

Community Property Exam

Summer 2005

Answer Outline

I. Personal Injury Award

1. Cash: personal injury award is CP during marriage, SP at divorce. For equitable reasons, non-injured spouse may be entitled to some share at divorce, but not more than 50 percent (see point 3, below).
2. House: Personal injury award is CP during marriage, SP at divorce. PI CP is traceable if used to purchase other property. However, for equitable reasons, non-injured spouse may be entitled to some share at divorce, but not more than 50 percent.
3. Discussion of wage replacement [CP] or future earnings post divorce [SP]
4. WSP contribution to house for H -- gift if prior to 1984 (Lucas)
5. WSP contribution to house for H -- reimbursement if after 1983 (anti-Lucas legislation unless she intended to create an SP interest in the house -- then use pro rata formula).
6. Effect of title in W name on disposition.
7. Effect on analysis of transmutation of SP award to CP primary residence?
8. Division upon divorce -- interests of justice, Devlin division.

II. Wildflower's Beeswax Business

9. Presumption asset is CP if acquired during marriage
10. Rebuttal -- source of purchase is WSP funds prior to marriage, assuming tracing OK.
11. Married woman;s presumption BB is SP if title held in W;s name, b/c acquired in 1971 (before 1975).
12. If SP, community interest under Pereira – W's business skills
13. If SP, community interest under Van Camp -- prime location

14. Adequacy of salary W has taken -- community underpaid?
15. Use of profits to purchase property in Indiana -- discussed below.

III. Henry's Stock Portfolio

16. Presumption asset is CP if acquired during marriage
17. Rebuttal -- source of purchase is HSP inheritance
18. If SP, community interest under Pereira -- H actively involved
19. If SP, community interest under Van Camp -- Henry astonished -- that it grew on its own?

IV. Property in Illinois and Indiana

QCP analysis not necessary or applicable. W acquired IL property prior to marriage; W & H were already domiciled in CA when IN property was acquired.

20. IL: No CP presumption re Illinois property, which was acquired by W prior to marriage in CL state -- it is WSP.
21. IL: W used Illinois SP prior to 1973 to pay for Henry's tuition at acting school -- W entitled to reimbursement? **Note:** reimbursement for educational expenses is available only to the community, based on whether the community has benefitted from the contribution at the time of divorce. This was not a CP contribution.
22. IL: Gift of WSP to H is inferred prior to 1985 -- no formalities (including no writing) required.
23. IN: SP if source is WSP directly traceable to property held prior to marriage.
24. IN: CP has an interest if funding source is earnings from Beeswax Business in which Community has an interest under Pereira.

V. General Points

25. Followed the organization of the interrogatories
26. References to relevant authority (cases or statutes)
27. Bonus points?