2)

California is a community property state.  Any property acquired during the marriage is presumed to be community property (CP).  Properties acquired prior to marriage through gift, bequest or devise, are presumed to be the acquiring spouse's separate property (SP).  A mere change in form does not necessarily change the character of the property.  In divorce, the court will divide the CP equally in kind, unless, there are circumstances requiring the court to deviate from the traditional equal division in kind.

The court will apply the tracing method to trace the origin of the fund in order to determine the characterization of the property. With these in mind, the following is the items to be distributed upon dissolution.

1. **<u>The Acme Stock</u>**

Source of fund - the source of fund used to acquire the Acme stock was H's SP because he had a pre-martial savings of $10,000 in his separate bank account.  However, after the marriage with Winona (W), H commingled his earnings and deposited his salary check into the account.  Under this situation, the court will apply the tracing methods in determining the character of the stock.

***Commingled Funds - Action taken in changing the***

***characterization***

When CP funds are commingled with a spouse SP, there are two method:  1) Direct tracing; or 2) Exhaustion method.

***Direct Tracing***

Under direct tracing, the court will account from the beginning of the SP funds prior to the date of marriage and note the SP fund at that time.  Then, it will tracing forward after the marriage to track the home expenditure.

Here, H originally had a $10,000 as his SP before marriage. After marriage in 2015, H deposited his $3,000 salary which is CP asset.  The court could separate the $3,000 monthly salary by adding them all the way to the date of dissolution to determine how much was commingled into H's SP.  The fact is unclear as to when the marriage ended when the date specified, by the court will have such resource upon dissolution.

***Exhaustion Method***

Under the exhaustion method, the court can add all the living expenses during marriage.  This is same by calculating the time the marriage last and minus the living expenses CP from H's SP and determine how much CP fund was exhausted from the SP and distribute according.

Next, when either or both of the tracing method concluded, the court will be able to determine how much fund in H's SP.  Then, whether the living expenses did not exhaust from H's SP.  Here, the fact suggested that there the living expenses would be exhausted by H's salary because his salary was $3,000 a month and the living expenses was $2,000 a month, which infer the CP contribution was only roughly $1,000 a month.

Thus, it appears that H still has enough fund on his separate bank account to buy the $1,000 in Acme stock.

***Community Might Got the Appreciation on Acme Stock***

Taking title in one of the spouse alone does not created a absolute determination of the acquiring spouse's SP entitlement because title is a presumption, but the community asset is the key.

Here, even assuming that after the tracing methods have determined that H had enough SP fund to buy the Acme stock, the appreciation during the marriage will be divided equally because the appreciation was earned during the marriage. The fact tells us that the stock has increase value. The court will apply the time rule in determining the distribution of appreciation. The method is the date or time of marriage over the appreciated value.

Thus, the Acme stock appreciation will be divided equally.

## 2. **Winona's Post-Separation Disability Insurance Payment**

Disability insurance acquired or earned during the marriage is presumed CP depending on whether the insurance is a replacement for W's earning.

Here, W purchased the disability insurance out of her salary during marriage which is CP asset. She became disabled and could no longer work meaning that W was using the insurance as her salary replacement. The fact that she is entitled to monthly disability insurance to be continued until she reaches the age of 65 clearly indicate that the insurance is in fact a replacement of earning. While during marriage, it will be CP asset. However after divorce, it will be W's SP.

At divorce, the court will award the disability insurance to W because her earning after divorce will be her own SP.

Thus, H will have no right to have any share of W's insurance after the divorce.

## 3. **<u>The Investment Account</u>**

At issue here when did the economic marital marriage ends. When a couple decided to separate and apart and had no intention to consummate the marriage, the economic marital marriage ends.

Here, however, while H and H decided to live separately, but they hope to reconcile and going to counseling. As such, the marriage did not end yet even though H moved out.

### ***Equal Management and Control***

Each spouse has equal management and control in how to expense or acquire property during the marriage.  Here, H used his earning to gamble at a local casino and won a large amount of money.  H then used his winning money and opened an investment account in his own name.

Again, title is not outcome determinant, characterization is the key.  H's earning was still CP because they have not ended their marriage yet.  This alone will rebut H's contention that taking title in his own name will be his SP.

Therefore, at divorce, the court will have jurisdiction over dividing the asset of the investment account either equally in kind by forced sale or giving the investment account to H, but set aside the equal contribution of CP asset to W.

### *Fiduciary Duty of Spouse*

Spouses owe each other a high fiduciary duty and must be negligent or recklessly do something that would be detrimental to the community asset.  Here, H did not tell W about his winnings or investment account simply because W did not approve of gambling.

This incident turned out not to be detriment because H won a lot of money.  However the result was unpredictable since H could have easily lost a lot of money as well.

This will be a factor to be considered by the court in determined whether or not to set aside more for W.

## 4. **The Loan for the Sailboat**

The loan for the sailboat was acquired after H filed for dissolution, meaning that he intended never to reconcile with W ever. When this happened, any property acquired thereafter will be H's SP.

A few days after H filed for dissolution, H took out a loan to pay for a sailboat. The lender intent is key here. Since W did not have any income due to her disability, it is very likely that the lender relied on H's credit and asset to approve the loan.

Any loan approved by the lender to H will be H's own debt.

Therefore, W has no right to claim ownership of the sailboat.

Question #2 Final Word Count = 1177

**END OF EXAM**