

QUESTION 1

Wanda, a successful accountant, and Hal, an art teacher, who are California residents, married in 2008. After their marriage, Wanda and Hal deposited their earnings into a joint bank account they opened at Main Street Bank from which Wanda managed the couple's finances. Each month, Wanda also deposited some of her earnings into an individual account she opened in her name at A1 Bank without telling Hal.

In 2010, Hal inherited \$10,000 and a condo from an uncle. Hal used the \$10,000 as a down payment on a \$20,000 motorcycle, borrowing the \$10,000 balance from Lender who relied on Hal's good credit. Hal took title to the motorcycle in his name alone. The loan was paid off from the joint bank account during the marriage.

At Wanda's insistence, Hal transferred title to the condo, worth \$250,000, into joint tenancy with Wanda to avoid probate. The condo increased in value during the marriage.

On Hal's 40th birthday, Wanda took him to Dealer and bought him a used camper van for \$20,000, paid out of their joint bank account, titled in Hal's name. Hal used the camper van for summer fishing trips with his friends.

In 2016, Wanda and Hal permanently separated, and Hal filed for dissolution. Just before the final hearing on the dissolution, Hal happened to discover Wanda's individual account, which contained \$50,000.

What are Hal's and Wanda's rights and liabilities, if any, regarding:

1. The condo? Discuss.
2. The motorcycle? Discuss.
3. The camper van? Discuss.
4. The A1 Bank account? Discuss.

Answer according to California Law.

QUESTION 1: SELECTED ANSWER A

California is a community property state. Unless the parties have agreed otherwise in writing, all property acquired during the course of marriage is presumed to be community property (CP). Property acquired before marriage and after the marital economic community has ended is presumed to be separate property (SP). In addition, property acquired by gift, devise, or descent is presumed to be SP as well. To determine the characteristic of an asset, courts generally trace the property to the assets that were purchased.

At divorce, all CP is equally divided between the parties unless they have otherwise agreed in writing, orally stipulated to in open court, or an exception applies to the general rule of equal division of CP at divorce. A spouse's SP remains his or her SP at divorce. With these general principles in mind, each property will be assessed individually.

The Condo

At issue is whether the condo is completely part of Hal's (H) SP or whether the community estate has an interest in the condo. As stated above, property acquired by gift or devise, such as an inheritance, is presumed to be SP of the spouse receiving the gift/inheritance. Here, H's uncle left him the condo and Hal inherited it. Therefore, unless H and Wanda (W) expressly agreed in writing that it was to change from SP to CP, H owned it as SP alone. However, the facts indicate that H transferred the title to the condo to W into a joint tenancy with W to avoid probate. Therefore, at issue is whether this vested the community estate with an interest in the apartment.

In California, property that is held in joint form is presumed to be CP. Therefore, when H transferred his interest in the Condo to W as joint tenants, the law will presume

that he intended to gift the condo to the CP and for each to hold as joint tenants with right of survivorship. When property that is held in joint form is to be divided at divorce, two statutes apply. First, in order for the transferring spouse to have an interest of ownership it must establish that there was either a written agreement that he was to hold it as SP or that the deed itself contains language that the property is only to be SP. Here, no such written agreement exists. On the contrary, W and H agreed to transfer the condo to W and H as joint tenants. However, a spouse who "gifts" SP to CP is entitled to reimbursements for down payment, principal payments for the mortgage, and for improvements made to the property. Here, H essentially paid the price of the condo \$250k when he transferred it from his SP to CP. Therefore, he will be entitled to receive a \$250k return on the apartment's value if it is deemed to be CP. The remainder of the condo's apartment will be CP.

However, H can argue that the transaction should be set aside because it is presumptively obtained through undue influence and, therefore, void. In the course of dealing with one another, spouses owe the same duties as those who are in confidential relationships. This duty imposes upon them the highest duty of good faith and fair dealing when the spouses enter into transactions with each other during their marriage. If one spouse gained an unfair advantage over the other in a transaction, the court will presume that the transaction was obtained via undue influence and, thus, invalidate it. The spouse who obtained the advantage will have the burden to prove that the transaction was entered into by the other spouse freely and voluntarily with full knowledge of all the facts relevant to the transaction and the basic effect of the transaction.

