

FINAL EXAMINATION

Except where indicated otherwise, assume all events and transactions described in this examination occurred in California.

PART I (50 POINTS)

In 1995, when Herbie purchased his residence for \$300,000, he made a down payment of \$75,000 and borrowed \$225,000, secured by a first mortgage on the property.

In 1996, when Herbie's mother passed away, he inherited a vacation home worth \$200,000. There was no debt against the property.

On November 1, 2003, Herbie married Winona. At the date of the marriage, the fair market value of the residence was \$400,000 and the mortgage balance was \$200,000. The fair market value of the vacation home was \$250,000.

Winona came into the marriage with an investment account worth \$2,000,000. Throughout the marriage, she kept the account in her own name and did not deposit any community assets into it.

At the time of the parties' first anniversary in 2004, Herbie gave Winona earrings worth \$2,000, and Winona gave Herbie a set of golf clubs worth \$3,000.00 using funds from her investment account.

On their second anniversary in 2005, Herbie gave Winona a necklace worth \$9,000 and Winona paid the entire cost of a trip that she and Herbie took to Europe, again using funds from her investment account..

On their third anniversary in 2006, Herbie paid \$12,000 for the parties' Caribbean cruise, and Winona paid \$50,000 from her investment account to purchase a car for Herbie.

Notwithstanding Winona's generosity, in 2006 Herbie began a secret romance with Britney, a woman 10 years his junior.

At the time of Herbie and Winona's fourth anniversary in 2007, Herbie gave Winona a diamond bracelet which cost \$10,000. Winona liquidated \$75,000 of her pre-marital investments; she used \$25,000 of the proceeds to pay down the mortgage on the residence, and \$50,000 to remodel the vacation home.

One week later, Winona lost her cell phone. Needing to make a call, she picked up Herbie's cell phone from his nightstand, whereupon she discovered several romantic text messages from Britney. She moved out of the residence the next day, and filed for dissolution of marriage on December 1, 2007.

Herbie hired counsel and the parties exchanged Preliminary Declarations of Disclosure. They agreed to meet with a mediator on April 4, 2008. Shortly before the mediation, they obtained joint appraisals of the residence and the vacation home. The residence was valued at \$600,000 and the vacation home was valued at \$500,000. Herbie's Preliminary Declaration of Disclosure showed a mortgage balance of \$150,000 on the house.

It is April 4, 2008, and you are the mediator. You have told the parties that you cannot give them any strategic advice, but you can advise them about what the law says and how it applies to their case. The parties ask you to tell them what their respective ownership interests and any other rights either of them may have with respect to the residence and the vacation home. You may assume that there have been no changes in the applicable law between April 4, 2008 and the date on which you are answering this question.

They give you all of the information described above, including supporting documents, regarding the assets each party had as of the date of marriage, the values of the assets as of that date, the amount and sources of the mortgage paydowns, the amount and source of the vacation home remodel, and each party's history of giving gifts to the other. They specifically ask you to calculate the values of their respective interests after all applicable formulas and rules of law have been applied. What will you tell them?

PART II (50 POINTS)

This part consists of seven short answer questions. Please answer each question in no more than five sentences.

1. Family Code §2550 states:

Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.

Name five exceptions to the equal division requirement, not including the parties' agreement to an unequal division.. (10 POINTS)

2. If, upon dissolution of marriage, a spouse wishes to have the community reimbursed for community funds used to pay the other spouse's pre-marital child or spousal support obligations, what must the requesting spouse show in addition to the amount of community funds used to pay the support? (5 POINTS)
3. What is the definition of the date of separation? (5 POINTS)
4. On October 1, 1983, Husband contributed \$20,000 of his separate funds to the acquisition of the parties' family home, title to which is taken in joint names.
 - a. Upon dissolution of the marriage, what is the presumed characterization of the home? (3 POINTS)
 - b. Which party would want to rebut the presumption? (2 POINTS)
 - c. What evidence is necessary to rebut the presumption? (5 POINTS)

NOTE: It is not necessary to apply any formulas to answer this question.

5. Please answer the following questions relating to retirement benefits.
 - a. What is the difference between a defined benefit retirement plan and a defined contribution retirement plan? (3 POINTS)

- b. Please state the name of the rule most commonly used to apportion defined benefit plans and state the rule. (4 POINTS)
 - c. How are defined contribution plans typically apportioned? (3 POINTS)
6. On February 1, 2004, the day after the parties' marriage, W conveyed the residence she had owned prior to the marriage to herself and Husband as joint tenants. At the time of this conveyance, the house was worth \$500,000 and had an existing mortgage of \$350,000. As of January 1, 2007, the house was worth \$650,000 and the mortgage had been reduced to \$300,000 using community funds. Now, at the time of dissolution of marriage, the house is worth \$400,000 and the mortgage balance is \$250,000. How is the \$150,000 worth of equity in the house to be distributed? Why? (5 POINTS)
7. Husband is an internationally famous sculptor. His works, almost all of which were created during the marriage, can be found in the best art museums all over the world, as well as in public squares, large office buildings, and parks in several countries. All of his fees are paid to a Subchapter S corporation, which pays the rent on his studio, the cost of his materials, and the salary of his bookkeeper. Upon dissolution of marriage, what interest, if any, does Wife have in the corporation? Explain your answer. (5 POINTS.)

END OF EXAMINATION