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### **California Law**

California law applies to legal marriages between couples that are domiciled in California.

Here, because Harvey and Wanda are both California residents that were domiciled in California at the time of their marriage California community property principles will apply to their marriage.

Thus, California law will apply to Harvey and Wanda's marriage.

### **Opening Presumption**

California is a community property state. Under community property state principles any property that is inherited, gifted, or earned before the course of marriage is separate property (SP.) Any property during the course of the marriage that is inherited, gifted, bequest, devisable, or discernible is also SP. Any property during the course of marriage that is purchased through the earnings of both spouses is considered community property (CP). Upon dissolution of marriage, the nature of property is determined by: 1) the source, 2) actions taken by each spouse, and 3) presumptions.

### **Marital Economic Community**

The marital economic community (MEC) begins when the couple is legally married and ends at death, divorce, or permanent physical separation with the intent to never rekindle the marriage.

Here, Harvey and Wanda's (MEC) began in 2016 because that is when they were married in California. Their MEC ended just a few years later because Harvey filed for dissolution, moved out of the house, and stopped paying the mortgage which indicated his intent to permanently separate from Wanda.

Thus, their MEC ended a few years after 2016.

### **What are Wanda and Harvey's rights and liability, if any, with respect to?**

#### **1. The car?**

#### **Source**

The source of property determines how the property will be divided at death, divorce, or permanent physical separation.

Here, the source of the property is Wanda's SP because she used her inheritance that she received before her marriage with Harvey to purchase the car. As stated above inheritance during the course of marriage and before is always deemed SP.

Thus, the source of the car is SP.

#### **Actions**

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Spouse may take actions that change the nature of SP to CP or CP to SP.

### **Rights of Spouses**

Each spouse has equal rights over property and may sell or use property that is held by the other spouse but it must not be sold if it is less than the fair market value.

Here, Harvey will argue that the car belongs to the CP because he had deep admiration for the car and used it often. However, these facts alone are not enough to give the car to Harvey upon dissolution because Wanda used the car as well and used her SP to purchase it.

### **Disposition**

Thus, the car is Wanda's SP and she will have rights over it.

## **2. The framed and signed football jersey?**

### **Source**

See rule supra.

Here, the source for the framed and signed football jersey is Wanda's SP because she used her inheritance to purchase it.

Thus, the source of the jersey is SP.

### **Actions**

See rule supra.

### **Gifts**

Gifts between spouse of insignificant value are considered CP, however, gifts between spouses of high value belong to the spouse that used their inheritance or income to purchase it which deems them SP.

Here, Harvey will argue that the football jersey belongs to him because it is a gift that was given to him after they both returned from their honeymoon in an effort to surprise him. However, this argument will likely not stand because the source of the gift was still SP and the gift was of significant value pricing at \$20,000 and not a small jersey that one can just purchase at their local sports store.

Thus, the gift is still considered SP.

### **Transmutations**

Transmutations are valid when both parties are agree in writing that is signed to change the nature of property from SP to CP or CP to SP. Before 1985, these changes were not required to be in writing and oral communication is enough. Gifts of insignificant value between spouses are not subject to this rule.

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Here, while Harvey might argue that he is entitled to the jersey because it was a gift given to him during the course of their marriage this argument will not stand because it was not a gift of insignificant value and there was no valid transmutation between the parties that changed the nature of the jersey from SP to CP.

Thus, there was no valid transmutation.

### **Disposition**

Thus, the framed and signed football jersey is Wanda's SP.

### **3. The house?**

#### **Source**

See rule supra.

Here, the source of the house was Wanda's SP because her inheritance was used to make the down payment of \$50,000 on the house.

Thus, the source of the house was Wanda's SP.

#### **Actions**

See rule supra.

#### **Taking Title**

When a spouse takes title in their name alone it does not change the nature from SP to CP.

Here, Harvey took title in the house alone and will argue that he is entitled to the house entirely. However, this argument will not stand because taking title alone does not change the nature of the house.

Thus, the house remains CP.

#### **Mortgage Payments**

If a spouse's SP is used to acquire the mortgage then they might attempt to argue that they are entitled to the home, if CP funds are used to acquire the mortgage then it is considered CP.

Here, Harvey will argue that the home is entirely his because Wanda was unemployed when they purchased the house and he used his earnings to acquire the mortgage and the continue to make mortgage payments. However, this argument will not stand because earnings during the course of marriage are considered CP.

Thus, the home is considered CP.

#### **Anti-Lucas Statute**

Jointly titled property between spouses is considered CP but upon dissolution the other spouse is entitled to reimbursement if their SP funds were used to purchase it. Before 1987, SP funds

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were considered a gift.

Here, the Wanda will argue that she is entitled to reimbursement in the amount of \$50,000 because she used her SP funds to purchase the house.

Thus, Wanda will be entitled to reimbursement.

### **Disposition**

Thus, the house must be equally divided between Wanda and Harvey and both of them must make the outstanding mortgage payment of \$300,000 on the home.

### **4. The restaurant?**

#### **Source**

See rule supra.

Here, the source of the restaurant is SP because it was Harvey's business before marriage.

Thus, the source is SP.

#### **Actions**

See rule supra.

#### **Van Camp**

Van camp is applicable when the property's nature itself is the reason it grows.

Here, van camp is not applicable because Wanda helped the restaurant grow.

Thus, van camp is not applicable.

#### **Perieria**

Perieria is applicable when the spouse's knowledge and skill help the property grow. They are entitled to 10 percent each year of marriage.

Here, the restaurant grew because of Wanda's value of working there that drove a celebrity to come see it. She will be entitled to at least \$400,000 for the 10 percent and rough calculation of years of marriage.

Thus, Wanda will be reimbursed for her work through perieria.

#### **Disposition**

Thus, it is considered CP and the million must be divided.

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**END OF EXAM**