Here, H will argue that W insisted that he transfer the property into both of their names as joint tenants to avoid probate. H will argue that because W was an accountant, he believed her word and relied on her professional experience to believe that the best move for the couple was indeed to hold it as joint tenants. Furthermore, he will argue that as an art teacher who knows nothing about estates and marital property, he relied on her word and did not know that holding as joint tenants will deprive him of

full interest in the condo if they were to divorce. W has the burden here. She will have to show that she explained everything to H and that she indeed told him of the basic effect of the transaction. However, this does not appear to be the case. It appears that all W did was insist that H transfer it to avoid probate, but did not inform him of any other consequences that such a transfer may have. Therefore, H has a good argument to void the transfer to W as joint tenants for the condo because W gained an unfair advantage over him.

If H is successful in arguing that the presumption that property held in joint form is CP, W may argue that the transfer constituted a valid transmutation. A transmutation is an agreement by the parties that changes the form of ownership from CP to SP, or SP to CP, or one's SP to the other's SP. However, to be valid, there must be a written agreement signed by the party whose interest is adversely affected and expressly state that a change of ownership is to occur. Here, this is not the case.

The Camper Van

At issue is whether the camper van is H's SP due to a gift from W or it remains as CP. During their marriage, the parties can enter into agreement to change the character of any particular property by transmutation. As stated above, transmutation is when the parties change CP to SP, or SP to CP, or one's SP to the other's SP. However, for a transmutation to be valid, it must be in writing, signed by the party whose interest is adversely affected and expressly states that a change in ownership is to take place. The general exceptions to writing requirements do not apply here. The only exception is when a spouse gives a gift of a tangible item of personal property to the other spouse. However, this personal gift exception only applies to gifts of low value and does not apply to those with substantial value.

Here, the wife purchased a camper van for \$20,000 on H's 40th birthday using money paid from their joint bank account, titled in H's name. Title alone does not establish the characteristic of property for community law purposes. Rather what is

more important is the funds that were used to acquire the property. Here, the funds were used from a joint bank account. The joint bank account is indeed community property because both of them were depositing money into it from the income they earned from their respective jobs. Therefore, the camper van purchased with CP is presumed to be CP unless there was a valid transmutation or other exception. Here, there was no valid transmutation. When W gifted the camper van to H, it was not accompanied by any written agreement, signed by W, that stated that H was to own the property as his SP and that W was gifting it to him outright. The issue then is whether the personal gift exception applies here. It does not. Generally, the personal gift exception applies to gifts of personal property with low value (such as a piece of jewelry that was inherited by a spouse). A \$20,000 camper purchased with CP will not be presumed to be a personal gift from one spouse to the other for community property law purposes. The subjective intent of the spouses does not matter.

In conclusion, the camper van is CP subject to be divided 50/50 between H and W because it was acquired with CP property and no exception applies to change its characterization.

The Motorcycle

To determine whether property is CP or SP, the courts will trace the funds used to acquire to purchase the property. Here, H used an initial down payment of \$10,000 to purchase the motorcycle. This \$10,000 was his SP because he had inherited it from his uncle and, as stated above, gifts acquired via inheritance are presumed to be SP. However, H then paid off the remainder of the 10k from a loan borrowed from a lender. Thus, the issue is whether then \$10,000 credit to purchase the motorcycle was CP or SP. Each spouse has an equal right of management over CP and, therefore, has the right to individually enter into agreements to purchase property on credit without the approval of the other. Determining whether a property purchased with a credit from a lender hinges on the primary intent of the lender and where he was looking for assurances before giving out the credit. For example, if the purchasing spouse used his

own SP for collateral for the credit purchase, then it would be presumed to be SP because the lender's primary purpose for giving the loan was due to the collateral. However, where the lender relies on the purchasing spouse's good credit, the property purchased with that credit is presumed to be SP. This is because one's good credit or reputation as having good credit is community property.

Therefore, because the lender relied on H's good credit in giving out the \$10,000 loan for the purchase of the motorcycle, the \$10,000 is presumed to be CP. As a result, H owns a 50% SP interest in the motorcycle because he used \$10k to purchase the property (50% of the purchase price) and shares the other half of the value of the motorcycle as CP with W. To conclude, H owns 50% of the motorcycle as SP and both H and W own the other half of the motorcycle as CP.

