

QUESTION 1

In 1980, Herb married Wanda, and the couple took up residence in a California home, which Herb had purchased in 1979.

Herb had bought the home for \$50,000 by making a \$5,000 down payment and signing a promissory note for the balance. At the time of the marriage, the outstanding balance on this note was \$44,000. During the next 20 years, the couple paid off the note by making payments from their combined salaries. The home now has a fair market value of \$200,000.

In 1985, Wanda sold for \$10,000 a watercolor she had painted that year. She and Herb orally agreed that the \$10,000 would be her sole and separate property. Wanda invested the \$10,000 in a mutual fund in her name alone. The current value of the mutual fund is \$45,000.

In 1995, Herb and Wanda bought a vacation cabin on the California coast for \$75,000. They made a down payment of \$25,000 with community property funds, and both signed a note secured by a deed of trust on the cabin for the balance. Title to the cabin was taken in the names of both Herb and Wanda “as joint tenants.”

Shortly afterward, Herb inherited a large sum of money from his mother and used \$50,000 of his inheritance to pay off the note on the cabin. In 2000, Herb and Wanda added a room to the cabin at a cost of \$20,000, which Herb paid out of the funds he had inherited. The current fair market value of the cabin is \$150,000.

In 2001, Wanda instituted a dissolution proceeding. What are Herb’s and Wanda’s respective rights to:

1. The home? Discuss.
2. The mutual fund? Discuss.
3. The cabin? Discuss.

Answer according to California law.

QUESTION 1

Community Property

In 1980, Herb married Wanda, and the couple took up residence in a California home, which Herb had purchased in 1979. (The California home is Herb’s separate property because he purchased it before he married Wanda)

Herb had bought the home for \$50,000 by making a \$5,000 down payment and signing a promissory note for the balance. At the time of the marriage, the outstanding balance on this note was \$44,000. (Herb has a \$6,000 separate property interest in proportion to the \$50,000 purchase price (6/50). The community is entitled to the remaining \$44,000. (44/50) During the next 20 years, the couple paid off the note by making payments from their combined salaries. (The payments on the note were made from community property funds) The home now has a fair market value of \$200,000.

In 1985, (Notice the date as the oral agreement was made after January 1, 1985. Therefore, any transmutation of property must be in an express writing. See §852(a) of the CA Family Code) Wanda sold for \$10,000 a watercolor she had painted that year. (Wanda’s labor is presumptively community property) She and Herb orally agreed that the \$10,000 would be her sole and separate property. Wanda invested the \$10,000 in a mutual fund in her name alone. (The fact Wanda held title in her name alone will not be sufficient to overcome the writing requirement of §852(a) The current value of the mutual fund is \$45,000. (Both Herb and Wanda are entitled to one-half each)

In 1995, Herb and Wanda bought a vacation cabin on the California coast for \$75,000. (The cabin was bought by the community) They made a down payment of \$25,000 with community property funds, and both signed a note secured by a deed of trust on the cabin for the balance. (The intent of the lender is to hold both parties accountable for the debt) Title to the cabin was taken in the names of both Herb and Wanda “as joint tenants.” (The party took title in joint and equal form)

Shortly afterward, Herb inherited (Inheritance is separate property §770) a large sum of money from his mother and used \$50,000 of his inheritance to pay off the note on the cabin. (Separate property contribution to community property entitles Herb to “reimbursement”) In 2000, Herb and Wanda added a room to the cabin at a cost of \$20,000, which Herb paid out of the funds he had inherited. The current fair market value of the cabin is \$150,000.

In 2001, Wanda instituted a dissolution proceeding. What are Herb’s and Wanda’s respective rights to: (At divorce, the court will likely do a division in kind §2550)

1. The home? Discuss.
2. The mutual fund? Discuss.
3. The cabin? Discuss.

What are Herb's and Wanda's respective rights to:

Herb and Wanda's rights are to be determined under California Law, specifically the California Family Code. Here, the community has a 44/50 pro rata interest in the California home purchased by Herb in 1979. Herb retains the remaining 6/50 as separate property. The mutual fund earned by Wanda's labor is community property and because the oral agreement was not in writing, it will remain community property. As for the cabin, Herb is entitled to reimbursement of \$70,000 as he contributed his separate property funds from inheritance.

Community Property Maxim

California is a community property state. All property acquired during the course of a marriage is presumed to be community property. All property acquired before marriage or after permanent separation is presumed to be Separate Property. In addition, any property acquired by gift, devise or bequest is presumed to be Separate Property.

In order to determine the character of any asset, court will trace back to the source of the funds used to acquire the asset. A mere change in form of an asset does not change its characterization. With these basic principles in mind, we can now turn to the specific items of property involved in this instance.

Under § 2550, in a proceeding for dissolution of marriage, the court shall divide the community estate of the parties equally.

1. The Home

Herb bought the house in 1979 before he and Wanda married. Thus, it is his separate property. However the community paid off the outstanding balance on the note from its combined salaries, which are community property. Hence, the community receives a proportional share of the fair market value of the home.

Community Contributions Made to Separate Property

Under Marriage of Moore, 28 Cal. 3d 366 (1980) where community funds are used to make payments on property purchased by one of the spouses before marriage, California gives to the community a proportional community property interest to the extent that the community payments reduce the principal debt.

- Community funds paid \$44,000 / \$50,000 of the original purchase price
- Community's interest is 44/50 and Herb retains 6/50 separate property interest

2. The Mutual Fund

The \$45,000 value of the mutual fund is community property as the oral agreement made after January 1, 1985 was not in writing. The fact the mutual fund was in Wanda's name alone will not change the character of the property.

Transmutation – Express Writing Required

Under California Family Code § 852(a), a transmutation of real or personal property is not valid unless made in writing by an express declaration that is consented to by the spouse whose interest in the property is adversely affected.

- The painting was made through Wanda's labor which is community property
- Wanda and Herb executed an "oral" agreement in 1985
- No express declaration was made
- The fact the mutual fund was in Wanda's name alone is immaterial
- The community is entitled to the \$45,000

3. The Cabin

The community owns the cabin because Herb and Wanda bought it while they were married. However, Herb is entitled to *reimbursement* for his separate property contributions made for the improvements and his payments that reduced the principal of the loan. Herb will be able to successfully *trace* the \$50,000 he used to pay off the note and the \$20,000 used to add the room as it was paid for out of his inheritance from his mother. Herb will receive \$70,000 in reimbursement.

Reimbursement

Under § 2640 when contributions to the acquisition of property, including *payments for improvements*, and *payments that reduce the principal of a loan* used to finance the purchase of the property (not including payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property), the court shall *reimburse* the party for contributions to the extent the party *traces* the contributions to a separate property source. The amount reimbursed shall be without interest.

- Henry used \$50,000 of his separate property to pay off the note on the cabin
- Henry paid \$20,000 out of the funds he had inherited to add a room and improve their home
- Henry is entitled to \$70,000 reimbursement

Separate Property

Family Code § 770(a)(2) states separate property of a married person includes all property acquired by the person after marriage by gift, bequest, devise, or descent.

- Henry inherited a large sum of money from his mother
- Inheritance is separate property
- Henry may trace his contributions to its separate property source

Organization, introduction and community property maxims and division at dissolution **9%**

1. The home **28%**

Community Contributions Made to Separate Property – Pro Rata share (%)

Marriage of Moore

2. The mutual fund **24%**

Oral Transmutation not valid after 1985

Holding Title in one's name alone is not sufficient to overcome the presumption

3. The cabin **39%**

Separate Property Funds used to Improve and Pay-off Community Property

Reimbursement

Inheritance is Separate Property