

Blue Book

NAME _____

SUBJECT Community Prop = PART 1

INSTRUCTOR Moskowitz

EXAM SEAT NO. _____ SECTION _____

DATE 8/11/11 GRADE _____

425
380
805

Part 1

= Separate Property
 (SP) is property acquired by either spouse before marriage. NO (SP) may also be acquired by gift, bequest, descent or inheritance. Rents, issues and profits derived from SP belong to that spouse. Since CA is a Community Property (CP) state all property acquired by either spouse while domiciled here is considered CP.

Prior to 1984, spouses were permitted to convey property by oral communication. ^{Since} After 1/85 all conveyances of property must be supported by an expressed declaration sufficient to show a change in the

characterization of the asset, signed by the party to be charged. Transmutations do not require consideration. Nor, is the word transmutation required to be used.

In 1993, the FC section 721-1100-1101 provided that spouses ~~exercising~~^{having} management and control of community assets were to use the highest form of good faith and management of the funds up to and the date of dissolution.

1. What are the respective ownership rights in the 1995 residence?

Residence

SP under 710, sp's that which has been acquired prior to marriage.

Here (H) \$300K residence was purchased prior to the marriage in 1995. Since this is Post Lucas, (H) may be entitled to 2640/2581 reimbursement. But, the facts state (W) ~~paid~~ pd \$25K to pay down the mortgage in 2007 = post Lucas, ~~for~~

2640 provides the Separater is entitled to dollar for dollar reimbursement when separate funds are used to purchase CP. That will not apply here because the House is Pre-Marriage property.

Pre-Marriage Property requires a Moore/Marsden application. Moore is used if the House is purchased a short period before the marriage less than 1 yr.

Marsden is applied if the house is ^{purchased} pre-Marriage

but the couple stays married for some years
 after marriage in the case 8 yrs passed.

↳ so Marsten is the correct approach.

		DOM	Trial
PP. \$	300,000	Pre H+W	\$600,000
HSP	<u>75,000</u>		<u>150,000</u>
financed	225,000		450,000

appreciation

HSP @/p 75,000 ÷ 2.5

In this application the (H) retains a large portion
 of the equity and the (W) would get a portion
 of the CP paydown + appreciation. pursuant
 to amendments in the FC after 1/1/2005 the (W)

Also, ^{after 1/1/05} under a 2640(c) reimbursement because

↳ the (W) contributed separate funds from
 SP to the (H) SP for improvements she
 is entitled to dollar for dollar reimbursement
 no interest or appreciation: unless (W) can show her \$ was sold
 Reason: house value increased and not due to market conditions

Vacation Home

SP, SUPA.

Here the (H) acquired the vacation house

by inheritance. Therefore as of 1996,

5 It was (H)'s separate property.

According to the facts (W) contributed 50K
in (SP) funds supra. to her (H) SP.

~~After~~ ~~to~~ ~~1987~~ after 2005, amendments

to FC 2640(c) allows a separator to

5 reimbursement when she contributes SP

to another spouses SP. Here (W) liquidated

her pre-marital investments and gave 50K

to (H) to remodel his home. At time of trial

the (H) ^{house} was worth \$500,000. If (W) can

prove her \$50,000 contribution was the

sole purpose the vacation home increased

in value she will be able to capitalize on
her investment by receiving all of the
increase in value. if other factors such
as growth in the real estate market
(market demand) which increased the value of Mac home, and
not the rehab. The (H) will retain
the larger portion of the equity and (W)
will only get her percentage of the
25K - applied to the purchase price.

Winona's Investments

SP, supra. ^{here} (W) comes into the Marriage
with 2mil in investment funds. So long
as she does not co-mingle her funds

with CP They will retain their SP status.

However, if W's use of funds are used by the community then their character changes to a CP asset.

~~Further~~ ^{Here}, the facts do not state how (W)

5 Invest funds were managed so, it can be presumed she used no outside help and did it on her own.

^{her profits} (A) will argue she owes him a portion Revera (Management control) 1

Under this approach the community is favored because the increase is due to the management skill of the spouse. Giving the community a

70% percentage. Since no growth can be shown

VanCamp Business Separators.

Because the funds from business allowed
Community to receive a salary. This ^{guarantees} makes
the separator the ability to capture more
of the profits since the Community
was paid.

One (V) could argue. (H) received
numerous valuable gifts during the
manage all of which were from
the salary the Community received
based upon the investment increase.

