

**Schwartz, Lois**

**Community Property Spring 2005**

**Sample Answer**

**Question One Hinkley and Wanna**

**1. San Francisco Loft.**

**Source:** Hinkley purchased the loft prior to the marriage. It is SP. The mortgage, obtained prior to marriage, is an SP liability or debt.

**Actions:** CP funds from H&W's joint account were used to pay the mortgage. [Some students thought this meant they had paid off the mortgage, but that did not affect your analysis significantly.] This is a community contribution to HSP. Under *Marriage of Moore*, when CP is used to make payments on separate real property owned by one spouse, the community acquires a **pro rata ownership interest** in the property to the extent that payments have applied to the **principle**. No facts indicate the numbers involved, so this required a conceptual analysis.

**Conclusion:** Hinkley will likely keep the loft & the mortgage debt but will have to buy out Wanna's half of the CP interest in the property to retain it. Since the community only made payments from approximately 1997-2003, Wanna's CP share is likely to be small.

**2. Petaluma Cottage.**

**Source:** The cottage was acquired with CP funds and payments have been made with CP funds. Therefore it is CP. The intent of the lender in issuing the mortgage was to rely on both SP and CP assets, but primarily the latter and certainly did not rely **solely** on SP. In addition, title taken in joint tenancy is presumed under post-*Lucas* legislation to be CP for purposes of distribution at divorce.

**Actions:** At some point after 1998, Wanna contributed \$100,000 of her SP inheritance to make an improvement (new bedroom and bath). She is entitled to **reimbursement** (or buy-out) for this amount under post-*Lucas* legislation, without interest.

Even though Wanna seems to have had the exclusive use of the cottage, it is too substantial to be considered a **gift** from the community to her SP without a writing to that effect.

**Conclusion:** Both Wanna and Hinkley have built an equal CP interest in the current value of the cottage, with an additional \$100,000 **reimbursement** to Wanna for her SP contribution. Wanna will likely buy out Hinkley's interest.

### 3. Organic Dog Food.

Earnings from Hinkley's company: Prior to 1997 HSP; 1997-2000 or 2003 CP; after 2000 or 2003 HSP.

**Source:** The dog food is a community asset if Hinkley worked on it during the marriage and invested labor, skills and effort. However, there are several complications, including Hinkley's SP ownership of the pet supply company prior to the marriage. The best answers considered the dog food as a means of increasing the value of Hinkley's SP business by community labor, skills and efforts. However, some students analyzed the dog food as a pure community asset.

**Actions:** Where marital labor contributes to the growth in value of an SP business, some of the increase in value will be awarded to the estate that provided the capital and some to the estate that provided the labor.

The dog food can be characterized as an increase of the value of assets of Hinkley's SP business. Thus, it would be necessary to conduct a *Pereira/Van Camp* analysis to determine the extent of the interest of the community in the business. Any labor pre-marriage and post-separation would not be subject to this analysis.

*Pereira* Pay the original capital plus a reasonable rate of return (approx. 10%) to the original SP investment in the property. Any increase in value over this amount during the marriage is attributed to Hinkley's labor and goes to the community. This would favor Wanna.

*Van Camp* Pay the community reasonable value for Hinkley's efforts as owner during the duration of the marriage, if it has not already received such. The original investment plus any excess of the increase in value is Hinkley's SP. This would favor Hinkley.

If the development of the dog food preceded the separation, that part of the labor would come within the *Pereira/Van Camp* calculations. If the couple did not intend to reconcile at the time of the development of the dog food, then Hinkley's labor and its results would be his own SP. If the separation was not conclusive, Wanna may still have a community interest.

**Conclusion:** This is likely to be a bitter fight, but the *Pereira* formula seems more apt in this case.

### 4. Hospital Debt

**Characterization:** Wanna incurred this debt to the hospital for her care during the marriage. Thus, all of the debtor's SP and all CP are liable first. Hinkley's SP is not liable

unless the hospitalization costs are characterized as a debt for necessities, which they likely would be.

