

## **Community Property**

**Professor Schwartz**

### **Spring 2005 Midterm Exam**

**1 hour 15 minutes -- One Question Only**

The following events occurred in California.

Homer and Winnie were married in 1965. Both were high school teachers. In 1966, Winnie entered into an installment contract for the purchase of a commercial parking lot downtown to supplement the couple's income. She exclusively used funds from the joint bank account where she and Homer deposited their earnings for the payments. In 1970, she made the last payment and received a deed conveying the parking lot to Winnie, a married woman. Homer kept the banking records for the couple and knew she was engaged in this transaction but he was not concerned.

In fact, Homer was impressed by Winnie's enterprising ways, and he wanted to reward her. Although money was scarce, in 1975 he bought her a sable [fur] coat valued at \$10,000. Winnie thought it an odd gift because she was an animal rights activist. She threw it in the trunk of their car and never wore it.

In 1980, Homer's sister Susan promised Homer and Winnie that if they would move into her house with her, maintain it, and care for her, she would will the house to Homer. Homer and Winnie moved in with Susan, who was ill with cancer, and performed their side of the agreement.

In 1981, freed of worries about living expenses, Homer quit his job and enrolled in an evening MBA program. He used funds from the joint bank account to pay his tuition. Susan helped by giving Homer a \$7500 loan for the cost of books and other educational expenses. Homer never made any payments on the loan.

Homer received his MBA degree in 1984 and started a successful software business from scratch. He received an offer of \$100,000 for the business in 1988. Although the tangible assets of the business were worth ten percent of that amount, he refused to sell.

Susan died in 1990. She left a will giving her house to Homer.

Homer and Winnie continued to live in the house but things were not going well between the couple. In 1995, Winnie announced that she wanted a divorce.

In the dissolution proceeding, what are Homer and Winnie's rights, if any, with respect to the following:

1. The parking lot.
2. The house.
3. Homer's education
4. The business.
5. The sable coat.

### **Selected Appendix of Statutory Law**

#### **California Family Code 720:**

H & W contract toward each other obligations of mutual respect, fidelity & support.

#### **California Family Code 721:**

(a) H & W can enter into any transaction with the other regarding property or with any other person respecting property which either might if unmarried.

(b) H & W are in fiduciary relationship/confidential relationship. Owe full disclosure and accounting related to CP.

#### **California Family Code 751:**

Community property; interests of parties.

The respective interests of H and W in CP during continuance of the marriage are present, existing, and equal interests. [Equal management and control established on January 1, 1975.]

#### **California Family Code 760:**

Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

**California Family Code 770:**

Separate Property of Married Person.

(a) Separate property of a married person includes all of the following:

- (1) All property owned by the person before marriage.
- (2) All property acquired by the person after marriage by gift, bequest, devise, or descent.
- (3) The rents, issues, and profits of the property described in this section.

(b) A married person may, without the consent of the person's spouse, convey the person's separate property.

**California Family Code 803:**

Presumption of separate property when title in writing was acquired by a married woman prior to January 1, 1975.

**California Family Code 850:**

Transmutation by agreement or transfer. Married persons may without consideration transmute CP to SP of other spouse; transmute SP of either spouse to CP; may transmute SP of one spouse to SP of the other spouse.

**California Family Code 852:**

Transmutations of community property must be made in writing and reflect express declaration made, joined in, consented to or accepted by spouse whose interests are adversely affected. Writing required as of Jan. 1, 1985 not retroactive. Does not apply to gifts.

**California Family Code 2627:**

In general, educational loans shall be assigned to the spouse whose act or omission provided the basis for the liability, without offset.

**California Family Code 2641:**

(a) "Community contributions to education or training" as used in this section means payments made with community or quasi-community property for education or training or for the repayment of a loan incurred for education or training, whether the payments were made while the parties were resident in this state or resident outside this state.

(b) Subject to the limitations provided in this section, upon dissolution of marriage or legal separation of the parties:

(1) The community shall be reimbursed for community contributions to education or training of a party that substantially enhances the earning capacity of the party. The amount reimbursed shall be with interest at the legal rate, accruing from the end of the calendar year in which the contributions were made.

(2) A loan incurred during marriage for the education or training of a party shall not be included among the liabilities of the community for the purpose of division pursuant to this division but shall be assigned for payment by the party.

(c) The reimbursement and assignment required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following:

(1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding, and that the community has substantially benefited from community contributions to the education or training made more than 10 years before the commencement of the proceeding.

(2) The education or training received by the party is offset by the education or training received by the other party for which community contributions have been made.

(3) The education or training enables the party receiving the education or training to engage in gainful employment that substantially reduces the need of the party for support that would otherwise be required.

(d) Reimbursement for community contributions and assignment of loans pursuant to this section is the exclusive remedy of the community or a party for the education or training and any resulting enhancement of the earning capacity of a party. However, nothing in this subdivision limits consideration of the effect of the education, training, or enhancement, or the amount reimbursed pursuant to this section, on the circumstances of the parties for the purpose of an order for support pursuant to Section 4320.

(e) This section is subject to an express written agreement of the parties to the contrary.