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===== Start of Answer #4 (1460 words) =====

California is a community property state. The presumption is that all property and earnings by each spouse acquired during the marriage is community property (CP). All property acquired prior to the marriage or after a physical separation with the intent to not remain married will be considered separate property (SP). Any profits, interests, rents derived from SP remain SP. Also, any inheritance, gifts to an individual spouse acquired during the marriage is considered that spouse's SP.

#### **Distribution**

At the time of dissolution, the court will distribute the assets of the marital estate equally to each spouse, some exceptions are applicable.

#### **1. What are Wendy's and Henry's respective rights regarding:**

##### **a) Necklace**

##### **A. Source**

The necklace was purchased by H for W with proceeds from his inheritance money in 2011. Inheritance money is considered SP even if earned during the marriage.

H will argue that since the court can trace the necklace to his SP, it should be considered SP despite him offering it to W.

Since the necklace can be traced to his SP and there was no change in title, the court may allow the necklace to be considered SP.

## **B. Gifts**

The general rule is that a gift to the community of insubstantial value, in relationship the community assets, will convert to SP of the spouse to whom the gift is provided.

Here, the necklace cost \$25,000. W will argue that since H received \$100,000, the value of gift is not substantial because its only a quarter was what he received. H will argue that the court must determine the substantial value based on the community as a whole. H and W do not appear to own property and we are not given the earnings of each spouse to determine whether as a whole, the necklace is substantial in value.

If H and W do not own many assets then a \$25,000 gift to one spouse will likely be considered substantial and therefore not be treated as a gift to the spouse and therefore will remain SP of the spouse who attempted a gift unless there was a valid transmutation.

## **C. Transmutation**

A transmutation allows a spouse to convert SP to CP or SP to the other spouse's SP or CP to SP. Prior to 1985, oral transmutation were allowable. Subsequent to 1985, the court requires that the party converting the property have a writing and a signed declaration of the intent to transfer the title of the property.

### **(i) Writing**

A writing is a document showing title in the name of the gifting spouse.

Here, there was no writing, the gift was given as a holiday present and usually does not come with a writing transferring the title. H will argue that if there was a card stating that this was a gift to W, that would suffice to be considered a writing for transmutation purposes.

Therefore, it is unlikely that the court will find that a writing existed.

**(ii) Declaration of intent to Transfer**

A declaration of intent to transfer requires that the gifter spouse have a writing specifically declaring his intent to change title to the asset.

Here, H did not have a writing stating this intent because it was a holiday gift.

Therefore a declaration of intent cannot be found.

**Conclusion:** The gift will remain H's SP because the gift will be considered substantial in value and there is not a valid transmutation to transfer the title to W.

**b) The car accident settlement proceeds**

**Torts Against One Spouse**

The general rule is that torts committed against a spouse during the marriage are committed against the community.

Here, H and W were married in 2008. H was injured in a car accident in 2012. The accident occurred during the marriage so proceeds obtained through the accident will be community assets.

Therefore the community is entitled to the proceeds of the settlement.

**Settlement of Accident**

Settlement of an accident that is provided after a permanent separation does not affect the ability of the community to be entitled to it being a community asset.

Here the accident occurred during the marriage in 2012 and H and W

permanently separated in 2013. The proceeds of the settlement were distributed in 2014 after H and W were permanently separated.

The general rule is that earnings acquired after permanent physical separation are SP. However in a settlement matter, if the cause of action arose during the marriage, the proceeds are CP.

Therefore although H and W did permanently physically separate with the intent to not remain married, the proceed will be attributed to the community.

### **Distribution of Settlement**

The courts tend to distribute the settlement award to the injured spouse unless the interest of justice prevent that distribution. This is an exception to the general rule of equal distribution.

Here, since H is entitled to the necklace and retains his SP of \$300 per month of the income derived from the municipal bond purchase through his inheritance, it is likely the court would find that granting the proceeds to W would not violate the interests of justice.

**Conclusion:** Although the proceeds are community property assets, it is like the court will grant them to W.

### **c) The stock options profits**

Stock options accrued during the marriage are considered community property asserts.

Here, W obtained a job in 2010, 2 years after they were married. She was granted the ability to obtain stock if she performed well. In 2012 she wanted the opportunity of stock options that would become exercisable in 2014. Since the option was given due to her performance, the performance is considered CP and

therefore the community has an equal interest.

### **Time Rule**

To determine the CP interest, the court will look to the time rule. The time rule refers to the amount of years the spouses were married divided by the year in which the stock will be exercisable.

Here, the numerator will be 5, because H and W were married from 2008 through 2013, the court will not consider the marriage to end when a dissolution judgment is entered because at the time of permanent physical separation, all economic status of the community will end.

The denominator is the time when the stock is exercisable, which here is 2014. The court will divide 5/2014 and the interest will be attributed to the community, the remainder will be W's SP.

**Conclusion:** The community will have an interest in the stock based on the time rule.

## **2. Should Henry be required to reimburse the community for his child support payments, if so, what amount?**

### **DEBTS OF THE COMMUNITY**

The general rule is that debt acquired prior to the marriage are now debt of the community. The community and the debtor's SP will be liable for the debt.

### **CHILD SUPPORT PAYMENTS**

The general rule is that child support debt by one spouse becomes the community's debt. Upon dissolution, the community may be reimbursed for child support payments made by the community if there was enough SP to cover the

child support payments.

**(i) Community Contribution**

The community will have contributed to the child support payments if payments were made by the debtor-spouse based on his earnings.

Here, H and W were married in 2008. The child support payments once they were married were deducted from H's salary, which has discussed above are community property earnings.

Therefore the child support payments were made with community payments.

**(ii) SP Available During Marriage**

SP refers to the debtor-spouse's inheritance or any money derived from prior to the marriage or after a permanent physical separation with the intent not to remain married.

Here, at the beginning of their marriage H did not have any separate property. In 2011, 3 years after the marriage, H inherited \$100,000. As discussed above, although California is a community property state, it is clear that any inheritance obtained by either spouse during the marriage is considered that spouse's SP.

**Reimbursement to Community**

The child support payments were \$1000 each month from 2008 through 2013. H and W were married for 5 years.

Since H had SP at the time child support payments were due in 2011, he will be required to reimburse the community for the child support payments. W will argue that he should be liable for the payments made as of 2008. H will argue that he should be liable as of the time he acquired the SP which was in 2011. The court is likely to establish that at the time the SP money was available, then

the reimbursement should apply.

Therefore, H will liable to pay 36,000 of past child support payments to the community; meaning \$1000 per month from 2011 through 2013.

**Conclusion:** H will be required to reimburse the community.

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Question #1 Final Word Count = 1460

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