**Actions:** No payments have been made. At divorce, all assets are liable for the debt in the order described above and the debt must be **assigned** according to priority. Note: if Hinkley's SP had been used to pay Wanna's debt AND CP or Wanna's SP had been available, Hinkley would be entitled to reimbursement.

Hinkley had control of the dogs that injured Wanna, and Wanna might have the right to sue Hinkley for her injuries if the SOL has not run. If Wanna did sue Hinkley for the injuries, HSP would first be liable until exhausted, followed by HCP. However, students needed to note that Wanna had NOT sued Hinkley.

**Conclusion:** Both H and W are liable for the hospital bill in the order specified above and the debt must be assigned (or bargained) accordingly at divorce.

### Sample Answer

#### Question Two Hollander and Wykeisha

**Threshold considerations:** Hollander and Wykeisha are involved in a **putative marriage** beginning in 1984. Both believed in good faith that the marriage was legal. Therefore, property would ordinarily be treated as **quasi-marital property** subject to community property rules.

However, Hollander and Wykeisha entered into **an oral pre-nuptial agreement** in 1984 or earlier agreeing to treat all income and assets acquired during marriage to community property. If this agreement is enforceable, this **transmutation** may change the distribution at Wykeisha's death.

As of 1985, all transmutations of property were required to be in writing and signed by the adversely affected party. This is an interspousal rule, however. As of January 1, 1986, California law requires premarital agreements to be in writing, signed by both parties. (FC 1600 et seq.) Former statutory law also required such agreements to be in writing but **courts would enforce an oral prenuptial agreement if it was fully executed during the marriage** in other words, if the couple's conduct involved full performance of the terms of the oral promise. The fact that Hollander and Wykeisha each took separate title to the interests discussed below is inconsistent with the purported oral transmutation, and thus they may retain SP ownership. So is the fact that Wykeisha's will distinguished between her CP and her SP. The final complication is that the language of the agreement is ambiguous and a number of students were unsure about whether it applied to the SP both spouses received during the marriage.

As for Bobby's rights to Wykeisha's estate, particularly the insurance proceeds, Wykeisha has been **permanently separated** from Bobby since 1981. Any assets acquired or earnings after separation from Bobby are Wykeisha's property and he has no automatic rights to them. A spouse domiciled outside of California cannot take advantage of California CP rules for his own advantage.

#### **A. Hollander's rights in Wykeisha's investment in the health club chain.**

**Source/Characterization:** Ordinarily the investment in the health club chain would simply be Wykeisha's SP, since the source of the purchase can be traced to her SP inheritance from her father in 1987. However, the oral premarital agreement, if enforceable, may rebut that presumption.

#### **Action:**

1. **Community Property.** Wykeisha orally attempted to **transmute** her SP into CP and, if the oral agreement is effective, there would be a 50/50 split of her share at death. Hollander would be entitled to half of her interest in the health club chain at her death, or half of \$240,000. Wykeisha could not will away Hollander's half of the health club investment to her children, although she could will them her own half of the CP.

2. **Separate Property.** However, it appears that Wykeisha may hold an SP interest in the health club chain despite the oral agreement. If so, it would remain her SP and so would any increase in value. She could will this to the Red Cross, but would first have to deduct any allocation due the community for her labor contributing to the increase in value.

A *Pereira/Van Camp* allocation is not really necessary, since Wykeisha is only a silent partner and did not seem to contribute any labor, skills or effort to increase in value except for attending semi-annual meetings. If she did, however, a *Van Camp* analysis is probably more apt because the increase is attributable to the property rather than the efforts of the spouse. This would return reasonable value to the community for spouse's efforts; original investment plus balance of increased value would be SP. Wykeisha can then bequest the SP balance to the Red Cross.

