5)

California Law

California Law is applicable when spouses have a valid marriage and are domiciled in California.

Opening Presumption

California is a Community Property State. All property acquired before marriage and after the end of the Marital Economic Community is Separate Property (SP). All property acquired through labor of the spouses during marriage is presumed Community Property (CP). All gifts. bequests, devises are SP. Upon divorce, death of a spouse or dissolution of marriage, the spouses are entitled to one half of the community property. The characterization of whether an asset is CP or CP depends on the Source of funds, the Actions by the spouses that affect the characterization of the assets and the statutory presumptions that affect the disposition of the assets.

Marital Economic Community
Begins at marriage and ends in death of a spouse, divorce or a permanent separation with no intention of rekindling the marriage.

Tracing

The courts will attempt to ascertain ownership of an asset through tracing. If not enough granularity exists to apportion ownership of an asset, it will be presumed as CP.

What are Wanda and Harvey's rights and liabilities, if any, with respect to:

1. The Car

Source
The car was bought using the SP of Wanda because the 20k used to purchase it was part of her $100k inheritance from her mother.

Actions
There have been no actions regarding the characterization of the car

Therefore, the car remains SP of Wanda

Disposition
At the end of the MEC, the car, being SP of Wanda, will fully belong to Wanda.

2. The framed and signed football jersey

Gifts

When a spouse grants a gift to the other from his/her SP, they must do so without consideration. The giving of the gift must be done in writing and signed by the granter of the gift. Gifts of insignifcant value are not required to be conveyed via writing.

Here, Wanda gave the gift without executing any writing, making the gift giving invalid.

Source
The Framed and signed football jersey was purchased from wanda's SP because it came from the $100k that she inherited from her mother.

Action
Wanda gave the signed football jersey as a gift to Harvey. However, because she did not execute the giving of the gift in writing, the gift was thus ineffective.

Disposition

Gifts
See rule supra

Here, the gift giving was void because it was not covered by a writing and it was not a gift of insignificant value.

Thus, the framed and signed football jersey remains the SP of Wanda.

3. The house. Discuss.

Loans
A court may assign a loan as SP or CP depending on the intent. If it is paid for by CP then it is CP. If the loan is secured by SP property, then it can be adjudicated as SP.

Taking Title
If a spouse takes property from CP funds and titles it in his/her own name, this does not change the character of the asset from CP to SP.

Source

The house was purchased by a loan paid for by Harvey's earnings from his restaurant. The payments come from his restaurant earnings which are CP. The downpayment came from the SP of Wanda because it came from her inheritance.

Thus the house, which is $550k in total, consists of $500k CP and $50k SP of Wanda.

Actions

Taking Title

See rule supra

Here, Harvey took sole title to the house despite the funds coming from CP. This did not change the character of the asset to Harvey's SP and it remains CP.

Disposition

Thus having traced $500k to the CP and $50k downpayment to Wanda's SP, at the end of their MEC, Harvey will be entitled to $250k while Wanda will be entitled to $250k+$50k= $300k. However since the mortgage was for the account of the CP, and $300k still remained on the mortgage, Harvey will have to pay $150k and Wanda will have to pay $150k. If we subtract the paid up value vs. the loan, we will have Harvey having $100k (250k-150k) and Wanda will have $150k ($250k-$150k + $50k DP).

4. The Restaurant.

When the spouses own a formerly SP business:

Perreira method

The Perreira method is used when the growth of a business is due to the effort, labor and skill of one or both of the spouses. The original value as SP is assigned an interest and that original value and interest remains the SP of the founding spouse,

Here, Harvey opened the restaurant in 2010. It grew in value from $100,000 to $500,000. Thus the original value of $100k will be given a 10%interest per year and the amount accrued will be added to the original amount and will be the SP of Harvey. Unfortunately, since the facts do not bear the year when Harvey and Wanda ended their MEC, it is not possible to calculate a numerical value.

During the time that the business grew from 100k to 500k, the growth was due to the combined efforts of Harvey and Wanda was working at the restaurant and managing it. For that period, the $400k growth is attributable to CP and hence Wanda and Harvey will both take $200k each at the end of their MEC corresponding to this respective period.

Van Camp Method

The Van Camp method is used to apportion a business that grew on its own accord, and not due to the direct labor, skill or efforts of either or both of the spouses.

Here, a celebrity posted on social media that it was her favorite restaurant causing its value to increase from $500k to $1Million. In this period the business grew not because of the efforts of Wanda or Harvey.

Being the original business of Harvey, the entire growth of $500k during this period will thus be

for the SP of Harvey, with the fair market value of Harvey's efforts paid to him and that portion becomes CP.

Unfortunately since the facts do not indicate the year of end of the MEC, a numerical value cannot be calculated.

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END OF EXAM