to be community property. All property acquired before marriage or during marriage by gift or inheritance is presumed to be separate property. Further, all property acquired during marriage with the use of separate property funds is presumed to be separate property.

To determine the character of property upon divorce, the court will look to the source of the funds used to acquire the property. A mere change in form of the property will not change its character. Further the courts will also look to the actions of the parties which may have an effect on the character of the property and any presumptions that apply. Upon divorce, the court will divide all community property equally, unless the interest of justice require otherwise.

With these principles in mind, we can turn to the property in issue.

1) The Car?

No marriage- Separate property funds used to acquire

Here the car was acquired before marriage. In 2003 Wendy and Hank were engaged to be married. They discovered that the \$10,000 monthly income Wendy derived from a trust fund would terminate upon her marriage or upon her reaching the age of 25, whichever came first. Therefore they decided to postpone their wedding until Wendy's 25th birthday, in 2006, and instead began living together. Also, Wendy in 2003 opened a checking account in both of their names, into which she deposited her \$10,000 (which would be considered her separate property as there is no marriage) into an account in both of their names. Wendy also used the funds to buy a new car.

Thus at this point, their relationship would not be governed by community property law.

Hank will assert that he is entitled to a portion of the car because Wendy opened a checking account in both of their names, into which she deposited her \$10,000 monthly trust income. Thus, Hank will assert that she made a gift of the trust property,

which before marriage, and even after marriage would have been considered separate property (as trust income is usually characterized as a gift or inheritance). However, Hank would have to satisfy the requirements of a contract under California's view on meretricious relationships.

Meritricious Relationship

California does not recognize common law marriage, but will recognize one that was contracted in another state that does recognize a common law marriage. Because there is no marriage at this point, any funds used would be separate property. Thus, as there is no community, any agreements the parties have as to any property would be governed by contract law, unless the main thrust of the contract is sexual relations. Here because instead of marrying one another and terminating the trust income payments, Hank and Wendy decided to move in together, there is no valid marriage and any agreements they have as to property would be governed by contract law.

Title to the car in both of their names

Accordingly, here Hank will assert that they had an agreement as to the car that it was to be in both of their names and thus he has a right to distribution of the car as partially his property. This would require that Hank prove that there was a contract between the two, as community property principles would not apply in this situation as, at this point there is no marriage.

Wendy will assert that she owns the car as her own separate property. She will assert that she used her funds prior to marriage, and thus the court should trace back the source of the property to her earnings prior to marriage. However, as noted above, if Hank is able to show that they had an agreement as to property acquired during the time pending their marriage and he is able to show that taking title in joint names evidences this agreement, he will be able to assert an interest in the car based on contract law. Further he will point to the fact that he quit his job in reliance upon their agreement to take title jointly to her trust income and thus there was valid consideration.

Further he will attempt to assert that the consideration for the contract was not sexual relations, rather it was the agreement that she would pursue an education, while

he would take care of the household chores. If Hank is successful, the car would be distributed pursuant to a contract between the parties, likely here equally as title was taken in both of their names.

Lucas- Anti Lucas

Alternatively Wendy will assert that Lucas decision and Anti Lucas apply here. Under Lucas, when a spouse expends separate property to take title jointly, a presumption arises that for the purposes of divorce, it is treated as community property. Under Lucas, all separate property expended for the acquisition of property in joint form would be presumed a gift. However California enacted Anti Lucas statutes to overturn this decision and entitle the separate property to be reimbursed in the form of an interest free loan. Thus she will assert that because title was taken in both of their names, the Anti Lucas statutes apply and she should be entitled to her down payment for the property in the form of interest free loan. However, because there is no community, this is not applicable here.

Wendy's use of trust income to pay living expenses for Hank and herself

It should be noted that Wendy's use of separate property, her trust income prior to marriage, for the living expense for Hank and herself will not entitle her to any reimbursement, unless they had an agreement to the contrary. It is presumed that when one party uses separate property for the expenses of another party, that it was intended as a gift. Thus, unless Wendy can show an agreement to the contrary, she will not be entitled to reimbursement for such expenditures.

2) The \$30,000 in additional salary under the settlement?

Cause of actions that arise during marriage

A cause of action that arises during marriage is deemed to be a community property asset, subject to division upon divorce. Here in 2006, Wendy and Hank married. Thus the community commenced and all community property principles will attach to the relationship.

Wendy's \$10,000 monthly trust income terminated. Afterwards, Wendy began teaching at a local college. In 2008, Wendy learned that her compensation was less than that of her male counterparts and made a claim against the college.

