JULY 2023

Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

Source: State Bar of California | 29 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

JULY 2023
ESSAY QUESTIONS 1, 2 AND 3

California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

Amy, Bob and Carl are partners in the ABC law firm, which operates under a general partnership agreement. ABC provides all firm attorneys with cell phones to facilitate prompt attorney-client communications. ABC has a policy that all firm attorneys must carry their work-provided cell phones with them at all times and that all client emails must be responded to immediately, at least with a personal acknowledgment of receipt.

Sam, an attorney well known for his many highly publicized trials, often works closely with ABC, but is not a party to the written ABC partnership agreement. ABC believes that Sam's presence raises the profile and prestige of ABC.

Sam leases an office in the suite of offices used by ABC, for which ABC charges Sam $3,000 per month. The ABC receptionist greets all clients of ABC and Sam. Sam uses the ABC firm name and telephone number on his letterhead. Sam bills his clients directly for his services. Sam also receives 10% of the annual profits of ABC in recognition of his value to the firm.

After work one day, Amy was driving in heavy traffic to attend a baseball game when she received an urgent email from an ABC client. While briefly stopped in traffic, Amy attempted to answer the email on her work-provided cell phone. Due to this distraction, Amy negligently caused a car accident that was the actual and proximate cause of serious injuries to the other driver, Priya.

Priya sued Amy, ABC, Bob, Carl, and Sam for damages arising from the car accident.

Which of these defendants might reasonably be found liable for damages arising from Priya's car accident and why? Discuss.

READING POINTERS

1 Connect policy to scope

The trip was personal, but the conduct causing the accident was a required response to a firm client.

2 Test co-ownership

Profit sharing supports partnership status, but compensation for services is an exception to the presumption.

3 Do not assume reliance

An injured motorist is not automatically a transaction participant who relied on a holding out.

QUESTION 2

3 DishWay developed a new dishwasher powder that it named UltraKlean. The company advertised widely that UltraKlean was “a revolutionary, safe product with the most powerful cleaning agent ever.” This advertisement accurately represented that UltraKlean contained a new cleaning agent that made the product more effective than other dishwasher powders.

2 1 DishWay knew the cleaning agent could cause severe stomach pain if ingested, but this is true of all detergent products. What DishWay did not know was that a potentially dangerous amount of UltraKlean residue tended to remain on aluminum cookware after a wash cycle. It is not unusual for dishwasher powders to leave a harmless amount of residue on different surfaces. During product development, DishWay tested UltraKlean on some surfaces but not on aluminum because there was no indication that it would work differently on aluminum than on other surfaces. The residue was not detectable to the eye, and there was no flaw in DishWay’s manufacturing process. DishWay’s instructions on the product only stated that the product should not be ingested.

Paul purchased a box of UltraKlean from DishWay. The first time he used it was to wash some aluminum pots. The next day, Paul used several of those pots to prepare a meal. Shortly after finishing the meal, Paul experienced severe stomach pain, which required him to be hospitalized. Laboratory test results revealed the cleaning agent in UltraKlean caused Paul’s stomach pain.

What products liability claims may Paul bring against DishWay? Discuss.

READING POINTERS

1 Eliminate the wrong defect

Conforming manufacture directs attention to design and warnings.

2 Analyze reasonable testing

A common cookware material matters even though the manufacturer had no actual notice of a different reaction.

3 Separate warranty from puffery

A safety assurance can carry different legal significance from a broad promotional superlative.

QUESTION 3

Laura is general counsel for MoreHome Mortgage Company (MoreHome), a California corporation. Eric is an entry-level mortgage advisor at MoreHome.

Eric approached Laura and gave Laura a package of documents that he obtained through his position at MoreHome. The documents demonstrate that MoreHome employees are falsifying the financial history of many mortgage applicants so they can qualify for mortgages they could not otherwise obtain. The documents also show that it is MoreHome's policy to push risky mortgages onto unsuspecting customers.

