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===== Start of Answer 5 (990 words) =====

Community Property

California is a community property (CP) state. There is a presumption that all property acquired by the spouses during the marriage is CP. Separate property (SP) includes anything acquired by a spouse before marriage, anything acquired by a spouse by gift, bequest, descent, or devise during the marriage, or any property acquired by a spouse after the spouses begin living "separate and apart." Spouses are considered to be living "separate and apart" when at least one of the spouses has no intention of reuniting with the other spouse. Property acquired with SP or SP funds is SP.

Premarital Agreements

California allows spouses to enter into premarital agreements. These agreements are construed strictly, must be in writing and must be signed by both spouses. If one spouse uses an attorney to draft the agreement, the other spouse must be given an opportunity to consult his or her own attorney or must give informed consent to proceed without the advice of his or her own attorney. Property the spouses intend to keep as SP must be clearly designated as SP in the premarital agreement. Courts will look to the intentions of the spouses when interpreting premarital agreements.

Here, Harry and Wanda jointly prepared a premarital agreement without the assistance of attorneys before their marriage. They signed a separate document stating "We agree we do not need legal advice." The premarital agreement was in writing and signed and dated by both spouses. They did not use the term SP within the agreement, but instead wrote "After we marry, Wanda's salary is her property and Henry's salary is his property." The court will need to evaluate whether this constitutes a valid premarital agreement. Salary earned during the marriage is generally presumed to be CP, but it appears that Wanda and Henry tried to overcome this presumption by keeping their salaries SP during the marriage. Even though they didn't use the words "SP", they used the words "her property" and "his property" to try to connote the same meaning. Because Harry and Wanda clearly intended to reserve their salaries during the marriage as SP, the court will most likely interpret the premarital agreement in accordance with the spouses' intent and find that this constitutes a valid premarital agreement.

An analysis of Harry and Wanda's rights and liabilities to certain property is included below.

1. Condominium ("Condo")

As stated above, SP acquired with SP funds is SP. Property acquired with CP funds during the marriage is considered CP. A spouse's salary during the

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marriage is CP. Title listed in only one spouse's name will not preclude a finding that both spouses hold title to the property as tenants in common.

Here, Harry used his salary to buy the Condo and took title in his name alone. Because Harry's salary is designated as SP in the premarital agreement, the Condo is his SP because it was acquired using Harry's SP funds. Therefore, Wanda does not have an interest in the Condo.

Accordingly, only Harry has an interest in the Condo.

[However, if the court finds that the premarital agreement was invalid, then Harry's salary would be CP and the condo acquired using Harry's salary would also qualify as CP. In that case, Wanda would have equal rights to the condo.]

## 2. Joint Savings Account

If spouses intend to designate property as SP, it must be kept in that spouse's own bank account. Any property put in a joint account is presumed to be CP, unless the court can clearly trace the SP. Any amounts taken from a joint account to pay for community expenses will be divided evenly and subtracted from each spouse's SP portion.

Here, Harry and Wanda opened a joint savings account and each deposited \$5,000 from their salaries into the account each year. Because the premarital agreement designates each spouse's salary as SP, the checking account contains both spouse's SP. The account was opened in 2005 and both spouses deposited \$5,000 annually until 2015 or 2016. Each spouse's SP investment should be traceable assuming that any community expenses are subtracted evenly from both sides and the amount Wanda used to buy rental property in her name is subtracted from her SP funds alone.

[However, if the court finds that the premarital agreement was invalid, then both spouse's contributions to the joint account would be considered CP because it is their salary.]

## 3. Rental Property

The rental property was purchased by Wanda using money from the joint account and Wanda put title in her name alone. Because the funds in the joint account are divisible as SP, the purchase price of the rental property will be subtracted from Wanda's SP interest in the joint account and the rental property will remain Wanda's SP.

[However, if the court finds that the premarital agreement was invalid, then Wanda acquired the rental property using CP property funds and the rental property would be CP property. Harry and Wanda would then have equal interest in the rental property.]



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4. Hospital Bill

Property acquired or liabilities incurred after the spouses are living "separate and apart" are SP. As discussed above, spouses are living "separate and apart" when one spouse has no intention of reuniting of the other spouse.

Here, Harry and Wanda permanently separated in 2016 and Wanda moved out of the Condo. Wanda required emergency surgery for a medical condition after their separation and incurred a hospital bill of \$50,000. Harry later filed a petition for dissolution of the marriage. The court will find that the two were living "separate and apart" as of 2016 as neither spouse seems to have an intention of reuniting. after Wanda needed surgery, but this will not impact the classification of the hospital bill because the spouses were already living "separate and apart." Therefore, the hospital bill is Wanda's SP liability because it was incurred after the spouses had begun living "separate and apart."

Accordingly, the hospital bill is Wanda's SP.

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