

5)

California is a Community Property state (CP). Marital economic community (MEC) starts with marriage and ends with death, divorce or permanent separation. Any property acquired during the marriage with the couples earnings considered as CP. Any property acquired before or after the marriage or after the one spouse death, or the property acquired via gift, bequest, or devise is considered separate property (SP).

1.

The Car

Presumption

Any property acquired while marriage is considered CP.

Here, Wanda (W) bought the car during marriage thus it is presumed to be CP.

Source and Tracing

A property acquired with the funds that acquired before marriage or even while married from the inheritance is considered SP. If the funds are commingled the SP claiming spouse may trace it to its source either with direct tracing or exhausting methods. In direct tracing spouse must show that there was enough funds to buy or the CP funds were exhausted and the property was bought by SP.

In 2015, before marriage, Wanda inherited \$100,000 from her father and she kept it in her bank account. Harvey (H) will argue that it is CP and he is entitled to half of the value of the car. However, W will argue that she acquired \$100k from her father and she used the money to buy the car. She can show by direct source that she had enough funds when she bought because she spent 20k on jersey, 50k for down payment and there are 30k left in the account to buy the car.

Therefore, the car is W's separate property.

Distribution

Spouses may keep %100 of their SP and 1/2 of the separate property at the dissolution.

Here, since the car is her SP, she will keep it.

2.

The Jersey

Presumption

See rule above.

Here, the jersey was bought during marriage by W.

Thus the jersey is presumed to be CP.

Source

See rule above

Here, W bought the jersey from the funds which she inherited from her father. As discussed above if she can show that she had enough funds it might be considered as her SP.

Transmutation

When a character of property changes from CP to SP or SP to CP, the change must be made with in writing.

Here, the jersey as discussed above likely W's SP.

Thus the change must be made in writing.

Gift Exception

Also if spouses gift each other SP to another spouses SP during the marriage it is considered as the gifted spouse's SP if the value is not substantial and the gift is related to personal use. Thus, there is no need for writing.

Here, the gift is likely substantial because when she bought the jersey she was unemployed and \$20,000 is substantially valuable considering her financial situation.

Therefore, the jersey is will be her SP in dissolution.

Distribution

H will argue that the jersey is for his personal use and should be awarded solely to him. However, as discussed above the jersey will remain as W's SP.

3.

The House

Presumption

See rule above.

Here, W and H bought the house during marriage.

Thus, the house is CP.

Special Title Presumption - Anti Lucas Statute

When one party acquired title alone on his name it does not change the character of the property in dissolution if the spouses did not intent to make the property belong to only one spouse.

Here, W and H bought to house for \$500k with down payment of \$50k from W's inheritance and titled in only H's name and he paid the mortgage debt from his earnings. Since title in one spouse is not enough to prove the property is belongs to SP of that spouse the house will be considered CP at dissolution.

Distribution

The house will be distributed 1/2 to each spouse.

Mortgage Debts

Presumption

Debts acquired during marriage considered as CP and paying spouse may not seek reimbursement after dissolution.

Here, H will argue that he paid the debts with his earnings from his restaurant business thus he should get reimbursement. However, his argument likely fail since the earnings are also CP and the debt inquired during the marriage is CP as well.

Thus, he will not be reimbursed. The debts are also be \$150,000 each spouse.

4.

The Restaurant Business

Presumption

See rule above.

Here, H opened his restaurant before their marriage in 2010.

Thus, the restaurant is H's SP.

Distribution - Van Camp

If a spouse contributed to another spouse's SP business they may seek reimbursement at dissolution if the business gained value because of the spouses work. However if the business gained value because of the business' own features the spouse will not be reimbursed.

Here, during their marriage W worked at the restaurant and helped H to manage it. At the dissolution restaurant's value reached to \$1M. W may seek reimbursement of her fair share from latest fair market value of the restaurant because she contributed to restaurant with her skills. However this argument will likely fail because H will argue that the restaurant increased to \$1M because the celebrity posted on social media that it was his favorite restaurant after W stopped working. W also will argue that the restaurant increased value from \$100,000 to \$500,000 because of her management skills. The court likely find that W has no part in latest \$ value in overnight because it is obvious that the increase is due to celebrity's social media post and she has no part on that increased.

Therefore W may seek reimbursement for her fair share for increase \$100k to \$500k but she may not seek reimbursement for the increase after she stopped working. Thus, the increase \$100k to \$500k is CP while overnight \$500k increase is H's SP.

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END OF EXAM