Eric confided in Laura that he was troubled to have learned of these practices himself and wanted Laura's legal advice on what do to. Eric said that he has never engaged in these practices himself and does not want Mianne, MoreHome's Chief Executive Officer (CEO), to learn of their discussion. Laura told Eric she would think about it and get back to him. Eric left all of the documents with Laura as she requested.

Laura knows that the practices shown in the documents and described by Eric constitute a crime under state law. Laura also knows that the State Attorney General is aggressively investigating similar practices by mortgage companies in the state, although Laura is not aware of whether MoreHome has been identified as a target for investigation.

Immediately after Eric left Laura's office, Laura called Mianne and informed her of Eric's visit and about Eric's concerns. Mianne instructed Laura not to do anything with the documents and to give them to Mianne. Laura consulted with outside counsel regarding what to do with the documents and based on that advice, and against Mianne's instructions, Laura provided copies of the documents to the State Attorney General.

What ethical violations, if any, has Laura committed? Discuss.

Answer according to California and ABA authorities.

READING POINTERS

1 Clarify whom counsel represents

Eric's request for individual advice and secrecy creates a role-clarification and possible conflict issue.

2 Reporting up may continue

A refusal by the CEO does not establish that the highest organizational authority has acted.

3 Reporting out is different

Analyze a confidentiality exception before treating delivery to investigators as permitted.

JULY 2023
ESSAY QUESTIONS 4 AND 5

California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, which is designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the situation turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them to the facts.

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Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

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READING POINTERS

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QUESTION 4

Deborah was homeless and without money. One night, the temperature was below freezing and continuing to drop. Deborah realized she might die if she did not find shelter. She found a run-down house with an attached garage that had a door connecting it to the house. Deborah thought the house was unoccupied. She went around to the side of the garage, looked through a window, and saw a stack of wood. Deborah decided to go into the garage, take some of the wood, and build a fire outside the garage to keep herself warm. She broke the window to get into the garage. Because of the extreme cold, Deborah decided to stay in the garage. She gathered wood scraps and paper, started a small fire to keep herself warm, and fell asleep. A spark from the fire ignited some oil on the floor. Deborah awoke to flames and smoke. She then escaped through the window she had broken. The fire quickly engulfed the house where it killed Stuart as he was sleeping in his bed.

Officer Oliver, who was patrolling the area, saw Deborah walking on the sidewalk three blocks from the fire. When Officer Oliver asked her what she was doing outside on such a cold night, Deborah said, “I started the fire.”

Deborah is charged in criminal court and moves to suppress her statement “I started the fire.”

1. With what crime or crimes can Deborah reasonably be charged; what defense or defenses can she reasonably raise; and what is the likely outcome? Discuss.

2. Should the court grant Deborah’s motion to suppress her statement? Discuss.

READING POINTERS

1 Fix intent at entry

An intent to steal existed before entry; the later decision to light a fire inside is a separate timing issue.

2 Separate belief from objective facts

The belief matters to culpability and defenses without making the occupied dwelling legally abandoned.

3 Check custody first

A public question without restraint ordinarily does not require Miranda warnings.

QUESTION 5

Steve owned property in the state of Columbia that Barbara offered to buy for $500,000. Steve agreed to sell, provided that he retained the mineral rights and had access to the land. Barbara later accepted Steve's conditions and said that she would tell her attorney to prepare the necessary papers. When Steve met with Barbara to sign the papers, he asked if the documents included his conditions and she assured him that they did. In fact, Barbara had not told her attorney of Steve's conditions and they were not in the papers that he and Barbara signed.

Shortly after the sale, Steve decided to investigate whether his former property had any mineral deposits. Barbara refused to let Steve and his geologist on the property and erected barricades to prevent their access. It was then that Steve realized that the documents he signed omitted his conditions.

Barbara had purchased Steve's property in cash, which included $250,000 of funds that she had embezzled from her employer, Acme Company (Acme). Barbara later embezzled another $20,000 from Acme, which she deposited in her checking account containing $5,000 at the time. The following month, she paid off $25,000 of her outstanding debts, bringing her checking account balance to zero. Subsequently, Barbara deposited $10,000 of her own money into the checking account. Shortly thereafter, Acme fired Barbara after discovering her embezzlement.