Additionally, even if the court determines that the lender's primary intent was based on H's SP and, therefore, the motorcycle was not presumed to be SP, the community estate will still have a 50% interest due to the principal debt reduction method. Where a spouse has acquired property before the marriage or acquired property through inheritance and then CP funds are used to pay for the principal of the property, the community estate obtains a pro rata interest in the property based off of the principal debt reduction due to funds paid from the CP. Here, the remaining \$10k of the motorcycle's balance was paid off with the joint bank account during the marriage, which is indeed CP. Therefore, the community estate would be entitled to a principal debt reduction of 50%, meaning it would have an interest of 50% of the total value of the motorcycle.

The A1 Bank Account

As stated above, all property acquired during the course of marriage is presumed to be CP, regardless of who holds title to the property. Here, W owned an individual bank account at A1 Bank without telling Hank and deposited some of her earnings into it. Earnings by each spouse are deemed to be community property when earned during

the course of the marriage. It does not matter where the spouse transfers the earnings or what type of account she transfers it into. The fact remains that the funds that she deposited in the A1 Bank were CP and she was not entitled from hiding CP or depriving H of his rights to the CP. The fact that she held the bank account solely in her name is not determinative here. Where the A1 Bank account would matter is if third party creditors of H's debts were seeking payment from him, they would not be able to attack this bank account because W expressly held the Bank account in her name, H did not have any rights of withdrawal and there was no commingling. However, at divorce, the bank account is subject to equal division as it was funded by W's earnings. Thus, H and W own 50% interest each in the bank account.

At issue is whether H may argue for an exception to the equal division of assets to apply here because W misappropriated CP. Although the general rule is that CP is to be divided 50-50 on divorce, a spouse who misappropriated community funds may not be entitled to receive an equal share due to her wrongful acts. H will argue that W misappropriated community funds here because she secretly opened up a bank account without informing H and deposited only her earnings in there. H will argue that because each spouse's earnings are CP he was entitled to those funds during the course of their marriage as it was supposed to be part of the community estate rather than W's private funds. Due to this misappropriation, H will argue that W should be forced to forfeit her interest in the A1 Bank and that he be entitled to take the 50k in full. Ultimately, this is a decision for the judge to make when he is ordering the divorce decree.

Additionally, H may argue that W again breached her duty of good faith and fair dealing by hiding the funds from him. He will argue that W had assumed control over the couple's finances and used that power to obtain an unfair advantage over H by hiding funds from him. He will argue that the agreement to allow her to control the couple's finances imposed a duty on W to use the duty of the highest good faith and fair dealing when she managed the finances and that she breached it by failing to disclose all the funds to H. W will have to overcome the presumption of undue influence by

showing that H knew of all the facts constituting the transaction. However, because H did not have any idea about the secret bank account it will be impossible for W to overcome this burden.

Therefore, H has a strong argument for having the court strip W's interest in the A1 Bank account funds and reward the full 50k to H for breaching her fiduciary duties as a spouse and for misappropriation of community funds. However, it is important to note that H's and W's marital economic community ended in 2016. The marital economic community ends when there is a permanent separation by the parties and an intent by one of the spouses to not resolve the marriage. The filing for a marriage dissolution is determinative evidence of such intent. Therefore, the marital economic community ended in 2016. From that time, any money that W deposited into the A1 Bank Account will be presumed to be her SP since the marital economic community has ended.

QUESTION 1: SELECTED ANSWER B

General Presumptions

California is a community property state (CP) all property acquired from the date of the marriage until separation is presumed to be CP - owned by the spouses equally 50/50. All wages earned from the time or labor of a spouse during marriage are CP. Property acquired before marriage or after separation is presumed to be Separate Property (SP) of the acquiring spouse. Property received by gift, bequest, or devise is also the separate property of the receiving spouse, as are the rents, issues and profits produced by SP. The character of the property may not be changed simply by changing the manner in which the property is held, the property will be traced to its source and characterized according to the source used to acquire the property. Upon divorce, spouses are entitled to in kind 50/50 distribution of all property.

