1)

California is a community property state, and recognizes community property as well as separate property. Below are the presumptions

Community Property Presumptions

Community property

Any property tangible or intangible acquired during the marriage is considered community property. Normally community property is usually acquired for the benefit of the community.

Separate Property

Separate property is any property acquired before the marriage or after the termination of the marriage. Any property acquired by gift, inheritance or bequest during the marriage is also considered separate property.

What are Henry's and Wendy's Respective Rights and liabilities?

1. The house

Acquisition of the house

Wendy and Henry were married in 2012. Shortly after they got married Wendy's aunt gave her the house "free and clear of any mortgage".

Community Prop. Presumption

The house would be presumed to be community property since it was acquired during marriage. Wendy married Henry in 2012 and right after she got the house without any mortgage from her aunt.

Henry would make the argument that the property is considered and should be held community property by the court since it was received right after he married Wendy. Henry would emphasize that he lived in the house with Wendy and he took care of it while she was constantly on tour. Henry would also say he is on title of the house and he deserves at least 1/2.

Wendy would counter the argument saying the house is actually separate property please see below.

Separate Prop. Presumption

Although the house would appear to be community property since it was acquired during the marriage, there is also a separate property presumption here. The fact pattern indicates the house **was a gift to Wendy specifically not the community**. The house came from Wendy's aunt. Recall, that separate property is any property acquired before the marriage or after marriage, but separate property is ALSO any property acquired by gift or inheritance during the marriage.

Conclusion

Given the fact that the property was a gift from Wendy's aunt and Henry did not make any payments on the home, it would likely be traced back to Wendy. Even though he has title, the title does not render it his, since no payments were made by him and it was a gift to Wendy not the community.

2. The bank loan

Community Prop. Presumption

The bank loan would be considered community property under the CP presumption because it was acquired during the marriage. The bank loan is under the name of Wendy and Henry, and as such it would appear both spouses are liable for the payments of the loan to the bank.

Henry would make the argument that the loan is a CP loan because it was acquired during marriage, and it was acquired by him and Wendy. Henry however, did not inform Wendy of his loan, and he forged her signature, it is unlikely this would be considered CP.

Wendy would argue that she is not liable for this loan based on Henry's breach of fiduciary duty (see below).

Fiduciary duties among spouses

In community property spouses owe fiduciary duties to one another. Among the duties is a duty of care, loyalty, and right to keep the community informed and not act in bad faith.

Breach of a Fiduciary Duty

When a spouse acquires a property, loan, or document with bad faith or breaches a fiduciary duty to the community, it often invalidates the CP presumption. The courts will not hold the community liable for the actions of one of the spouses in bad faith by purposely not informing the community of their breach.

In this case, Wendy would argue that Henry forged her signature while she was on the road, and he broke his fiduciary duty to her and the community by doing so. Wendy would emphasize Henry acted in bad faith by withholding the information from her, and never informing her that he got a loan for his auto repair shop without her knowledge and without her approval. As such Wendy would ask the court to find that the bank loan for the auto shop is solely the responsibility of Henry.

Conclusion

The court would likely find that Henry broke his fiduciary duty to Wendy by acting in bad faith and forging her signature on the bank loan without informing her of it. Henry also withheld the fact that he used her gifted house as collateral for his loan. As such Henry would be liable for this loan alone, the community would not have to pay for it regardless if it was acquired during marriage.

3. The Auto Repair Garage

CP Presumption

The auto garage was acquired during marriage and as such it would be considered community property.

Henry as previously stated used the funds from the bank loan to acquire his auto repair garage, however Henry acquired these loans with bad faith. Henry forged the signature of Wendy and used her house as collateral without ever informing her of these actions.

SP Presumption

Separate property is any property acquired before marriage, after marriage or during marriage by gift inheritance or bequest.

Henry would try to make the argument the garage is his separate property since he acquired it for his business as an auto mechanic. However this argument would fail, the property is under both of their names, there is nothing that demonstrates he used his own personal money to acquired this property. The court would likely use the tracing method to determine whether it is CP or SP.

Tracing

When a property acquired during marriage or loan, bank account, or other legal document is in dispute the court often looks at tracing of funds to determine whether the property is SP or CP.

Conclusion

The court in this case would find that the auto repair garage is considered CP because it was acquired during marriage. However, since the property was acquired through bad faith, the court has the option to completely give the property to Wendy if she wants it, or completely take it away from Henry given his actions.

4. Wendy's Investment

Wendy stopped coming home and told Henry the marriage was over. Dissolution in california is the end of a divorce, normally when the process is over however date of separation is different since it plays a role in determining CP and SP.

Separation

Separation in CA is considered when one spouse completely leaves the home, and stops being intermingled with the other spouse. Normally leaving the home is enough to hold a separation of marriage, if the spouse keeps living in the home, it is normally harder to prove date of separation.

CP presumption

Henry is going to make the argument that Wendy's investments are CP because it was acquired during the marriage and she had not technically divorced him yet. Henry will emphasize although she stopped returning home and sending him money they were legally still married and not separated. Henry will also argue that any wages made during the marriage are considered for the benefit of the community and as such they are CP. Therefore Wendy's investment should be considered CP.

SP Presumption

Wendy on the other hand is going to argue that under C**A the date that matters for SP and CP is the date of separation.** Wendy will emphasize that the date she left the house and stopped going to the house she became legally separated from Henry. Wendy will argue that since she left the house and never returned, anything she acquired using her wages were not for the benefit of the community and they are her SP.

Conclusion

The court would likely use the tracing method to see if the wages are CP or SP. The court would find that when Wendy left the home, and never returned back with Henry she was separated. As such when Wendy used her own wages to purchase her investments, they were her SP.

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END OF EXAM