Both Steve and Acme have brought suit against Barbara.

1. What equitable remedies does Steve have against Barbara? Discuss.

2. What equitable remedies does Acme have against Barbara? Discuss.

3. What amount of money, if any, can Acme recover as part of an equitable remedy from Barbara's checking account? Discuss.

READING POINTERS

1 Identify fraud plus mistake

Reformation can correct Steve's induced unilateral mistake even if Barbara knew what the writing said.

2 Trace a proportionate interest

Half of the purchase price came from Acme; a constructive trust and lien produce different recovery measures.

3 Stop proprietary tracing

A later deposit of the wrongdoer's own money does not automatically restore an exhausted trust balance.

July 2023

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

IN RE MARRIAGE OF BURKE

Instructions .....

FILE

Memorandum to Applicant from Andrew Washington .....

Reporter’s Transcript of Proceedings .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.

2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.

3. You will have two sets of materials with which to work: a File and a Library.

4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.

6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.

8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.

9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

The Washington Law Group

7 Chadbourn Road

Fair Haven, Columbia

MEMORANDUM

TO: Applicant

FROM: Andrew Washington

DATE: July 25, 2023

RE: In re Marriage of Burke

We represent Wendy Burke in this proceeding for dissolution of her marriage to Harlan Burke.

On July 21, 2023, the family court conducted a trial on the issue of the characterization of shares in the stock of DigitalAudio, Inc. that had been issued to Harlan before marriage. During marriage, the value of Harlan's DigitalAudio shares increased by $200 million. If the court were to characterize the increase entirely as community property, Wendy would effectively receive 50 percent or $100 million, with Harlan receiving the remaining $100 million. But if the court were to characterize the increase entirely as Harlan's separate property, Wendy would effectively receive nothing, with Harlan receiving the entire $200 million. The court has scheduled argument for July 26, 2023.

This morning, Harlan's counsel called me and offered to enter into a joint stipulation characterizing the increase in value, during marriage, of Harlan's DigitalAudio shares as 50 percent community property and 50 percent Harlan's separate property, a characterization that would effectively result in Wendy receiving $50 million and Harlan receiving $150 million. I called Wendy and relayed the offer to her. She asked me whether I would recommend that she accept Harlan's counsel's offer.

1

Please draft a letter to Wendy, for my signature, responding to her request. Begin with a brief statement of your recommendation, then address and resolve the following issues raised by her request, citing the applicable law and the material facts:

2

READING POINTERS

1 Calculate the offer correctly

A 50% community characterization gives Wendy half of that community portion, or one-quarter of the total increase.

2 Follow the assigned letter order

Start with the recommendation, then answer each of the three requested issues.

1. Are Harlan’s DigitalAudio shares community property or separate property?

2. Did the community devote more than minimal effort involving Harlan’s DigitalAudio shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting in community property?

3. How should the family court apportion the $200 million increase in value, during marriage, of Harlan’s DigitalAudio shares?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL ON ISSUE OF CHARACTERIZATION OF PROPERTY
July 21, 2023
9:00 a.m.
Family Court of Columbia, County of Dixon
In re Marriage of Burke, Case No. 123632
Maryann Moreno, Judge Presiding

THE CLERK: Please remain seated and come to order. The Family Court is now in session, the Honorable Maryann Moreno, judge presiding.

Your Honor, this is the matter of *In re Marriage of Burke*, and it's case number 123632. Counsel, may I have your appearances for the record?

MR. WASHINGTON: Good morning, Your Honor. Andrew Washington for Petitioner Wendy Burke, who is present.

THE COURT: Good morning, Mr. Washington.

MS. GRANADOS: Good morning, Your Honor. Karina Granados for Respondent Harlan Burke, who is also present.

THE COURT: Good morning, Ms. Granados.

We're here today for trial on the issue of the characterization of shares of stock in DigitalAudio, Inc., issued to Mr. Burke before marriage. This matter was originally assigned to Judge Sean Onderick when Ms. Burke filed the petition for dissolution in 2021. On Judge Onderick's recent retirement, it was reassigned to me. Mr. Washington, call your first witness.