Transmutation

One spouse may not gift themselves community property. In order to change the character of property from CP to SP or SP to CP, there must be an agreement in writing signed by the spouse whose interest is adversely affected explicitly stating that the spouse intends and understands that she is altering the character of the property. Oral agreements will not be a valid transmutation.

1. THE CONDO

The general presumption is that property acquired during the marriage is CP. Hal acquired the condo in 2010 which was during his marriage to Wanda. However, by law, property acquired through inheritance is the separate property of the inheriting spouse. Since Hal acquired this property from his uncle through inheritance, the condo was Hal's SP. The issue is that Hal, at Wanda's insistence, titled the property in Joint tenancy with Wanda.

Title in Joint Form

A married couple who takes title in joint form when it is inconsistent with the nature of the funds used to acquire the property will be presumed to have intended the property as CP. Taking title in joint form with no indication that a spouse wanted to reserve a separate property interest creates the presumption of CP. Here, Hal and Wanda took title in joint form and Hal did not reserve any separate property interest, there also is no other writing that evidences an agreement between Hal and Wanda for Hal to keep a separate interest so the court will presume that because they took title in a joint form that they intended the property to be CP.

Transmutation by Deed

In order for spouses to change the character of property from SP to CP as in the case with the condo being Hal's SP and then later conveying to CP, there must be a valid transmutation. The issue is whether the deed from Hal to Hal and Wanda will be a valid transmutation of his interest. Typically, a deed satisfies the writing requirement for the transmutation if signed by the party adversely affected, in this case Hal. However, Hal may not have intended for interest in the property to be adversely affected. The facts indicate that he only agreed to put the condo in joint tenancy after Wanda's insistence that he do so in order to avoid probate. It is likely that Hal being an artist relied on Wanda's assertion because Wanda was a successful accountant who would have known the consequences of such decisions as titling property in a particular manner. The courts have been unclear in whether or not they consider a deed by one spouse to other spouses to be a valid transmutation. Assuming that that the deed from Hal to Wanda is a valid transmutation, then at most Hal would be allowed reimbursement for his SP that was used to acquire the condo by the community. The reimbursement will be allowed without interest or apportionment of increase in value to the items. A court would likely use the value of the property at the time it became CP which for the condo was \$250,000, Hal would be reimbursed for the \$250k at divorce and the remaining value of the condo would be divided in kind 50/50 between Hal and Wanda.

Fiduciary Duties of Spouses

Spouses owe one another the highest duty of care and are fiduciaries to one another. If one spouse breaches her fiduciary duty to the other and takes advantage of that spouse by gaining an interest financially or in an asset, then the non-breaching spouse may be able to set aside the conveyance on those grounds. Here, Wanda was a successful accountant and Hal was an art teacher, there is a strong possibility that but for Wanda's insistence that Hal put the condo in joint form that he would not have done so. By insisting that the condo be in joint title, Wanda gained a financial interest in property that she would have otherwise had no rights to because it was received by Hal through inheritance. If Hal can show that Wanda breached her duty to him in convincing him to put the condo in joint form only to benefit herself, Hal may be able to have the conveyance set aside.

Equal Rt of Mgmt

Each spouse has an equal right to manage the assets of the community and keep the other spouse reasonably informed as to the financial situation. Here the facts indicate that Wanda managed the couple's finances and that she also kept a secret bank account without Hal's knowledge. By doing this she breached the duty to share management with Hal and used it to her advantage to try to hide \$50k - Hal will also be able to use this to bolster his case that Wanda breached her fiduciary duty to him and should not be allowed to take an interest in the condo.

Conclusion as to the Condo: Hal will likely be entitled to reimbursement for his contribution of SP to CP - in this case the condo was valued at \$250k at the time he conveyed to Joint Tenancy so he will have a right to reimbursement of the \$250k and the remaining value will be CP. However if the court finds that the deed was not a valid transmutation from Hal's SP to CP then the condo would remain Hal's SP.

2. THE MOTORCYCLE

One spouse may not appropriate CP to themselves by simply taking title to the property in their name alone. When both SP and CP are used for the purchase of an asset the

funds used to acquire the property will be traced to their source and the property will be characterized in accordance with funds used for acquisition.