**Conclusion:** The call is close, since the oral agreement (which would allow Hollander to receive \$120,000) is inconsistent with the Wykeisha's conduct (which provides evidence of separate property ownership and would allow Hollander to receive, at best, a *Van Camp* allocation). Likely the Red Cross will receive this after the allocation to the community is deducted, but Hollander won't get much. Bobby has no interest because this occurred after he and Wykeisha were permanently separated.

#### **B. Hollander's rights in the coin and stamp store.**

**Source/Characterization:** Ordinarily the coin and stamp store would be Hollander's SP [with a *Pereira/Van Camp* allocation to the community], since the source of the purchase is repayment of his loan of **SP funds** to a friend prior to the marriage and the **inception**

**of right** doctrine would mean this is HSP. However, the **transmutation** in the premarital agreement, if enforceable, may rebut that presumption.

Students characterized the store in many different ways: (1) HSP with Pereira allocation to the community and reimbursement to W's estate for her \$20K contribution; (2) HSP with gift from WSP; (3) CP per the oral agreement; (4) a partnership between H (60 percent ownership) and W (40 percent ownership) despite H's title as sole proprietor. The trick is that you have to characterize the property as SP or CP it cannot be both.

**Action:**

1. **Community Property.** Hollander attempted to orally transmute his SP into CP. If the oral agreement is enforceable, Wykeisha is entitled to dispose of her half of the CP value of the store by will to her children. The other half is owned by the surviving spouse (PC 100).

Here, Wykeisha would only have authority to will to her children her half of the community property -- \$75,000 -- in the coin and stamp store. This is not likely to be a good arrangement, whether or not they are Hollander's offspring as well, and Hollander may be forced to buy them out or perhaps he can attempt to invalidate the pre-nuptial agreement (but then he would lose his interest in the health club chain).

2. **Separate Property.** Hollander's purchase of the store from SP funds with title in his own name is inconsistent with the oral premarital agreement purporting to transmute to CP. Thus, he can argue that the store is his own SP, subject to two restrictions:

a. Wykeisha's estate may be entitled to **reimbursement** for her **SP contribution of \$20,000** from her inheritance now that the marriage has ended.

b. Applying *Pereira* because the increase in value is due to Hollander's labor, skills and efforts, the business merely owes a **fair rate of return plus the SP originally invested** in the business, balance of the increase in value to the community (favors Wykeisha's heirs). If the increase in value is due to the property (pure luck with estate sales), *Van Camp* may be applied to return **reasonable value for efforts** of spouse to community; original investment plus balance of increase to SP (favors Hollander).

3. **Partnership.** This was a bonus, since we did not particularly discuss H and W becoming business partners.

**Conclusion:** The court will likely find that the coin and stamp store is Hollander's SP, but the community is entitled to some return for the increased value.

**C. Hollander's interest in the proceeds from Wykeisha's life insurance policy.**

**Source/Characterization:** Wages and salaries, including employment benefits such as a life insurance policy, are CP. Here, the premiums on Wykeisha's policy were paid entirely during her putative marriage. Thus, the **policy is entirely CP**, with or without the pre-nuptial agreement. Upon Wykeisha's death, Hollander is automatically entitled to one-half of the proceeds, and Wykeisha can dispose her half but not all of the policy -- as she wishes. In this case, she has designated her surviving spouse as the beneficiary.

**Action:** The issue is whether the court will interpret **the ambiguous phrase surviving spouse** literally and award the proceeds to Bobby. The confusion is compounded by Hollander's less certain status in a putative marriage. Hollander can argue that it would be unfair to allow Bobby to benefit from his **fraudulent misrepresentation** to Wykeisha. A key factor that many students missed is that Wykeisha and Bobby were **permanently separated** by the time the employer took out the policy, so Bobby had no automatic interest. However, Wykeisha could of course designate anyone she wanted as a beneficiary.

**Conclusion:** The court will likely award the \$500,000 proceeds from the insurance policy to Hollander, giving him his own CP share plus Wykeisha's share, which she has expressly designated to her husband rather than her children.