MR. WASHINGTON: Your Honor, before calling our first witness, I would like to read into the record a joint stipulation of facts between Ms. Burke and Mr. Burke.

THE COURT: Ms. Granados, there's a joint stipulation?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

MS. GRANADOS: Yes, Your Honor.

THE COURT: Proceed then, Mr. Washington.

MR. WASHINGTON: Thank you, Your Honor.

Petitioner Wendy Burke and Respondent Harlan Burke jointly stipulate as follows:

1. In 1983, Harlan Burke co-founded DigitalAudio, Inc., with Pamela Gardner.
2. In founding DigitalAudio, Harlan Burke and Pamela Gardner each made a capital contribution of $5,000, and each received 50 percent of the shares of its stock.
3. In 1989, Harlan Burke and Wendy Burke married. By the date of marriage, the value of Harlan Burke's DigitalAudio shares had fallen to zero.
4. In 2009, Harlan Burke and Wendy Burke separated. By the date of separation, the value of Harlan Burke's DigitalAudio shares had risen to $200 million.

THE COURT: Ms. Granados, is this your joint stipulation?

MS. GRANADOS: Yes it is, Your Honor.

THE COURT: Just one question, Mr. Washington, solely out of curiosity. Ms. Burke and Mr. Burke separated in 2009. But it was not until 2021 that Ms. Burke filed the underlying petition. Why so long?

MR. WASHINGTON: Ms. Burke had raised four children with Mr. Burke, relatively amicably, and had not contemplated remarriage. In 2021, she began to contemplate remarriage.

THE COURT: Thank you, Mr. Washington. Call your first witness.

MR. WASHINGTON: Thank you, Your Honor. We call Petitioner Wendy Burke to the stand.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

WENDY BURKE,
called as a witness for Petitioner Wendy Burke, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

MR. WASHINGTON: Q. Good morning, Ms. Burke.

A. Good morning.

Q. When did you meet Mr. Burke?

A. In 1986.

Q. How?

A. Through Pam — Pamela Gardner. She was a high school friend, and thought I'd like Harlan.

Q. Did you?

A. Yes, very much. He was so different from me, but in a good way. He had just graduated from the University of Columbia with a degree in computer science and electrical engineering; I was about to graduate with a degree in Classics – that's Latin and Greek.

Q. Was Mr. Burke working at DigitalAudio in 1986?

A. Yes, night and day. Typical start-up.

Q. When did you marry?

A. 1989.

Q. When did you separate?

A. 2009.

Q. Did Mr. Burke work at DigitalAudio throughout that time?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

A. Yes. Night and day.

Q. Did you ever work at DigitalAudio?

A. Maybe not *at* DigitalAudio, but *for* DigitalAudio. In the early days of our marriage, I helped Harlan with shipping some hardware and software.

Q. Did you ever work outside the home?

A. Not *outside* the home, but *in* the home, just as hard as Harlan worked at DigitalAudio. Over the years, we had four children. I worked more than full time caring for them, for Harlan, and for the house.

Q. Do you work outside the home now?

A. At my age, and with a degree in Classics, no.

Q. Are you getting by?

A. Barely.

MR. WASHINGTON: Thank you, Ms. Burke. That's all I have.

THE COURT: Cross-examination, Ms. Granados?

MS. GRANADOS: Yes, Your Honor.

CROSS-EXAMINATION

MS. GRANADOS: Q. Good morning, Ms. Burke.

A. Good morning.

Q. You just testified that "I worked more than full time caring for them"—your four children—"for Harlan, and for the house."

A. Yes.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Q. But isn't it true that you didn't *have* to "work more than full time"?

A. No.

Q. But isn't it true that, many times over the years, Mr. Burke offered to hire housekeepers, nannies, drivers, and whatever other household staff you might have needed to enable you to pursue any career you wished, but that you refused?

A. Yes.

Q. Why?

A. I just preferred to raise my own children myself, especially with Harlan working night and day at DigitalAudio.

MS. GRANADOS: Thank you, Ms. Burke. That's all.