Consequently, because the cause of action arose during marriage, likely the court will find that any subsequent award is deemed community property.

Wendy will assert that because shortly after her separation, she settled her claim against the college in return for additional salary in the amount of \$10,000 per year for the next three years, she will claim that this settlement was meant not as a settlement for past wages but as wage replacement for future years.

Wage replacement

Wendy will claim the settlement is meant as a form of wage replacement for the future years. Wage replacement under community property law are characterized upon receipt. Thus if received during marriage, will be deemed community property, however if received after marriage, will be deemed the working spouse's separate property. Here, Wendy will assert that as such, the \$10,000 should be deemed her separate property. She will argue that wage replacements are characterized at the time they are received rather than at the time the cause of action arose. Thus she will assert that because she will receive the \$10,000 after marriage, they should properly be deemed wage replacements characterized upon receipt.

Community property right to settlement

However, Hank will likely prevail in his assertion that the payments are for past services that occurred during marriage. All time labor and skill expended during a marriage is considered a valuable community property asset. Further all wages earned during marriage are considered community property. Here Hank will point to the fact that Wendy in 2008, learned that her compensation was less than that of her male counterparts and made a claim against the college. The following year, Wendy and the college settlement for an additional \$10,000 per year for the next three years. Because this settlement was likely due because of the fact that during the marriage she was

earning less than her male counterparts, the intent of the college was to compensate her for her labor expended in the past.

Thus because Hank will successfully assert that the settlement was entered into to pay Wendy for past services, namely her years of employment at the college from 2006 to 2009, he will be entitled to a community property interest in the \$30,000. Thus each will likely be awarded \$15,000.

Education expenses

It should also be noted that if the community pays down the loans incurred to gain an education and that spouses earning capacity has been enhanced, the community will be entitled to reimbursement for such expenses made from community funds even if the education was gained prior to marriage, unless 1) the community has already substantially benefitted from the education, 2) the other spouse has gained a community funded education and 3) if it lessens the need for spousal support upon dissolution. Here there are no facts to indicate whether the education that Wendy received was at all funded by the community during marriage. However, in the case that the community did pay part of her education, she will assert the exceptions.

Community has already substantially benefitted

There is a presumption that arises if the education was gained 10 years before the end of a marriage, the community has already substantially benefitted and is not entitled to reimbursement. Here this is exception is inapplicable because Wendy earned the education in 2003, they married in 2006, and the community ended in 2008.

Other spouses Community funded education

There are no facts to indicate that Hank has received an education.

Lessen the need for spousal support

Wendy will likely assert that although she gained the education prior to marriage, it lessened her need for spousal support upon dissolution. She will assert that she was living off of a trust which expired in 2006, thus her education enabled her to gain

employment which lessened the need for spousal support. Thus she will claim that H is not entitled to reimbursement.

3) The \$50,000 owed to the casino?

Debts during marriage

All parties during the marriage have equal right to manage and control the community. Thus each spouse is allowed to incur debt and borrow money. Such debt incurred during marriage is generally presumed to be community property. However, debt acquired during the marriage will likely be awarded to the debt incurring spouse. The non debt acquiring spouse's separate property will not be liable on the debt incurred by the other spouse. Here Unbeknownst to Wendy, Hank had run up a gambling debt to a casino during their marriage. At the time of their separation, Hank owed the casino \$50,000.

Thus this debt during marriage would properly be characterized as community property debt. However, upon dissolution, the court will likely award the debt to the debt incurring spouse.

Necessaries

There is an exception to the general rule that one spouse's separate property will be unavailable to the other spouse's creditors. This exception applies for all debt incurred during marriage and even during the separation if the debt is incurred for a necessary. A necessary is one that is a requirement of life, such as medical care and food and water. Here because the debt was incurred by Hank for gambling at a casino, likely this exception would not apply. Debt incurred at a casino is not a necessary of life and as such Wendy's separate property will not be available to the casino.

Interest of justice require different allocation

The court may however, in the interest of justice require that different debt allocation be made upon divorce. The rationale is that at this point, the interest is in protecting the creditors. Thus the court may look to see which spouse is in a better position to repay the debt and may allocate the debt to such a spouse. Here the facts

indicate that Wendy was working for a college and actually earning a salary. However, Hank and Wendy agreed that Hank would quit his job and stay home taking care of the household chores. Thus if Hank is unable to repay the debt, it may be that the court will assign the debt to Wendy to assure that the Casino is repaid.