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California is a community property (CP) state. All property purchased by the spouses during marriage is presumed to be community property. Property obtained before marriage or after permanent separation is separate property (SP) of the spouse who obtained the property. Also, property obtained by gift, will or inheritance is the SP of the spouse receiving the asset. At dissolution, CP is divided equally in part. The presumption of CP can be rebutted by tracing source of the funds that were used to obtain the property.

With these major principles in mind, each asset in question is analyzed separately.

1. What are Harry's (H) and Wanda's (W) rights and liabilities regarding the condominium?

A spouses's salary is generally the result of joint effort during marriage and is presumed to be CP, absent an agreement to the contrary. Here, the condominium was purchased with Harry's salary. However, H and W had a pre-marital agreement regarding the salary that H will use to rebut the CP presumption.

Pre-marital agreement

A pre-marital agreement is valid if it is in writing and signed by both spouses, the spouses had 7 days to review the agreement, the spouses had an opportunity to get advice from an outside counsel. If no advice was obtained from an outside counsel, a written informed waiver or consent must be signed. Here, before entering into marriage, H and W prepared and signed two documents: one addressing the nature of their salary after marriage; the other one - waiving the rights to the advice of an outside counsel. Because both are in writing and signed, the writing part of the valid agreement is satisfied. The terms of the

agreement are valid unless they are agreed to under duress or are unconscionable. There are no facts to indicate duress as both H and W are entering the agreement voluntarily before marriage. Keeping each of the salary a SP may be viewed as a normal practice in the agreements, hence it will not be viewed as unconscionable or favoring one party over another. Although the facts do not indicate the passage of the 7 day requirement between the creation and the signing of the waiver, the court will likely interpret the agreement not to seek legal advice as valid under the circumstance in this case because there is no large discrepancy between the assets owned by either party that can affect the interest of one party over the other in the absence of independent legal advice.

Hence, the court will find that the pre-marital agreement is valid. The salary earned by each spouse would be construed as SP.

Because H used his salary, SP, to purchase the condominium and he took the title in his name alone, the court will determine that the CP presumption is rebutted, and condominium is H's separate property, although they lived there together after marriage.

2. What are Harry's (H) and Wanda's (W) rights and liabilities regarding the joint savings account?

H and W opened the joint savings account together. This indicates their intent to hold the funds in the account as CP. Although they funded the account with their salary, SP, the fact of commingling the funds in the same account and the intent will be sufficient for the court to construe the transfer of SP into the CP as a gift to CP. If any of the spouses desires to prove otherwise they will need to demonstrate via exhaustive method that the funds they deposited were used distinctly separately from the remaining funds or they will have to show that the funds that came in and the funds that went out of the account were not a target

of the intent to hold it as separate property.

Therefore, the joint savings account and the funds contained therein would be construed as CP and will be subject to equal division at dissolution.

3. What are Harry's (H) and Wanda's (W) rights and liabilities regarding the rental property?

The rental property was purchased from the funds in the joint savings account. Because, as discussed above, the funds in the savings account were CP, the rental property was purchased during marriage with CP funds, the presumption of CP will stand. W will try to rebut the presumption with the fact that W purchased the property in her name alone. Because titling of the property in one name alone is insufficient to prove SP without the adequate tracing of the funds, W will not prevail. As discussed above, she will not be able to prove that the property was purchased with her separate funds because of the lack of evidence to substantiate exhaustive method of tracing or the exclusivity of W's funds in the joint account.

If W is able to demonstrate to the court that she used separate property to purchase the CP, under anti-*Lucas* statutes W can claim a reimbursement for down payment, improvement and principal payment. It is not a likely route here because of the nature of the savings account where the funds came from as it was funded equally by both spouses and treatment of W's SP will have the same effect as treating the property as CP for equal division purposes.

The rental property is CP subject to equal division at dissolution.

4. What are Harry's (H) and Wanda's (W) rights and liabilities regarding the

hospital bill?

Debts incurred by either spouse before marriage or after permanent separation is the SP of the spouse incurring the debt. One exception to this is debt incurred for necessities after the separation and before the dissolution. The necessities include food, shelter, medical expenses. These expenses are satisfied from CP first.

Here, H and W permanently separated in 2016. After the separation, but prior to filing of the petition for dissolution, W required emergency surgery that resulted in the \$50,000 bill. Because H and W "permanently separated" and W moved out of the property, the separation can be treated as economic separation for the purpose of the assessment of the debt incurred thereafter. Hence, the hospital bill would ordinarily be viewed as W's separate obligation and would not affect H's interest. However, because the hospital bill, a medical expense that qualifies as necessity, was incurred after the separation but before divorce, CP would be responsible for the debt. Hence, the court can use the funds from the joint savings account as well as the rental to satisfy the debt before the assets are divided.

Therefore, the court will find that H's CP interest can be tapped to satisfy the debt. W's CP or any of W's SP will be subject to use to satisfy the hospital bill. However, H's SP will not be reachable in order to pay the hospital.

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