THE COURT: Redirect, Mr. Washington?

MR. WASHINGTON: No, Your Honor.

THE COURT: Call your next witness.

MR. WASHINGTON: We have none, Your Honor. Ms. Burke rests.

THE COURT: Ms. Granados, do you have any witnesses?

MS. GRANADOS: Yes, Your Honor. Mr. Burke.

HARLAN BURKE,
called as a witness for Respondent Harlan Burke, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

MS. GRANADOS: Q. Good morning, Mr. Burke.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

A. Good morning.

Q. Did Ms. Burke ever do any work at or for DigitalAudio.

A. No.

Q. Did you ever offer to hire household staff to enable Ms. Burke to pursue a career?

A. Yes, many times.

Q. Did she ever take you up on any of your offers?

A. No.

MS. GRANADOS: Thank you, Mr. Burke. That's all.

THE COURT: Cross-examination, Mr. Washington?

MR. WASHINGTON: Yes, Your Honor.

CROSS-EXAMINATION

MR. WASHINGTON: Q. Good morning, Mr. Burke.

A. Good morning.

Q. Isn't it true that, over the years, you've often said that Ms. Burke was a great wife and mother?

A. Yes—and I meant it.

Q. You just heard Ms. Burke testify that she is "barely getting by," didn't you?

A. Yes.

Q. Isn't it true that you're "getting by" quite well?

A. Yes, very comfortably. I can't complain.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

MR. WASHINGTON: Thank you, Mr. Burke. That's all I have.

THE COURT: Redirect, Ms. Granados?

MS. GRANADOS: No, Your Honor.

THE COURT: Ms. Granados, do you have any further witnesses?

MS. GRANADOS: Yes, Your Honor. One more, Pamela Gardner.

PAMELA GARDNER,
called as a witness for Respondent Harlan Burke, having been duly sworn,
testified as follows:

DIRECT EXAMINATION

MS. GRANADOS: Q. Good morning, Ms. Gardner.

A. Good morning.

Q. When did you meet Mr. Burke?

A. In 1981, when a bunch of us got together to form a band.

Q. Did you found DigitalAudio with Mr. Burke?

A. Yes.

Q. Why?

A. To transform the music recording industry by creating a market for cost-effective, privately-owned studios as an alternative to expensive commercial ones.

Q. What were your roles at DigitalAudio?

A. I was the Chief Executive Officer and Harlan was the Chief Scientific Officer.

Q. Was DigitalAudio able to transform the music recording industry?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

A. Yes, I'm proud to say twice, through two entirely different products. Early on, there was SoundAudio, with its hardware and software. And later, there was ProAudio, with its entirely different hardware and software.

Q. Let me ask you about SoundAudio first. Who worked on it?

A. Harlan. He designed SoundAudio, updated SoundAudio, and sustained SoundAudio throughout its life as a marketable product.

Q. Did anyone work with Mr. Burke on SoundAudio?

A. No. SoundAudio was Harlan's baby. We were lucky Harlan stayed with DigitalAudio throughout its marketable life. No one else knew much about it.

Q. Did Mr. Burke also work on ProAudio later on?

A. No. Not at all. Others at DigitalAudio developed, updated, and sustained ProAudio.

Q. Did ProAudio derive from SoundAudio?

A. No, it was entirely different, both in hardware and software.

Q. In 2009, when, according to the joint stipulation, the value of Mr. Burke's DigitalAudio shares was $200 million, was SoundAudio a marketable product?

A. No, SoundAudio had ended its marketable life years earlier in 2009.

Q. In 2009, was ProAudio a marketable product?

A. Yes.

Q. In your opinion as DigitalAudio's Chief Executive Officer, what was the basis of the value of DigitalAudio's shares in 2009—SoundAudio or ProAudio?

MR. WASHINGTON: Objection: Impermissible opinion.

THE COURT: Overruled. A businessperson like Ms. Gardner may present an opinion based on her knowledge and participation in the day-to-day affairs of the business. [To the witness:] You may answer.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

THE WITNESS: ProAudio.

