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## **Presumptions**

California is a community property state. Property acquired during the course of marriage is presumed to be community property (CP). While property acquired before marriage and after marriage is considered separate property. Moreover, gifts, bequest, or devisees are considered separate property (SP).

At the end of marital economic community, each spouse entitled to their half of CP and entire SP. The end of the community occurs at death or divorce. Moreover, the community can end when one spouse states intent for dissolution followed by acts such as separation,

Here, Harvey and Wanda married in California in 2016, and thus the community began in 2016. Property acquired during this time is presumed to be community property unless an exception applies. And the community when Harvey file for dissolution and moved out for the house.

## 1. Car

### Characterization of Property

To determine the characterization of property, courts generally look at the funds used to acquire the property. Generally, if SP funds were used to acquire the property the property is considered SP. In contrast, if CP funds were used to acquire the property, then the property is presumed to be CP. A change in the property's nature does not change the characterization.

Here, Wanda used SP funds to purchase the car. The funds were from the \$100,000 inherited from father prior the marriage. Moreover, the funds remained in Wanda's separate account that was created before she married Harvey. And because the property was acquired with separate property, it follows the car is also Wanda's separate property.

With that said, the car was acquired during the course of marriage and was used by Harvey. Harvey could argue that the car was for the benefit of the community, and was acquired

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during marriage. But, the facts merely state that Harvey loved the car when he drove. The facts do not state that the car was for the benefit of the property.

### **Wanda has full rights to the Car**

In short, Wanda retains all the rights to the car because the car is SP. The car was acquired with SP. Harvey may have used the car from time to time and enjoyed the car, but mere use property does not change the property's nature. Moreover, the facts do not make clear whether the car was for the community's benefit. Or the car was for Wanda's personal use. Thus Wanda obtains full rights to the car.

## **2. The Football Jersey**

### **Transmutation**

A change from SP to CP or CP to SP requires a valid a Transmutation. A valid transmutation requires the burden's spouse consent and signature for the change in property to occur. However, exceptions such as clothing, jewelry, and gifts that are not of substantial value do not

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require a transmutation.

Here, Wanda used \$20,000 from SP account to purchase the jersey for Harvey. Although, the jersey was a gift intended for Harvey, the gift is of substantial value. Thus, for Harvey to have any rights to the property, Wanda would have to consent and signed with a valid transmutation.

### **Jersey is Wanda's SP**

Because Wanda used her SP to purchase the Jersey. And a valid transmutation, did not occur, then the Jersey is likely Wanda's SP.

## **3. The House**

### **Tenants Entirely**

When a two spouses acquire real property, both spouses share property as tenant entirely. Each spouse has equal rights and equal share of the property. And at the end of the community, each spouse entitled to their share of the CP.

Here both Wanda and Harvey acquired the house as tenants entirely. Although the property, is under Harvey's title, Wanda did

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make a downpayment on the house. Moreover, the house was acquired during marriage, and thus makes the house CP.

### **Right to Reimbursement**

Spousal debts have a right to reimbursement for improvements to the house when a spouse use SP.

Here, Harvey paid for the mortgage payments with from his business which is SP. Thus at the end of the marriage, Harvey is entitled to reimbursement for his contribution used to pay for the mortgages.

### **Debts During Marriage**

If a debt occurred during the community and for the benefit of the community, then both spouse are liable for debt. Moreover, CP debts are generally paid with CP funds. But if CP funds cannot satisfy the debts, then each spouses SP funds are used to satisfy the debt.

Here, the house was purchased during the community, and for the benefit of the community. It follows that both Wanda and

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Harvey are joint severally liable for the debts of the house. Even, Harvey filed for dissolution, the debt accrued during the course of marriage. Thus, Harvey is obligated to pay from his SP funds if the community funds cannot can satisfy the mortgage.

Similarly, Wanda is also liable for the remainder of the mortgage because the house is CP. Also, Wanda's SP funds will have be used if CP funds cannot pay of the remainder of the mortgage.

#### **4. Restaurant**

A spouse is entitled to reimbursement for contribution of another spouses business under Van Camp or Pierra.

#### **Pierra**

Under Pierra, a spouses entitled to reimbursement if the growth of the of spouses business is due to personal efforts. The spouse is entitled to 10% of the growth due to the contribution and the value of the business prior

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to the growth.

Here, the facts state that the restaurant initial value was \$100,000. And over time, with Wanda's contribution, the restaurant value increased to \$500,000. Under Pierra, Wanda is entitled to 10% of \$400,000 increase plus the restaurant initial value. In short, Wanda is entitled to \$140,000 (\$40,000+\$100,000) due to her contribution and labor for the restaurant.

## **Van Camp**

Under Van Camp, if a spouses SP business grows outside of contribution such as external factors, the spouse that doesn't own the business is entitled to half the original market value prior the growth.

Here, the growth of the market was due to external factor outside of either spouses control. The growth was caused by the celebrity that the took the photo of the restaurant raising the market value from \$500,000 to \$1 million dollars. Thus, it follows that Wanda is entitled to half of the value before the change which would be \$250,000. While Harvey, is entitled to

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the rest of the value because the restaurant is  
his SP

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**END OF EXAM**