852 transmutations

After 1/1/85 all transmutations affecting property had to be in writing signed by the party to be charged.

- 2004
- 1) (H) earnings \$2000 (H) golf club \$3000
- 2005
- 2) (H) necklace \$9000 (H) Europe Trip
~~(W) Europe Trip~~
- 2006
- 3) (H) car \$12K (H) 50K car

Here the facts state that (W) gifts to (H) were by generosity. However, since W's gifts were rather expensive and did not come with an expressed declaration, it is unlikely she can

argue that the gifts were not gifts. Since (W) made no

account earning may be considered CP
even though she did not put the
funds in an account specifically
set as CP. Also, but, the European
trip will probably not be considered
a divisible asset because (H) can
claim it was a necessity of life
or expense.

Wife will argue the gifts were ~~not~~ not CP
and should not be divided at dissolution
wife will argue the gift was not under \$5,000
and was for the benefit of The ~~CP~~
father, then part for (H) & should

be of. in down paper.

Gift of a personal check Friday

25
of amount out of 852 and

in the end would not like be
held or paid.

Post Lease (H) = only for purchase - ~~Property~~ Manage

But, Marsden Property (P- Manage Property) Sys Manage (25% ÷ 1000)

DEM = 1000
 \$400,000

\$ 300,000
 HSP 75,000
 Gained 225,000

75K
 Equity

OP Appreciation 200K
 OP Interest

$$75 \div 300K = 0.25 = 105.00$$

75,000 HSP
 125,000 HSP interest on appreciation = ~~125,000~~
 200,000 (H)

25% 600 = 466

DO/Trade 600,000
 150,000 Per (H)
 450,000

Volume
 PART I

(W)

(W) SP 25K to pay down mortgage -
 2640 (W) SP - SP other response (amb)

1) 1995 = Post Lucas Pre Lucas
 850 Transmutation effective 1984 c/b oral
 1985 requires Expressed dec.
 (H) residence SP (1995 —

2) SP = 770 property acquired by either spouse b/w (M)
 770^(M) by gift, bequest, descent or inheritance
 Rent, issues ~~profits~~

(H) vac home acquired by inheritance
 Free + clear of mortgage ~~State SP~~

CP
 760
 defines CP
 still + 1/2
 domicile = not
 affirmative

3) DOM 11/1/03

(H) still (H) SP = no change in ownership shown by
 850 or transmutation from SP to CP
 852

Don't see Moore = short time
 or
 Marsden at this point
 long period of ownership
 prior to marriage then
 new spouse starts
 contributing to paydown
 of principal.

Residence worth 400K
 balance 200K
 vac home 250K

 all (H) SP still

no 2640 application b/c H was Pre Marriage

4) (W) 2nd comes into (M) = she keeps in sep acct
 no commingling with community fund

But, there is an agreement some of the net a CP = 1/2 who's paying
 change expense

Facts d/N state how (w) is managing investments by self or (with help). Also, facts are silent about whose \$ was used for payment of residence since (w) funds were kept in a separate acct & not shown as having withdrawal account by the interest, dividends are (w) SP.

2005 2nd Anniversary
necklace = 9K presumably a gift = d/N appear to be for investment purposes. Ring case looks like ring came from (H)'s own SP funds.
(w) paid for European Trip = gift also = (still an acct acct)
no 2640 reimbursement.
absent an agreement if d/N get value of trip back at dissolution.

2006 -
12K = (H) cruise = gift to "C" = 12K/3
no funds in "C" acct = b/c gifts do not state ~~there is no~~ even an acct existing
Direct tracing
Family expense tracing

50K = Car possibly benefited community - can show tracing
did possible 2640 reimo to (w)
Direct tracing (w) will show.

Facts state (W)'s purpose of gifts was generosity =
 intent could constitute all gifts from (W) were gifts
 and absent a 2640 showing oral agreement PART
 does not apply = sneaky gift sneer from
 after 1985, wife would need an (1)
 agreement between the parties a
 (2) making that the source of gifts was SP
 and she wanted reimbursement.

2007 4th ann.
 10K = gift absent other purpose
 large gifts require a (W) trying
 moderate amts.

75K - liquidation = funds - 25K Walt Wirth
 not B/C equity Lucas not cred. mgt.
 2007 pre 1984 gift to pay for other items.
 1985 transferred, tracing to source (W) can do.

if (W) can prove value
 it v. # increased due to SP #
 she can get % of appreciation
 based on 50K 2005 moved
 2640 (1) (2)
 (W) can get (2)

Name 5 exceptions to the equal division requirement; not under the parties agreement to an unequal division.

