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California is a community property state. All property and earnings acquired during the course of a valid marriage are presumed to be Community Property (CP). Separate property is all property that is acquired either before the marriage or through bequeath, or gift. Quasi-community property is all property that is acquired during the course of the marriage that is acquired outside of California that would otherwise be CP if acquired while in the state.

Valid Marriage

In California, a valid marriage requires that two people (1) enter into a consensual contract to marry and (2) followed by a license from the county and solemnization.

Here, the facts state that H and W entered into a valid marriage in 2008.

Thus, there is a valid marriage between H and W.

End of Economic Community

The economic community of a marriage ends upon either (1) death or (2) dissolution. Upon dissolution, each spouse is entitled to one half of the CP, and the spouse's are entitled to their SP. Upon death, the surviving spouse is entitled to the deceased spouse's portion of CP, as well as 1/2 of their SP if they have issue. If they have one more than one issue, than the surviving spouse receives 1/3 and the issue receive 2/3. With the following principles in mind we can now turn to the issues at hand.

Permanent Separation

Permanent separation occurs when one spouse leaves the marital relationship with intent not to return to the relationship. Formerly, there was a requirement to leave the marital home, but that is no longer a requirement and the only requirement is the intent not to return to the marriage.

What are H's and W's rights and liabilities in:

The Condo

Source

See rule above for SP.

Here, H acquired the condo through inheritance from an uncle.

Thus, because he acquired the condo through inheritance this would be SP.

Actions

After the acquisition of the condo, H was the sole person of title on the property. Later, W insisted that H change the title of the property to jointly held property, which H did. At this point the condo was worth \$250,000, but further increased during the course of the marriage.

Transmutation

A transmutation is an agreement between spouses to change the nature of property from one type to another (CP to SP, or vice versa). Prior to 1985, an oral or written agreement was sufficient for a valid transmutation. Post-1985, a valid transmutation required (1) a written agreement (2) stating the nature of the property to be changed and (3) signed by the party who's interest was affected.

Here, W has convinced H to change the title of the property from his name only to a jointly held title. This occurred in 2010, thus a written agreement is required, and an oral agreement would not be sufficient for a valid transmutation. W will argue that because the title is jointly in their name, that the property is CP. However, to change the nature of property, a valid transmutation would be required to change it from SP to CP. Further, there is no evidence that they signed a written agreement to change the nature of the property.

Thus, because there is no written agreement, there is no valid transmutation to change the nature of the property from H's SP to CP of the marriage.

Anti-Lucas - Jointly Titled Property

Under the Lucas Case, all jointly held property upon dissolution of a marriage is presumed to be CP. However, California has enacted an Anti-Lucas Statute which holds that property that is jointly held at dissolution is presumed to be CP, but must reimburse a spouse's SP if the SP was used for either (1) down payment (2) principal payments or (3) interest payments.

Here, the property was held jointly upon dissolution. Courts will presume based on the joint title, that the property will be CP. However, as analyzed above, the property was never validly transmuted from H's SP to the CP of the marriage. Further, there is no evidence that shows that H used any of his SP for either down payments, principal payments or interest payments.

Thus, the Anti-Lucas statute will not apply this situation.

Improvements - CP to H's SP

CP is entitled to reimbursement if it is used to improve or increase the value of

the other spouse's SP.

Here, the facts state that the value of the condo increased in value during the marriage. If CP was used to increase the value of the property then it will be entitled to reimbursement for any contribution. As analyzed above, the property was never validly transmuted into CP, thus it remained H's SP. Further, because the condo was transferred into a joint title, then it can be presumed from there on out that CP would be used to improve the property. We can argue that if she used any CP towards the improvement of the property, then the community is entitled to reimbursement.

Thus, if CP was used to improve H's SP, then the community is entitled to reimbursement.

Dissolution

Thus, upon dissolution, the condo remains the SP of H, however, if any community funds were used to improve or increase the value of the property, then the community is entitled to reimbursement.

The Motorcycle

Source

See rule above for SP.

Here, the down payment of the motorcycle was H's SP.

Actions

Courts will trace the property of the marriage to determine what the property is

upon dissolution. H can show that the down payment of the motorcycle was his SP.

Thus, the down payment of H's motorcycle will be considered to be SP.

Property Acquired on Credit

Property that is acquired on credit during a marriage is presumed to be the property and responsibility of the community. However, if one spouse can show that the lender relied solely on that spouse's SP or good credit when extending credit, then the property will be considered SP. This is known as the intent of the lender test.

Here, the motorcycle was purchased with \$10,000 of H's SP. The remainder of the value of the motorcycle was acquired on loan from a Lender. The facts state that the Lender relied solely on H's good credit when extending credit.

