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Henry and Wendy married in California in 2008. California is a community property (CP) State, meaning there is a rebuttable presumption that all assets acquired by either spouse during marriage constitute community assets, to be distributed equally on divorce. Any property acquired before marriage, or by gift, devise or inheritance during marriage are considered separate property (SP). In order to classify marital assets, we must look to the 1) source of the asset, 2) Presumptions and 3) Actions changing the nature of the asset before determining dissolution. With these factors in mind, we can evaluate Wendy and Henry's assets.

Valid Pre-nuptial agreement

Here, there are no facts indicating that Henry and Wendy entered into a pre-nuptial agreement, so the assets will be distributed according to CA CP law.

1. Division of Assets

The Necklace

Source

The necklace was purchased with \$25K of Henry's inheritance.

Presumption

Inheritances during marriage are the inheriting spouse's SP. Gifts purchased with the inheritance money do not change the nature of the SP.

Action

Both spouses are free to gift their individual SP. Here, Henry gave the necklace to Wendy as a holiday present. When one spouse intends to change the nature of SP to CP or the other spouse's SP, a transmutation occurs. Henry clearly

intended the necklace to be a gift, but gifts after 1985 are subject to specific conditions. The gift must be in writing, and the value of the gift must not be excessive in relation to the couple's lifestyle. Here, the facts do not indicate whether H & W are so well to do that a 25K necklace is not a gift of significant value. To the ordinary couple, the gift would be excessive in relation to lifestyle. Furthermore, the gift would fail because it is not a transmutation in writing.

Dissolution

The necklace cannot be Wendy's gift because it was not in writing and is likely excessive compared to H&W's lifestyles. If W wishes to keep it, she may have to reimburse the community for 1/2 of the necklace value.

The Car Accident Settlement Proceeds

Source

Wendy was in a car accident in 2012, and made a claim against the person responsible. Wendy and Henry separated in 2013. The settlement proceeds were not delivered until 2014, after separation.

Presumption

Proceeds from Tort settlements belong to the community if the tort occurred during marriage and before separation. Torts occurring after separation are the injured spouse's SP. The community may also be reimbursable for loss of wages during marriage.

Action

Here, the settlement was not reached until after Wendy and Henry separated. However, Wendy was in the car accident before the separation. The settlement funding will be treated based on when the tort occurred, which was during marriage before separation. This means the community would have suffered

losses from Wendy's medical payments, loss of wages and treatments, and the like.

Dissolution

The car accident proceeds are CP because the tort occurred during marriage before separation. The \$30,000 should be divided evenly between Wendy and Henry.

Stock Option Profits

Source

Wendy was informed of potential performance-based stock options from her job at Company in 2010. Wendy was granted the stock options in 2012.

Presumption

A spouse's earnings during marriage are presumed CP. Stock options are often a benefit of a spouse's earnings, and are calculated in two ways: 1) Performance based stock-options, granted during marriage are calculated in a way that benefits the community, and 2) incentive-based stock options, designed to keep the earning spouse at that particular company.

Action

Performance-based Stock Options/ Marriage of HUG

When an earning spouse receives stock options based on performance during marriage, the calculation grants the community a percentage based on performance during marriage. The calculation is the number of years married while working at company/ number of years at company x the stock option amount. Here, Wendy was told in 2010 that she would receive stock options based on her performance. Wendy was married at the time the offer was made.

Company granted the stock options in 2012, while Wendy was still married. The options were granted based on the two years of performance during marriage: 2010 to 2012 (2)/(5) years wendy worked at Company, although she was separated in 2013. By this calculation, the community would be entitled to $2/5 \times$ the 80K wendy exercised in 2014.

Incentive-based Stock Options

However, the facts state that the stock options in 2012 were only partially based on Wendy's exceptional performance at work. If the options were issued as an incentive to retain Wendy as an employee, the calculation is different, dividing the time of offer or marriage to option/years at company x stock option amount. Here, the facts are unclear as to whether the stock options were meant to be incentive for retainer, or performance based. The court also has discretion to divide assets per the tenants of justice if neither calculation adequately serves both spouses.

Dissolution

If the options were performance-based, the calculation in marriage of HUG applies. If they were incentive-based, the alternate calculation applies. However, the court may wish to use its discretion to equitably divide the \$80k from the stock options because the facts are unclear as to why the stock options were issued.

2. The Child Support Payments

Source

Henry was liable for child support payments dating back to at least 2008 when he and Wendy were married.

Presumption

CP is generally reachable in order to satisfy liabilities from either spouse, even if those liabilities occurred before marriage. However, there is an exception for child support payments from previous marriages. The other spouse's SP is generally not reachable to satisfy pre-marital liability.

Action

Here, Henry has been paying child support presumably since 2008 from his paycheck. While his paycheck during marriage is CP, and therefore reachable to satisfy pre-marital liabilities like child support, Henry was not entitled to use CP to make child support payments without Wendy's consent, because both spouses are stewards of the marital assets and have identical rights to control CP property. If Henry has done so without consent, he will be required to reimburse the community for any payments dating back to 2008

Dissolution

Any payments made from CP without Wendy's consent will be reimbursed to the community. W's SP cannot be reached to satisfy the child support payments if they are outstanding.

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