

Final Examination
Community Property Section LSN
Professor Thomas W. Wilson
Spring 2006

INSTRUCTIONS

1. You have **two (2) hours** to complete this exam.
2. This is a **closed book** exam. No outside materials are allowed and you may not discuss the exam with anyone else.
3. This exam consists of two questions.
 - **Question 1** has a suggested completion time of one hour and fifteen minutes and will comprise sixty percent (60%) of your final grade.
 - **Question 2** has a suggested completion time of forty-five minutes and will comprise forty percent (40%) of your final grade.
4. Use the blue books provided for your answers. Write only on the right hand side of the page (skipping a page each time) and double-space your work. Please write legibly.
5. Write your exam number on your exam envelope, at the top of this page and every page of questions thereafter, and each blue book you use. **Do not** use your name, student ID number or Social Security number on any exam materials.
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

QUESTION ONE

(Suggested time: one hour 15 minutes)

Harry and Winona were married on January 1, 1980 in California. Winona was a successful real estate agent with a college degree. Harry was a union carpenter with an eighth grade education.

In 1978, Harry divorced his first wife and as part of the division of property in that case he received a duplex, which generated a positive cash flow of \$200 per month. He deposited this income into a property account in his name alone, and continued to do so during the marriage. Harry had a daughter, Dana, from his first marriage, who was 2 years old at the time of his marriage to Winona.

In 1981, Winona's rich uncle Roy died and left her \$200,000, which she deposited into a money market account in her name alone. At no time since has Winona deposited any further funds into the money market account.

In March 1982, the couple decided that they would purchase a family residence in Berkeley. They paid \$200,000 for the property with a down payment of \$50,000, which was paid entirely by a check written by Winona and drawn on her money market account. Title to the residence was taken as Harry and Winona, as joint tenants.

In June 1986, the couple decided they would purchase a small commercial building. They paid \$300,000 for the property with a down payment of \$50,000, which was paid entirely by a check written by Winona and drawn on her money market account. Title to the residence was taken as Harry and Winona, as joint tenants.

During the marriage, Harry paid support from his earnings to his former wife for Dana's support in the amount of \$300 per month until Dana reached age 18 on January 2, 1996.

In 2000, the parties decided that they needed to remodel the family residence. To pay for the project, Harry agreed to refinance his duplex. Winona told him that in order for the deal to be legal and correct, title to the property should be placed in both of their names. Trusting her, Harry agreed, and a deed was recorded reflecting joint title.

In 2001, Harry was injured on the job, falling from faulty scaffolding. As a result of a lawsuit that he brought against the manufacturer of the scaffolding, Harry received a settlement of \$300,000, which should be payable in the next month or so. The terms of the award specify that \$80,000 of it is based upon Harry's wage loss and \$20,000 is for reimbursement of unreimbursed medical expenses paid from Winona's earnings.

An action for dissolution of the parties' marriage is now pending. Evidence adduced at trial indicates that current value of the family residence is \$600,000, and that the current value of the small commercial building is \$800,000. Applying California community property law, discuss the following.

1. The respective rights of the parties in the family residence.
2. The respective rights of the parties in the small commercial building.
3. The respective rights of the parties in Harry's duplex.
4. The rights of the community, if any, in connection with the child support payments that Harry made during the marriage.
5. The respective rights of the parties in Harry's pending \$300,000 settlement.

QUESTION TWO

(Suggested time: 45 minutes)

Applying California community property law, provide a complete, concise answer to each question posed in the following four vignettes:

1. Harry and Winona were married in California. Prior to their marriage Harry purchased a residence for \$200,000, paying \$40,000 down and financing the remainder with a \$160,000 first loan. At marriage, the property was valued at \$300,000 and the loan balance was \$150,000. Title to the property has remained in Harry's name at all times. During the marriage Harry paid the monthly loan payments from his wages. At separation, the loan balance was \$100,000. The present value of the property is \$500,000. What interest, if any, does the community have in Harry's residence?
2. Harry and Winona were married in California. Prior to marriage, Winona owed \$30,000 to Wells Fargo Bank. During the marriage, the debt was paid down to \$20,000 from a joint checking account into which each party deposited his or her earnings. During marriage Harry made charges on an American Express card in his name alone, which presently total \$10,000. The facts will show that \$5,000 of these charges is attributable to expenses of the couple's child, for clothing, tutoring and private school tuition. The remaining \$5,000 is attributable to a diamond bracelet that Harry purchased for his mistress. The parties have a joint savings account containing \$50,000.
 - a. Assuming the parties have not separated, what are the rights of Wells Fargo and American Express vis a vis the savings account?
 - b. Assuming the parties have separated and a dissolution action has been filed, how is the court likely to assign the Wells Fargo and American Express debts?
3. Harry and Winona were contemplating marriage in California. Harry had been married before and insisted that they enter into a premarital agreement before he would agree to go forward with the marriage. Harry indicated that his attorney

could handle everything and that Winona didn't really need an attorney. Among the terms of the Agreement finally executed by the parties were provisions providing that the earnings of each party would be his or her separate property, and that in the event of a dissolution of the marriage, Winona waived the right to receive any spousal support from Harry. A separate paragraph in the Agreement stated that: Winona had been advised of her right to independent counsel and had waived it, and that she was fully informed of the terms and basic effect of the agreement. In a dissolution action now pending Harry has invoked the Agreement to claim that he does not have any spousal support obligation to Winona and that because all property purchased during the marriage was acquired with his earnings, he should receive all of the property as his sole and separate property. Discuss the enforceability of the premarital agreement with respect to both support and property rights.

4. Harry and Winona were married in California. During marriage they purchased an unimproved lot in the Tahoe area which they took in joint title. In 2003, they were at their daughter's wedding, attended by many friends. At the reception, during the traditional round of toasts, Harry said, You know that little piece of land we have in up at Tahoe. I've decided to give it Winona because she's been such a wonderful wife for all these years. Thereafter, title remained unchanged. Now, an action for dissolution of marriage is pending and Winona claims that the Tahoe land is her separate property. Harry claims the land remains community property. The wedding guests are willing to testify as to Harry's utterance. Who wins on this issue, and why?

END OF EXAM