MS. GRANADOS: Thank you, Ms. Gardner. That's all.

THE COURT: Cross-examination, Mr. Washington?

MR. WASHINGTON: Yes, Your Honor.

CROSS-EXAMINATION

MR. WASHINGTON: Q. Good morning, Ms. Gardner.

A. Good morning.

Q. Between 1989, the date of marriage, and 2009, the date of separation, was Mr. Burke important to DigitalAudio?

A. Yes, indeed. Without Harlan, DigitalAudio would not have come into existence and would not have remained in existence. He was always working, always at 110 percent. He's one of the most skilled computer scientists and electrical engineers of his generation, and he attracted many other skilled computer scientists and electrical engineers to DigitalAudio.

Q. But how could Mr. Burke be important to DigitalAudio if he had nothing to do with ProAudio?

A. ProAudio got off to a very rocky start. After initial development, it had to be redeveloped, not once, but several times. Harlan was able to keep updating SoundAudio, and DigitalAudio was able to keep selling SoundAudio, until ProAudio became marketable. Without Harlan, DigitalAudio would have gone out of business and it would never have developed ProAudio.

1

MR. WASHINGTON: Thank you, Ms. Gardner. That's all I have.

THE COURT: Redirect, Ms. Granados?

READING POINTERS

1 Use the strongest causal evidence

Harlan did not develop ProAudio, but his continuing work kept the company alive while it was redeveloped.

MS. GRANADOS: No, Your Honor. Mr. Burke rests.

THE COURT: We've come to the end of presentation of evidence and all that remains is argument. I've got another matter I have to handle this afternoon. Let's reconvene for argument at the same time in five days, if that fits your schedules.

MR. WASHINGTON: That's fine with me, Your Honor.

MS. GRANADOS: It's fine with me as well.

THE COURT: Excellent. See you then.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

July 2023

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

IN RE MARRIAGE OF BURKE

LIBRARY

In re Marriage of Rand

Columbia Court of Appeal (2015).....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

In re Marriage of Rand

Columbia Court of Appeal (2015)

In this proceeding for dissolution of marriage, Linda Rand appeals from an order characterizing shares of stock in Rand Investment Corporation (RIC), which Charles Rand formed before marriage. Finding no error in the order, we shall affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In 1974, Charles formed RIC to provide investment advisory services in exchange for fees based on the percentage of clients' assets under management. Charles owned all of RIC's shares and would continue to do so over the following years.

In 1986, Charles married Linda. As of the date of marriage, the value of Charles's RIC shares was zero.

Between 1986 and 1991, Charles worked for RIC night and day; Linda was not involved with the business at all. The value of Charles's RIC shares rose from zero to the tens of millions of dollars.

Between 1991 and 2004, lifted by an ever-rising market, RIC became enormously successful. By 1991, Charles had withdrawn from the business, having left it essentially on autopilot, and had turned from making money to spending money. Linda remained uninvolved with the business. The value of Charles's RIC shares rose from the tens of millions of dollars to the hundreds of millions. Charles and Linda amassed $300 million in cash.

In 2004, Charles and Linda separated. As of the date of separation, the value of Charles's RIC shares, as noted, had risen to the hundreds of millions of dollars.

In 2005, Charles filed a petition for dissolution of marriage. Charles and Linda soon entered into a joint stipulation distributing all of their $300 million in cash, giving each $150 million.

READING POINTERS

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In 2011, after extensive—and to our mind, excessive—discovery and motion practice by Charles and Linda, the family court conducted a trial on the issue of the characterization of Charles's RIC shares.

In 2012, the family court issued an order with a statement of decision. The court: (1) characterized Charles's RIC shares as his separate property; (2) characterized, as community property, the increase in the value of his shares between the date of the marriage in 1986 and his withdrawal from the business in 1991, under *Pereira v. Pereira* (Colum. Supreme Ct., 1909); and (3) characterized, as Charles's separate property, the increase in the value of his shares between his withdrawal from the business in 1991 and the date of separation in 2004, under *Van Camp v. Van Camp* (Colum. Ct. App., 1921). The court awarded Linda tens of millions of dollars consisting of her 50 percent share of the community property, and awarded Charles hundreds of millions of dollars consisting of: (1) his 50 percent share of the community property; and (2) his 100 percent of his separate property. It is from this order that Linda has appealed.

