

## Answer A to Question 1

1)

California is a community property state. All property acquired during marriage is presumptively community property (CP). All property acquired before marriage or after permanent physical separation, or during marriage by gift, will, or inheritance, is separate property (SP). Upon divorce, marital CP assets are distributed 50-50 unless certain exceptions apply.

In determining the time for final property division, the probate court will look at when there was a permanent physical separation and an intent not to resume marital relations. This is when the economic community is considered to be at an end.

Here, the economic community did not end when W first moved out of the home due to marital difficulties, early in 2003. The couple continued to attend marriage counseling sessions, suggesting that they were still hopeful of a possible reconciliation. At the point, they did not have the requisite intent to not resume marital relations. The economic community ended later in 2003 when H & W discontinued marriage counseling and filed for divorce. Only at that time was it clear that there was a permanent physical separation and an intent not to resume marital relations.

### 1.a. Henry's savings account

Property acquired before marriage is that spouse's SP. All income, rents, and profits from SP earned during marriage is also that spouse's SP. Upon dissolution of marriage, the spouse who owns the SP will take it in its entirety. Although the character of property might change, what was initially SP will remain SP unless there has been a transmutation. No transmutation occurred here.

Henry purchased shares of stock before marriage and kept these shares in a brokerage account. Because the shares were purchased before marriage, they are his SP. The income from these shares, the annual cash dividend of \$3,000, is also Henry's SP. Furthermore, the income from the shares was deposited into a savings account held in his name alone. This suggests that the funds were not commingled with CP. In addition, it is assumed that W had no rights to withdrawal on the account.

Because the income deposited into H's savings account had as its source the stock he had purchased before marriage, all income in the savings account--assuming it was solely for such income and did not contain any commingled CP funds -- is H's upon divorce. W has no right to the income in the savings account.

b. Henry's personal injury settlement

A personal injury settlement that results from an injury sustained during marriage is presumptively CP. Legal relevance is placed upon when the injury occurred, and not on when settlement was awarded. Upon divorce, however, the injury settlement belongs to the injured spouse: it is treated as the injured spouse's SP. The community is, however, entitled to reimbursement for medical expenses paid with CP when SP was available.

Here, H was injured in an automobile accident that occur[r]ed in 2003, while he was still married to W. As stated above, at the time of the accident, H & W were no longer living together but were still attending marriage counseling sessions. Because there is no indication that H & W intended not to resume marital relations at this point, the economic community was not yet at an end. There was, at this point, no permanent physical separation. Because of these facts, the injury occurred at a time when H & W were still married and the settlement is thus CP during marriage.

On the given facts, the settlement was paid to H in 2004, after H & W had discontinued counseling and had filed for divorce. Thus, the economic community was at an end. Nevertheless, what is legally relevant is that the injury arose during marriage, and not the time the settlement was paid.

At the outset, upon divorce, the \$20,000 will be awarded to H as the injured spouse. It is treated as his SP. However, because \$5,000 of medical expenses were paid with CP, the community is entitled to reimbursement. Because H received an annual cash dividend of \$3,000, it can be assumed that he had \$5,000 in his separate savings account at the time the medical expenses were paid. Thus, because CP funds were used to pay his medical expenses at a time when H had SP available, the community is entitled to reimbursement.

The net result is that H will receive \$15,000 of the settlement. The community receives a reimbursement of \$5,000 which will be divided 50-50 between H & W.

c. Wilma's stock options

Stock options earned during marriage are CP to the extent that CP contributed to them. The court will apply the time rule to determine the pro rata share of contribution of CP and SP. Applying the time rule, a fraction is given whereby the numerator is the number of years that have elapsed between the granting of the options and the date the economic community of the marriage ended. The denominator is the number of years that have elapsed between the granting of the options and the year in which they are exercisable.

Here, the 1,000 shares of Tech Co. stock were awarded to W in 1999. The economic community of H & W ended in 2003. Thus, four (4) years of CP labor creates the numerator. The options are exercisable in 2006. Thus, the denominator will be 7.

The remaining 3 years, from 2004 to 2006, will be treated as W's SP.

Because 4 years out of 7 are attributable to CP, upon dissolution of marriage the community will be entitled to 4/7 of value of the stock options, while 3/4 will be W's SP.

## 2. Henry's reimbursing the community for his child support payments

Child support payments from a prior marriage are considered a spouse's premarital debt, regardless of whether the payments started before marriage or began during the marriage. Although CP and the debtor spouse's SP are both liable for any premarital debts of the debtor spouse, if CP funds are used during the marriage to make child support payments arising out of a prior marriage, and it is determined that the debtor spouse had available SP funds at the time, then the community may be entitled to a reimbursement upon divorce.

Here, H's child support payments arose out of a prior marriage. H had a child by a prior marriage – not the marriage to W. During the course of his marriage to W, H had paid out of CP funds a total of \$18,000 as child support. However, on the given facts, H had SP available to make those payments. He received \$3,000 annually in cash dividends from his stocks. Between 1998 and 2004, that amounted to \$15,000 (\$3,000 multiplied by 5 years). Moreover, he received \$20,000 as settlement for the personal injury claim which, although CP at the time received, is treated as his SP upon divorce.

Thus, because CP funds were used to make the child support payments, the community is entitled to reimbursement. H should be required to reimburse the community at least \$15,000 which is the amount he had accrued in his personal savings account during the course of the marriage. This amount can be offset from his personal injury settlement claim which will be treated as SP upon divorce. The amount is also \$15,000, after the \$5,000 has been deducted to reimburse the community. Furthermore, because half of the \$5,000 will go to H, that makes an additional \$2,500 available to reimburse the community for the child support payments.

In summary, on the given facts, H should be required to reimburse the community for \$17,500 for his child support payments.