5)

C**ommunity Property Presumption**

California is a community property state. All property acquired during the marriage is community property. Earnings are deemed community property when earned during the marriage as well. Separate property is property acquired before marriage, after separation or by devise, bequest or property purchased with separate funds or profits from separate property. To trace the source of an item, courts will look to the source and then seek any transmutations that may have occurred to change the character of the asset. Upon divorce, community property is divided equally and the separate property is granted to the spouse to whom it belongs.

Marital Economic Community

The MEC begins at marriage and ends upon permanent separation when the parties indicate no desire to rekindle the relationship.

Here, the marriage began in 2016 and ended when Harvey moved out of the house and stopped paying the mortgage which was shortly after his restaurant became and overnight success.

Transmutation

A transmutation is an agreement between spouses to change the character of an asset. These agreements must be in writing and signed by the adversely affected spouse. Gifts of insignificant value are excepted. Prior to 1985, these agreement could be oral.

1. **The Car**

Source

See rule supra.

The source of the funds used to purchase the car were from Wanda's separate property because it was her inheritance that was used and inheritance is separate property. Harvey will argue that he loves the car and that he drove it often which constituted a transmutation and that it should be deemed community property. However, there was no agreement between Harvey and Wanda to change the character of the asset and there was no writing.

Disposition

Thus, the car is Wanda's separate property.

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

Source.

See rule supra.

At the time when Wanda was unemployed, she used $20,000 of her inheritance to purchase a gift for Harvey of a framed and signed football jersey from his favorite player. The gift was purchased with separate property because it was Wanda's inheritance that was used to purchase the gift for Harvey. Wanda will argue that she should be awarded the jersey because it was purchased with her separate funds. However, the court will look to Wanda's intent which was to gift the property to Harvey in order to determine if any action was taken to change the character of the asset. Since the framed and signed football jersey is unique to Harvey but it is significant in value it will be awarded to Harvey.

Thus, the framed and signed football jersey will be awarded to Harvey.

3. **The house**

Source

See rule supra.

The house was purchased during marriage for $500,000.

Thus, it is CP.

Wanda entitled to Reimbursement of $50,000 (Marriage of Lucas/Anti-Lucas)

If a spouse uses separate property to purchase CP, they are entitled to seek a reimbursement for their separate property used.

Here, Wanda used separate funds and is entitled to her $50,000.

Titling In Spouse's Name Alone (Home and Morgage)

Titling the home in Harvey's name alone did not change the character of the property from CP to SP. Nor did having the loan in his name alone make only Harvey liable for the loan.

Thus, both Harvey and Wanda owe the mortgage.

Breach of Fiduciary Duty

Spouses owe a duty to each other as fiduciaries.

Thus, titling the home in his name alone was a breach.

Disposition

Thus, the home is CP and the loan is CP as well.

4. **The restaurant**

See rule supra.

The restaurant was purchased in 2010, prior to marriage.

Thus, the restaurant itself is Harvey's separate property. However, if there was an increase in value during the marriage of Harvey's separate property asset, then a proportionate share belongs to the community. Wanda will argue that the restaurant became community property because of her efforts at the restaurant. However, the courts look at two formulas for determining the community property and separate property shares of a separate property business.

Periera

When a spouse's efforts are the reason for growth in a separate property business rather than the business itself, the courts apply the Periera method. The courts will take the initial start up contribution and multiply that by a reasonable rate of 10% and multiply it by the number of years of marriage, to determine the amount of separate property. Thus the restraurant was valued at $100,000 when Wanda was working. 10% is $10,000.

Thus, if the Court uses the Periera method it will subtract the amount of Harvey's SP contribution to the amount the business is worth today. However, in this case, that would not be fair, as it may be more likely that the Court will implement the Van Camp method due to the instant success, for parity and fairness.

Thus, it is likely the Court will apply the Van Camp method as opposed to Periera.

Van Camp

If the success of the business is derived from other factors or because of the business itself, the Court will use the Van Camp method for determining the CP and SP shares in the community.

Here, after Wanda was working at the restraurant a celebrity posted on social media which caused the restaurant to become an overnight, economic success. This success was derived from other factors than the labor of the owning spouse. Harvey will argue that Wanda stopped working and should not enjoy such a windfall. However, Wanda worked, contributed to the success of the business and the marriage did not end until after the valuation increased to $1,000,000.

Thus, it is likely that under the Van Camp evaluation, Wanda will be entitled to a significant share of the success of the business.

Question #5 Final Word Count = 960

END OF EXAM