DISCUSSION

Under Columbia law, marriage is an egalitarian partnership.

Property that either spouse acquires during marriage belongs to the marital community—it is community property. *See*, Columbia Family Code, section 760. At dissolution, community property is awarded to each spouse in an equal 50 percent share. *Id.* Section 2550.

In contrast, property that either spouse acquired before marriage belongs to that spouse—it is his or her separate property. *See id.* Section 770. Likewise, the proceeds of property that either spouse acquired before marriage also belong to that spouse—the proceeds are also his or her separate property—even if he or she acquires the proceeds during marriage. *See id.* At dissolution, separate property is confirmed in its entirety to the owning spouse. *Id.* Section 2550.

But because marriage is an egalitarian partnership, whenever the community devotes more than minimal effort involving a spouse's separate property during marriage, the community acquires an interest in any increase in value, during marriage, of the separate property, and that interest is community property. *In re Marriage of Dekker* (Colum. Ct. App., 1993).

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It follows that, in dividing property at dissolution, the family court must apportion the increase in value, during marriage, of one spouse's separate property whenever the community devotes more than minimal effort involving the separate property during marriage.

One approach to apportionment, under *Pereira*, applies when the increase in value, during marriage, of one spouse's separate property is principally due to community efforts—i.e., when such efforts are the predominant cause of the increase. This approach requires the family court to apportion the increase in value mainly to the community estate (with the remainder to the owning spouse's separate estate).

Another approach to apportionment, under *Van Camp*, applies when the increase in value, during marriage, of one spouse's separate property is principally due to factors *other than* community efforts—again, when such efforts are the predominant cause of the increase. This approach requires the family court to apportion the increase in value mainly to the estate of the owning spouse (with the remainder to the community estate).

Finally, although in dividing property at dissolution the family court is not required to adopt either the *Pereira* approach or the *Van Camp* approach—or indeed any other approach—the court must nevertheless divide the property in such a way as to achieve substantial justice between the spouses.

After review, we conclude that the family court properly characterized Charles's RIC shares as his separate property. It is undisputed that Charles acquired his shares before marriage.

We also conclude that the family court properly determined that the community acquired an interest in the increase in value, during marriage, of Charles's RIC shares. It is similarly undisputed that the community devoted more than minimal effort involving Charles's shares during marriage through Charles's hard work for the business between marriage in 1986 and separation in 1991. Although there is no evidence that Linda worked for the business, that fact is inconsequential. The community acts whenever either of the spouses acts.

1

Against this background, Linda contends that the family court erred by adopting a "hybrid *Pereira/Van Camp* approach." We disagree. The facts show two separate periods during marriage: The first period, between 1986 and 1991, was the "*Pereira* period," during which the increase in value of Charles's RIC shares

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1 Community effort includes Harlan

Wendy need not have been an employee for marital labor to create a community interest.

2 Distinguish the precedent

Rand involved withdrawal from the business; the Burke record describes continuing work and no intermediate valuation.

was principally due to community efforts, i.e., Charles's hard work was the predominant cause of the increase. The second period, between 1991 and 2004, was the "*Van Camp* period," during which the increase in value of Charles's RIC shares was principally due to factors *other than* community efforts, i.e., market forces were the predominant cause of the increase.

Linda goes on to contend that the family court erroneously subjected her to substantial injustice by awarding Charles hundreds of millions of dollars and awarding her *only* tens of millions. The court, of course, did not leave Linda destitute. Even if it had, it would not have mattered. Contrary to Linda's assumption, substantial justice between the spouses does *not* require the court to evenly divide the *entire* increase in value, during marriage, of one spouse's separate property. Instead, it requires the court to evenly divide only the *portion* of the increase *principally due to community efforts*. That is what the court did.

DISPOSITION

For the reasons stated, the order of the family court is AFFIRMED.

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