1. Student loans, Spouse/child support,
2. Constitutional issues, One spouse ability to ^{Realize} ~~manage~~ Physical abuse.

2461 Student loans: A spouse who receives an education loan is responsible for that debt. If ~~at~~ the time of dissolution the non-educated spouse can show CP funds were used to pay for the others education. The community may seek reimbursement or the non-ed sp may seek on off set through other @ assets.

2462 allows for reim if an enhancement can be proven. Just 10 yr of marriage prior to dissolution C must show it d/w benefit - after 10 yr reimb allowed if can show it benefited both scenarios are reliable.

2) Child/Spousal support

Child support is given for the care + support

of minor children. Spousal support
is given for the support of the spouse

0 if the spouse can show that there needs
to be an adjustment in SS based upon

Spouse ability to make a living support
can be modified. 2nd spouse does not

like this because her @ funds may

be attached - exception if she places ~~assets~~
Spouse must be able to show through family tracing CP were ~~not~~
~~not~~ not exhausted and (H) had ~~spills~~ ~~to~~ ~~pay~~ ~~debts~~.

Earnings in a separate account where

only spouse does not have withdrawal

capacity and making sure funds/earnings

were never commingled.

2 3) Divorce 271 and Felman conduct

Derivative conduct is that for atty misconduct during dissolution proceedings. The (S) ~~misconduct~~ ^{Atty} may be sanctioned for inappropriate conduct and atty fees may be reimbursable to properly acting spouse. Elman for intentional failure to disclose assets.

Your dissolution. MAS, may be set aside and appropriate division re-ordered.
 = breach of fiduciary ^{attorney} fraud = still misconduct ^{Fraud on employees}

721-1100101 (+) applies
 → punitive behavior. ROSSI - lottery ticket & Fraudulent Transfer Maya at can set aside for child support.

4) Spouse who can pay

A spouse who at the time of dissolution

has the financial ability to pay debts

which the other for no means to
may be ordered to pay an increased
amt. Public policy favors this
original decision.

Constitutional Issues

5) have not
taken on law
yet!

The supremacy clause provides that
Fed cases supersede state law.

0) Addison, Baughuet, Healy. ^{most important}
2640 applicable to (W) CA has state interest.
77 not re to to (W)
(H) needs (H) to (W)

3) Date of separation can be shown
by the parties conduct or statement
5 there is a "complete and final breakup
of the marriage." Secret agreement: case
where wife / husband ~~secretly~~ agreed for
family sale & appearance that they
would not be married. NO Joint Bank
accts, no sex, not living in same
residence. Bargain did not show
~~this~~ b/c he still ^{lived} ~~was~~ in house
~~shared meals, paid ~~the~~ bills~~
shared meals, pd bills. plus gave gifts to
wife

4) a) Since the 20K is a Pre-hearsal gift ^{it is presumed} to the community. The house is CP.

3 b. (H) would want to rebut but, tracing his sp \$20 to a separate source.

2 c. (H) needs to show (H) waived his right to reimbursement.

5. Defined Benefit retirement plan is one where the employer pays the employee must work to become eligible to benefit from the plan. The employee works the required number of years and during that sometimes employer contributes to the plan, or benefits of employees. Emp gets

Based on # of years of service

Required Contributions

is one where the employer and employee

3 both contribute (401K) to plan. The benefits are based on ^{Employment} Salary, Years of service and employer contribution. Some plans

can set a contribution % per year.

B) Time Rule

Starts a date of employment ends at

4 date of separation or job.

Stock example = Nelson J. Miller

(D) DOA = Date of Grant - Date of Separation
(N) DOA = " " and Date of Exercise

$$54 \frac{\text{mos}}{100} 90\% = SP$$
$$10 = CP =$$

0 c) Based on years ^{months} worked during the marriage. If the marriage ends before retirement. at dissolution if non-vesting occurs. non-working spouse may seek Quinn \$ or request a direct payout same.

3 ● 6) Use Marsden Pre 85 Quinn Quinn 852 no 2040 appreciation b/c house is P-M. (H) gets all of equity b/c house is ~~now~~ equity that was avail in 2007 has been reduced. Separation is upheld just. If after calculation any \$ left C ~~will~~ will get portion of appreciation = if No the (H) gets all. Right result - wrong authority cited

7) looks like a McTiernan case. (Money Director)

5 There skill was not a divisible asset

for purposes of dissolution. Also,
just because sculptor has a staff
does not mean ~~business~~ ^{skill} constitutes

abandonment like McTearan has skill

but not transferable nor could it be sold.

