

3)

California is a community property state. In a community property state, both parties' actions are for the benefit of the marital economic community. The community begins at marriage and ends at divorce, death of a spouse, or permanent physical separation with no intent to continue the relationship. Property, earnings, and debts acquired during the marriage are presumed to be community property. Property acquired before the marriage, gifts and inheritance during the marriage, and property acquired after divorce or separation are presumed separate property. If a married couple acquires property in a non-community property state but then moves to California, California will treat the property as quasi-community property (QCP) and it will operate under the same rules as community property.

How should the court allocate the value of the business?

In 1995, Wendy (W) acquired 1/2 interest in the business by signing an agreement with her father. In 1999, W inherited her father's 1/2 interest in the business by his will. Because these two halves of the business were acquired by different methods and with different sources, the court will treat each half separately to determine how to allocate the value of the business between Hal and Wendy.

1. Wendy's 1/2 interest in the business acquired in 1995 by agreement

Presumption

There is a presumption in California that property and assets acquired during the marriage are community property (CP) unless shown to be otherwise.

Here, H and W were married in 1990. The business owned by W's father existed at the time prior to the marriage, but when W signed an agreement with her father in 1995 for 1/2 interest in the business, it was during her marriage. Because W acquired the business during her marriage to H, it will be presumed to be CP.

Source

The source of a property can be used to determine its nature. When a spouse acquires a property, earning, or When a spouse acquires property by gift or inheritance during the marriage, it is considered to be that spouse's SP.

The facts are silent as to the source of any funds or any consideration paid by W to her father

for the 1/2 interest in the business. H will argue that the 1/2 interest should be CP because it was acquired during marriage and therefore is presumptively CP. For instance, if H is able to argue that the 1/2 interest in the business was given to W as compensation for her hard work, then it should be considered to be like earnings and therefore CP. If H can liken the 1/2 share in the business to stock options, then he may be able to make the argument that W is being compensated for her work. The facts state that W helped her father operate the business prior to her marriage with H, and continued to work with her father until 1995 when she was made 1/2 owner. H can argue that all of those years of W's work, and 5 years during which W and H were married, is the consideration given by W to her father in return for the 1/2 interest.

W will argue that the 1/2 interest was a gift, because her father gave it to her for no consideration. More information is needed to determine if W will be successful, like the terms of the agreement. If W is able to prove that no consideration was given for the 1/2 interest, then a court will likely find that the 1/2 interest is a gift.

If W is successful in showing that the 1/2 interest is a gift, then it will be considered SP. If H is successful in showing that the 1/2 interest was given in consideration for W's years of work in the business and that the interest should be treated more like stock options, then it will be considered CP.

Title

Title may be used to show a spouse's intent as to the CP or SP nature of a property. However, titling alone will not be enough to change the nature of CP or SP, and title is not determinative of the nature of a property.

The facts are silent as to the title for the business, and they only state that "Wendy became the owner of a 1/2 interest in the business." Because of this statement, it is fair to assume that W and not H were given title to the 1/2 interest in the business. However, this is not determinative as SP, because CP acquired during the marriage will remain CP even if it is titled in one spouse's name alone.

Title is not enough to show that the business is W's SP.

Married Woman's Special Presumption (MWSP)

The MWSP applies before 1975 when a married woman had property in her name only, it was presumed to be SP. After 1975, the presumption no longer applies and the property would be presumed to be CP.

Here, all of the events took place after 1975 so the MWSP does not apply.

Actions

W and H did not take any actions like transmutation or make any agreements to change the nature of the 1/2 business interest.

Conclusion

W's 1/2 interest in the business acquired in 1995 by agreement will be SP if W is successful in arguing that it was given as a gift from her father with no consideration. The interest will be CP if H is successful in arguing that it was given as compensation for W's work and given with consideration.

2. Wendy's 1/2 interest in the business acquired in 1999 by her father's will

Presumption

There is a presumption in California that property and assets acquired during the marriage are community property (CP) unless shown to be otherwise.

Here, H and W were married in 1990. The business owned by W's father existed at the time prior to the marriage. When W's father died in 1999 and left his 1/2 interest to W by will, it was during her marriage. Because W acquired the business during her marriage to H, it will be presumed to be CP.

Source

The source of a property can be used to determine its nature. When a spouse acquires property by gift or inheritance during the marriage, it is considered to be that spouse's SP.

When he died in 1999, W's father left his 1/2 interest in the business to W by will. Because W acquired the interest by inheritance, it will be considered W's SP.

Title

Please see above for rule.

The facts are silent as to the title for the business, and they only state that "Wendy became the owner of a 1/2 interest in the business." Because of this statement, it is fair to assume that W and not H were given title to the 1/2 interest in the business. However, this is not determinative as SP, because CP acquired during the marriage will remain CP even if it is titled in one spouse's name alone.

Title alone is not enough to show that the business is W's SP.

Actions

W and H did not take any actions like transmutation or make any agreements to change the nature of the 1/2 business interest.

Conclusion

W's 1/2 interest in the business inherited in 1999 from her father is W's SP.

3. Pereira and Van Camp

When one spouse has a SP business acquired during marriage, the court will use the Pereira Approach or the Van Camp Approach at separation or divorce to calculate the CP value and SP value of the business.

Pereira Approach

The Pereira Approach gives more value to the work done by the community. The Pereira approach is applied when the spouse's special skill or efforts is what caused the business to grow and be successful, because the spouse's efforts belong to the community. The formula for the Pereira approach is:

SP = the value of the business at time of marriage + (the value of the business at time of marriage x 10% x years of marriage)

CP = fair market value of the business at time of separation - SP as calculated above

Van Camp Approach

The Van Camp Approach places more value on separate property. The Van Camp approach is applied when the business grows and is successful because of the nature of the business itself, not because of any efforts of the spouse. The formula for the Van Camp approach is:

CP = (reasonable value of spouse's efforts - annual family expenses) x years of marriage

SP = fair market value of the business at time of separation - CP as calculated above

Conclusion

The Pereira approach is applied when the spouse's skill or efforts is what caused the business

to grow and be successful, because the spouse's efforts belong to the community. Because the facts do not provide specific amounts as to the market value of the business or the reasonable value of W's efforts, we are unable to calculate using the two formulas.

Here, a court will be more likely to use the Pereira Approach to calculate the community property value of the business because the business was grown due to W's skills and efforts. The facts state that the business doubled in value from 1995 to 2000 because of Wendy's exceptional talent for buying antiques. The court will likely use Pereira to calculate the SP value of the business, at least from 1995 on.

If W is successful in showing that the entire business is her SP, then a court will apply one of these approaches to the entire business. If H is successful in showing that the 1/2 interest acquired in 1995 is CP, then a court will split the CP half of the business equally between H and W, and then use one of the approaches above to calculate the CP value of the other half of the business.

If W is successful, S will receive the SP calculation plus one half of the CP portion. H will only receive one half of the CP portion.

If H is successful, H will receive 1/4 interest plus half of the CP calculation of the SP portion. W will receive 1/4 interest plus half of the CP calculation of the SP portion.

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END OF EXAM