Down Payment

Property that was initially SP will continue to be SP even if the SP is exchanged or sold and the form changes. Hal inherited \$10k from his Uncle - inheritance is an area of SP. Hal then took his \$10k of SP and used it for a down payment on a motorcycle that he took title to in his name alone. Had the motorcycle cost only \$10k, there would be no issue here because the \$10k used to purchase the motorcycle could be traced directly to the inheritance which was Hal's SP making the motorcycle then SP as well. The motorcycle cost \$20k, though, so it must be determined where the other \$10k came from and whether the additional \$10k can be traced to other SP or to CP.

Credit - Intent of the Lender

The credit, good will and reputation of a spouse belong to the Community during the marriage, this also includes credit scores. A loan taken out during the marriage is a community debt unless it can be shown that the lender in determining whether to loan one spouse the money relied solely on the borrowing spouse's separate property for repayment. The fact that a lender "relied" on one spouse's good credit is not the determining factor because good credit of one spouse belongs to both spouses as community property. When Hal borrowed the additional \$10k from the lender, the lender ,relied on Hals good credit - Hal's good credit belongs to the community and so therefore, the loan for the motorcycle was a community debt. If there were other facts that indicated that the lender relied on Hal's separate property interest - such as the condo - for repayment then the debt could belong to Hal alone, but based on the facts present that the lender relied on credit of Hal the debt was community debt.

Repayment of Loan w Joint Acct \$

Wages and earning of a spouse are community property if earned during the marriage. Here Wanda and Hal were putting their earnings into a joint checking acct which was used to pay off the motorcycle loan. Because CP was used to pay off half of the

motorcycle loan, the community owns a 1/2 interest in the motorcycle.

Conclusion as to the motorcycle: Hal owns the motorcycle as 50% SP because half of the purchase price can be traced to his SP inheritance, the community owns the other 50% interest because community property was used to obtain the loan and pay off the loan.

3. CAMPER VAN

When one spouse uses CP to buy a gift for the other spouse and puts title into that spouse's name alone, it is presumed to be a gift. While one spouse may not appropriate CP, one spouse may make a gift of interest in CP to the other spouse as SP. In this case, Hal will argue that Wanda taking him out for his 40th birthday and buying the camper van was her gifting her interest in the CP to Hal as his SP. On the other side, Wanda will argue that she did not intend to make a gift to Hal as SP, but instead intended to retain a CP interest in the van and that there was no valid transmutation from CP to Hal SP.

Gift Exception to Transmutation

There is an exception to the requirement that all transmutation be in writing. The exception is for gifts given to one spouse that are for that spouse's personal use and that are not substantial in value. Here Hal may argue that the van would also fall into the gift exception even if there was no writing that evidenced Wanda's intent to make a gift. Hal did use the camper van for fishing and summer trips with his friends. There is no mention of Wanda participating in these trips which would indicate that the van was for her personal use. However the gift must also not be substantial in nature and the van cost \$20k; whether or not this is of substantial value would be considered in light of Hal and Wanda's station in life - their assets etc. While this may be an arguable issue, courts have typically found that cars are not items that are personal enough in nature to fall within the exception.

Conclusion as to the Van: If a court finds that by purchasing the van and titling it in

Hal's name alone that Wanda intended a gift of her CP to Hal SP, then the van will be considered Hal's SP at divorce. Otherwise by tracing the funds to the CP checking account the van will be deemed cp.

4. A1 BANK

Wages earned by either spouse's time, labor, or skill during the marriage belong to the community. Here Wanda took her earnings during the marriage which are CP and deposited them into a secret acct w/o Hal's knowledge or name. Regardless of the fact that Hal's name is not on the account, Wanda's wages still belong to the community and, therefore all of the money in the account (\$50k) is CP. A court may continue to have jurisdiction over the proceedings and assets until they are all disbursed. Just because in this case Hal did not discover the \$50k until right before the final hearing will not affect his rights - and if Wanda purposely hid the money or failed to inform the court of its existence then she may be denied interest in the money to the extent that justice and fairness require.

Conclusion : The \$50k in the A1 acct is CP subject to in kind division upon divorce.