Artist, skill not sellable, exception.

unless tied to an industry. Possibly,

value b/c he has a sub S corp (^{haven't taken}
corp yet)

Wife may ~~not~~ ^{not} have ~~any~~ ^{any} interest in

corp. because his art works can be sold.

Looks more like Green case.

Part II outline

461 1. Student loan = party receiving education
liable for the debt.

2027 enhancement = by "benefits" IDK, spouse to
also preserve or benefit

"C" may seek reimbursement if
and ^{not otherwise} offset.

Don't know
if it did not
Both relatives
py pro of S.

Child Support Spouse Support

"C" responsible for child support payments.

2000 spouse of N like

exception non-debtor spouse may retain

C's funds if she opens a separate
acct and does not commingle in C's acct.
Once commingled - protection is lost.

Constitutional Issues

"C" Spouse less than 50%

Spouse with capacity to pay
maybe grand debt

1. 2550

2. Exceptions to ED R, 2461

1. Student loans go to educated spouse
"C" may rec reimbursement of non-ed (S)
can show CP were used to pay for Ed.
& (S) re: funds is making big bucks

2627 — enhancement occurs when 10 yrs
prior to dissolution (S) w/ Ed. salary
benefited "C" of less than 10 yrs
enhancement may not be so evident.
~~SP~~

2. Child support ^{SP just CP 2nd-}
Spousal support | 2nd spousal
exception:
if (S) can show (D) had ability to
pay during (M) and d/N. Community
agency/training.
3. Constitutional issues Addison Helton 2640 D Patten
violates of vested spouse
supremacy clause
Fed law traps.

4. Estate less than 5K

Spouse who is financially capable is in
more of a position to pay.

5. Physical asset?

1. 2550

2. Exceptions to EDR, 2461

1. Student loans go to Educated spouse
'C' may rec reimbursement if non-Ed (S)
can show CP were used to pay for Ed.
& (S) re's funds is making big bucks

2627 — enhancement occurs when 10 yrs
prior to dissolution (S) w/ Ed. salary
benefitted 'C' of less than 10yr
enhancement may not be so evident.
~~2627~~

2. Child support ^{CP first}
Spousal support ^{CP 2nd-} | 2nd spouse's
exception:
if (S) can show (D) had ability to
pay during (M) and d/N. Community
assets/tracking.
3. Constitutional issues Addison Helton
Bourgeois. 2640 D Patten
violates of
vested spouse

4. Estate less than 5K

Spouse who is financially capable is in
more of a position to pay.

5. Physical asset?



4. (c) 10/1/83 = ^{= Pre 83} 2040 applicable ^{provide sp of b traced} tracing to sp source.
 B) unless ^{about an agreement} ^{that has} ^{burden} ^{of overcoming} ^{presumption.}

c) Tracing =
 agreement =

5. Required Benefit Retirement plan is one where the employer establishes the years the employee must work to become eligible to benefit from the plan. The employee works the required # of yrs and during that time the employer - furnishes the benefit into the account.

Defined Contribution Plan - is one where the employer + employee both contribute to the plan and the benefits are based upon

employee contribution + employee's contribution. These plan sets a % each will contribute with a max allowable amt.

Stocks Nelson formula

b) Time Rule $\frac{DOE - DOS}{DOE - DOE} =$

c) Based on yrs of service and yrs of marriage
 $DOM - DOS =$

an accountant or actuary places a value on the plan at the present time or future projects based on the schedule the employee will continue working. = formula for spousal benefit

if employee retires early - then the non-vested spouse may request the value of the plan and seek a present Lehman.

Marsden

Part II on the

now
with

2-1-04 Pre-M house

	TOC	FMV	DOS
\$350 K	500 K —	650	400
			<u>250</u>
			(150) 150K
		<u>-300</u>	

6)

(iv) appraisals used to

350 = equity
prior to 2007

Pay down mortgage have been extinguished
b/c the value of the house depreciated
in their custody the "Community losses
just. The sp is protected and rec'd
all of the \$150K

7. McTernan = M/Director Skill & N be sold
NOT A business unless coupled w/
an industry.

NO = Goodwill. (Just because H has a
staff & N. mean is
has a ~~set~~ considerable
asset ~~for~~ under CP
guidelines.