

Essay 3 – 50

Donor comments:

Had problems on b., c., and #2, and two problems on b, two problems on c and all of #2.  
VC and Pereira analysis was wrong. Did not have good structure. Did not have standard intro.

3)

I. Wendy and Hank's respective rights in Chex Oil stock, the restaurant, and the rental property.

In California community property is recognized in the context of marriage. Any property that is obtained by a spouse before the marriage, after the dissolution of the marriage, or during the marriage via will, inheritance or gift will be deemed the separate property of that spouse. All other property obtained by a married person during a marriage while in California is community property including property acquired jointly during marriage, and salaries earned during marriage.

A. Chex Oil Stock

The issue is what Wendy and Hank's respective rights are in the Chex Oil Stock

Inheritances acquired during the marriage are considered the separate property of the receiving spouse. Anything purchased with separate property will be considered separate property of the purchasing spouse if the funds used in the purchase can be traced back to separate property. If they are so commingled that they cannot be traced, they will be considered community property. If separate property funds are used for the benefit of the community during a marriage, the contributing spouse will be entitled to reimbursement from the community for the contributed separate property upon dissolution.

Here, Wendy uses her inheritance to purchase \$50,000 of Chex Oil stock. The stock, because it was purchased with separate property funds, is the separate property of Wendy. She then, however, puts the stock up as collateral for the rental property that Wendy and Hank build together. Upon dissolution of the marriage, Wendy will be entitled to reimbursement of this separate property upon

dissolution because she contributed it for the benefit of the community. Hank may attempt to argue that the stock has been sufficiently commingled that it has become community property; however the bank specifically requested that the stock be put up as collateral, not that it be sold off and that the cash proceeds be used as collateral. The stock will be sufficiently traceable to Wendy's inheritance to be considered separate property and she will be entitled to all \$50,000 Chex Oil stock upon dissolution of the marriage.

#### B. The Restaurant

The issue is what Wendy and Hank's respective rights are in the restaurant.

Inheritances acquired during the marriage are considered the separate property of the receiving spouse. Anything purchased with separate property will be considered separate property of the purchasing spouse if the funds used in the purchase can be traced back to separate property. The purchase of a business with separate property will make the business entity a separate property business. The value of the business to the community and separate spouse upon dissolution is determined either by the Pereira or Van Camps formula.

#### Pereira -

If primarily the skills, labor and expertise of the separate spouse are what contributed to the value of the business, the Pereira formula will be used. This will allocate the (capital investment)  $\times$  (10% return per year)  $\times$  (years the business was run during the marriage) to the separate property of the contributing spouse. The remainder to the community property.

Here, Wendy's investment was \$100,000, and the business operated during the marriage from 2007 to 2013 (6 years).  $\$100,000 \times 10\% \times 6 = \$60,000$  to the separate property of Wendy. The remaining value of the business (\$240,000) goes to the community property.

Van Camps - Capital; reasonable salary \* years = CP

If the capital contribution is the primary reason that the business is successful, that is, it is successful through no special skill or labor, then the Van Camps formula is used. This will allocate a (reasonable salary) \* (years the business operated during the marriage) to the community property. The remainder to the separate property of the spouse.

Here, there is no indication of what a reasonable salary might be, but if it were, for example, \$50,000 per year, then the community would be entitled to \$40,000 \* 6 years = \$240,000. The remainder (\$60,000) would go to Wendy as separate property.

Here, the court is likely to use a Van Camps calculation because there is no indication that any special skill or expertise is the reason the business thrived, and Wendy's sole contribution to the business was her \$100,000 investment.

Wendy is entitled to \$60,000 + one half of the \$240,000 community property value of the business, totaling \$180,000. Hank is entitled only to one half of the community interest in the business, \$120,000.

### C. The Rental Property

The issue is what Wendy and Hank's respective rights are in the rental property.

Inheritances acquired during the marriage are considered the separate property of the receiving spouse. Anything purchased with separate property will be considered separate property of the purchasing spouse if the funds used in the purchase can be traced back to separate property. Appreciation during the marriage is calculated by the contribution of the community to the appreciation in value.

Here, Hank inherited the land on which the rental property was constructed. He is entitled to the land as separate property. However the rental property was constructed jointly during the marriage and all appreciation to the property is due to its construction. The appreciation accrued was completely within the marriage and due to a joint construction of a rental property of the premises, so Hank and Wendy will each be entitled to one-half of the appreciation value of the property, or 1/2 of \$425,000 for each of them because \$425,000 in appreciation is community property.

II. May Cathy reach community property, Hank's separate property, and/or Wendy's separate property to satisfy her judgment against Hank?

Judgments for or against individual spouses are the separate property of the spouse so long as the asset or liability can be traced to them. Spouses are not per se deemed to be jointly and severally liable for their individual debts. For a judgment against a spouse, the order of satisfaction will be the separate property of the spouse, then community property. The separate property of the spouse who is not subject to the judgment (here, Wendy) will not be reachable if it is kept in a separate account.

Here, the judgment is against Henry and will be considered his separate property. The amount of the judgment is not disclosed, however Hank will need to satisfy the judgment first with his separate property. In the case that Hank's separate property will not satisfy the judgment, Cathy will then be able to reach community property assets. If the judgment is still not satisfied, Cathy will be able to reach any separate property assets of Wendy that are commingled with Hank's assets or with the community property. Any separate property that Wendy has kept in her own name, not commingled with any community property or with any separate property of Hank will be safe from the reach of Cathy.