2)

Community Property (CP)

California is a community property state. Community property is any property that is acquired during the marriage.

Separate Property (SP)

Separate property is any property acquired before the marriage. Additionally, anything acquired after final separation or dissolution of the marriage is presumed to be separate property. Separate property is also any bequests or gifts, or any rents or profits thereof.

Beginning of Marital Economic Community

The marital economic community starts on the date of marriage and continues until there is a final separation or dissolution of marriage.

Here, the facts indicate that Harry (H) and Winona (W) were married in California in 2015.

Therefore, this is when the marital economic community began.

End of Marital Economic Community

The marital economic community ends when there is (i) a final separation with the intent to actually separate, or (ii) at the beginning of the dissolution proceedings of the marriage.

Here, first Harry and Winona decided to live separately, but to go to counseling with the hope of reconciling their differences. Therefore, there was not a "final break in the marriage" as of that day, because they had the intent of reconciling. However, the facts also state that after a short period of counseling, they decided they would not reconcile and H filed for dissolution of the marriage.

Therefore, as of the date H filed for dissolution, the Marital Economic Community ended.

Timing, Intent, and Title of the Property

When trying to discern the rights and liabilities of different items of property, we must look at (i) when the property was acquired, (ii) the intent of the parties at the time the property was acquired, and (iii) who took title to the property.

1. The Acme Stock?

Timing

The facts indicate that Harry had premarital savings of $10,000 in a bank account before he had married Winona in 2015. Therefore, the $10,000 would be presumed to be the SP of H. However, after the wedding Harry started working at a new job and deposited $3,000 salary check into the account. He then paid $2,000 for rent and $2,000 for living expenses. Both of these expenses benefitted the community, so they will be presumed to be drawn from CP. After these expenses were taken out for the community, H's initial premarital earnings now sit at $9,000. He then bough the $1,000 of Acme stock which increased in value over time.

Intent

H will argue that the money is held in his separate SP checking account, and that after the expenses were drawn, he was left with less than the initial SP amount he had in the account. Therefore, H will argue the Acme stock belongs to him. However, W will likely be able to rebut this presumption that the money is solely SP, as Harry used commingled funds to pay for necessaries of the community (rent and living expenses).

Therefore, the court must consider the intent of the parties when deciding whether the $1,000 in Acme stock is CP or SP.

Tracing

H will likely be able to utilize tracing to show that this stock was in fact purchased with SP funds. H will use what's known as <u>*exhaustive tracing,*</u> where all that is left in the account after deducting CP expenses is SP.

Conclusion

Because H will likely be able to show tracing through the exhaustive method, in addition to the fact that the bank account was opened in his name *alone,* and before the marriage started, the court will likely rule that H is entitled to 100% of the Acme stock that was purchased by H. W will likely get none of the stock.

2. Winona's Post-separation disability insurance payments?

Timing

The facts state that during the marriage, W purchased disability insurance out of her salary. W later became disabled and could not longer work, so she became eligible and received monthly payments until she reaches age 65. Because the policy was purchased during the marriage, it will be presumed CP. Additionally, H can likely argue that because it was purchased during the marriage is is presumed to be CP.

Intent

However, the court will not only look at the timing and the funds used, but will also look at the intent of the parties. W will contend that this was purchased for her sole benefit on the off-chance that **she** became disabled, not H. Additionally, W will argue that the court should look at to **what the benefits are being paid out for**. The facts state that W became disabled and could no longer work. Therefore, W will contend that H should not get payments from the post-separation disability payouts because it should be used 100% to take care of her during her time of disability.

Tracing

Another method that W can use to rebut the presumption of CP is tracing, as discussed above. Because there are no factual details about any accounts the money came from to purchase the disability insurance, it can be inferred she paid from it from her own account, although it will be likely presumed CP funds since it was acquired during the marriage. Thus, W can use the *direct tracing* method to show that she **directly** paid for the disability insurance with her own SP.

Conclusion

W's post-separation disability insurance payments will be presumed CP because of the timing (during the marriage). However, W will likely be able to rebut that presumption by showing the intent when it was purchased, what the purpose of buying the insurance was, and possibly also by direct tracing to show that the policy was purchased using W's own SP funds.

3. The investment account?

Timing

As discussed above, the marital economic community did not end until H filed for dissolution of the marriage. The investment account, on the other hand, was opened after they had decided to live separately, but with the intent of reconciling.

Therefore, the investment account will be presumed to be CP because it was opened during the marriage, and before a "final break" in the marriage occurred.

Intent

There are also issues with the intent of the parties surrounding the investment account, specifically with H, as he used gambling winnings to open the investment account. The gambling money will also be presumed to be CP because H gambled during the marriage, and earned those funds during the marriage (before the final break in the marriage). H will argue that his intent was to be SP because he knew that his marriage with W was falling apart. W will argue that it was still during the marriage and before the marital economic community ended.

However, the court will also look to the bad faith acts by H.

Duty of Good Faith

Both spouses have a duty to act in good faith in regards to the other spouse.

Here, the facts state that H did not tell W about the gambling winnings or the investment account because she did not approve of his gambling. H will argue that he did not act in bad faith when choosing not to disclose, but instead did not want to upset W. W will argue that H did not act in good faith by failing to disclose the winnings to W, as they were married and it's their responsibility to act in good faith toward one another.

Duty to Disclose

Both spouses have the duty to disclose to one another truthful, material information. W will argue that H breached his duty by failing to disclose the gambling earnings and investment account to W. H will argue, on the other hand, that their marriage was failing as it was, and he did not want to agitate and further ruin the marriage. However, this will likely not be a valid excuse the court will take into consideration.

Conclusion

It is likely the court will either (1) punish H for the breaching the duty of good faith and disclosure by awarding 100% of the investment account to W, or (2) split the earnings down the middle because it will be presumed to be CP.

4. The loan for the sailboat?

<u>Debt of the other Spouse</u>

Harry

After Harry filed for dissolution, he took out a loan to pay for a sailboat, hoping that sailing would relive the stress of divorce. Because there are no facts of malicious intent by taking out the loan, and the act to take out the loan appears to be made in good faith, H will not be found to have breached his duty of good faith to W. He did however, breach his duty to disclose, because there are no facts to support that he told Winona about the loan he took out. However, H will still be liable for the debt. Upon the dissolution of marriage, H will be liable to the debt out of his portion of CP, and then his SP.

Winona

Winona, on the other hand, as the non-debtor spouse, will only be liable to the extent of her CP contributions. W's CP will be reachable by the creditor, but not her SP. W's SP cannot be reached by a creditor because she is the non-debtor spouse, and additionally, she had no notice of the loan that was taken out on H's behalf.

Therefore, W's CP will be liable for the debt of H, but not her SP.

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END OF EXAM