Thus, the motorcycle will be presumed to be the SP of H because the intent of the lender test shows that they relied solely on H's good credit.

Reimbursement

The community can be reimbursed for any payments from CP to a spouse's SP during the marriage.

Here, it states that the motorcycle loan was paid off with funds from the joint checking account. This would show that the community had used some of its funds for H's SP.

Thus, because the community used funds to payoff H's motorcycle, then the community will be reimbursed for what they paid towards the motorcycle loan.

Dissolution

Thus, upon dissolution, the motorcycle will remain H's SP because the intent of the lender test showed that they relied solely on his good credit. Further, H used his SP for the initial down payment of the motorcycle. However, W will be entitled to any reimbursement that the community made towards paying off the motorcycle.

The Camper Van

Source

See rule above for CP.

Here, the funds used to purchase the camper van came from the joint checking account.

Thus, the source was CP and will be presumed to be CP.

Actions

The funds from CP were then used to purchase a camper van which was then given to H and titled in his name only. At this point, H will likely argue that the camper van is his because it is titled in his name only. However, the court will look to see if the property was validly transmuted from CP to SP upon dissolution.

Transmutations

See rule above for transmutation.

Here, there is no valid written agreement between H and W regarding the camper van. W will argue that the camper van is CP because it was purchased using CP funds. Further, because there is no valid transmutation, the CP would not be changed into SP. However, H can argue that the camper van was a gift, and thus would be his SP upon dissolution.

Gift Exception

A transmutation is not required when the property is used to confer a gift to a spouse. Courts will presume a gift if (1) the gift is personal in nature (2) given to the other spouse and (3) not substantial based on the of the economic community.

Gift is Personal in Nature

Here, the gift is personal in nature because it was given to H to use for his summer fishing trips with his friends.

Thus, the gift to H was personal in nature.

Given to Other Spouse

Here, the gift was given to H for his 40th birthday from W.

Thus, the gift was given to H.

Substantial for Economic Community

A gift will be the SP of the receiving spouse if the value of the gift is not substantial for the economic community. For example, an expensive gift that is

beyond the means of the economic community would not become SP of the receiving spouse.

Here, the gift was \$20,000 for the camper van. It must be argued whether the gift was substantial compared to the economic community. It can be presumed from the facts that W is a successful accountant, and may have the means to buy such an expensive gift for H. Further, we can look to the fact that W was taking some community funds and placing them in a separate bank account which totaled \$50,000. This amount would thus show that the \$20,000 would not be substantial in value compared to the economic community because W had saved an amount much larger than the purchase price of the camper van.

Thus, because the camper van was not substantial in value compared to the economic community, it will be presumed to be a gift to H.

Dissolution

Thus, based on the gift exception, the camper van will be H's SP.

A1 Bank Account

Source

See rule above for CP.

Here, the bank account was funded with community funds earned during the marriage.

Thus, the bank account will be presumed to be CP.

Actions

Here, W created the account in her name only and deposited some of the community funds to the bank account. This would not automatically change the nature of the property from CP to SP.

Thus, W will have to show that the funds were changed from CP to SP.

Transmutation

See rule above for transmutation.

Here, there is no valid written agreement between H and W that the funds would change from CP to SP. Further, there was not even communication regarding the funds because W was doing this behind H's back.

Thus, there is no valid transmutation to change the funds from CP to SP.

Management and Control

During the course of the marriage, each spouse is entitled to complete control of the property and finances of the community.

Here, the facts state that W was in charge of the finances. While W can argue that she had control of the finances of the community, this does not exempt H from exercising any control of the finances. It would be in H's interest to know where the funds from the community are going, and in this case W was taking some of the funds for herself.

Thus, H was denied the ability to manage and control the community funds during the marriage.

Fiduciary Duties of Spouses

During marriage, each spouse owes each other a duty of loyalty and duty of care when it comes to CP. This requires that spouses confer with each regarding actions such as (1) purchases of substantial value (2) investments of community funds and (3) general financial maintenance. The spouse who did not violate any fiduciary duty can be entitled to the value of the property if there is a showing of dishonesty, or fraud.

Here, H did not discover the separate bank account until after the dissolution. W had been taking community funds and using them to fund an account which she did not tell H about. This would be a violation of the duty of loyalty because it shows dishonesty on the part of W when it came to the community funds. Further, H had entrusted the management of the community finances to W and she took advantage of this and started to put money away for herself. The fact that W did not tell H about the separate account (and that she amassed such a large amount) can be a showing of dishonesty or fraud on the part of W.

Dissolution

Thus, H might be entitled to the entire value of the separate bank account because W violated a fiduciary duty by failing to disclose the account, while also improperly handling the community finances.

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