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COMMUNITY PROPERTY (CP) AND SEPERATE PROPERTY (SP) INTRODUCTION

California is a community property state. Any property, items, earnings, or incomes accumulated during marriage until before death or divorce or permanent separation is considered as a community property, which some exception. Any gift or devise that is inherited to gifted to an individuals during the valid marriage are exempt from this rule, and considered SP. Additionally anything that was gained before the marriage is also considered as SP. In order to decide the characterization of a property, court look at 1. source 2. action 3. presumption of any statutory rules. This is to decide how the property was transferred to the individual or came in to their possession and wether or not along the way anything has cause to change the characterization of such property.

VALID MARRIAGE In CALIFORNIA

In order to be considered under the CP rules, couples must be legally married and domiciled in California.

here, H and W were married in 2012. It is also stated that they got married in California which is a CP state.

Thus there is a valid marriage in CA.

ECONOMIC MARITAL COMMUNITY

divorce or permanent separation as well as death, mark the end of economic marital community. And any property that belongs to the CP, will be share in half between the couple.

Here, W and H marriage ended because W decided to physically and permanently become separated from h. W told H that their marriage was over and she did not return home and stopped sending money to H like she used to do prior. W actions indicate that she is not intending to continue her marriage and she has decided to physically and permanently

Thus, W and H ended their EMC

1.the house?

THE SOURCE

To decide wether the house is a CP or SP, the court first look at the source of a property to decide how it came about. Under CP rules, any gift given to an individual during marriage is considered to be a SP.

Here, the house was gifted to W from W's aunt, without no mortgage or any liabilities/ encumbrances on it. W's aunt owned the land house free and clear. The house was in solely gifted to W with no mentions of H.

Thus, the source of the house is SP.

THE ACTION

The action will look at the intentions or activity that resulted any form of change to the source of the property and possibly changing the character.

Here, Wendy added H to the title of the document and they started living in the house. Because the action taken by W and H to include the H's name on the title, it can be said that W had the intention of changing the SP to CP. Now W and H both share the title of the house and they both live in it together. W and H's action as well as W's intention is enough to decide that the house's character changed.

Thus, the action is CP.

PRESUMPTION

After 1985, Transmutation requires a written acknowledgment from parties especially the one who may have to carry a burden of any loss of value to agree with the change of characterization. The changes from CP to SP or SP to CP needs to have parties signed document agreeing with such change. Transmutation is the presumption statutory rule that applies here.

Here, W and H simply changed the title of their house and started to live in it. There is no fact indicating that there was an agreement signed between the parties, especially for W. W did not sign or wrote down any form of acknowledgment agreeing with the change of the characterization in order to comply with transmutation rule.

Thus, the presumption was not followed.

In conclusion the house is W's SP.

2. the bank loan?

THE SOURCE

Any liabilities or loans that were acquired for the use and enjoyment during marriage is considered to be CP. That means, liabilities will be shared equally between the married couple if it received during the marriage.

Here, the loan was sourced from H's need of a new garage. H decided to open a new auto repair garage and applied for a loan for that specific reason. This garage will be owned by H and he will be able to continue his work in it. However, the bank approved the loan using the house as a collateral.

thus, the source is CP.

THE FIDUCIARY DUTY

Married couple are in a fiduciary relation with one another, that means they have to treat

the community property with good intention and duty of care and loyalty. Violating a fiduciary duty could lead to higher remedies against the violating party.

Here, H forged W's signature and without letting her know use the house as a collateral to obtain a loan. Forging a signature and not sharing such information with W is an indication that he lacked duty of care and loyalty.

Thus, fiduciary duty is violated.

THE ACTION

Here, H forged W's signature with the bank and acted with the intention that the loan should be under the name of both of them. Although H used the house as a collateral for securing the loan, by not letting W know that H is using the house to secure the mortgage and forging W's signature, H acted in a way that a CP must be assumed as a SP. There is no fact indicating that W was aware or had any intention in changing the characterization of the CP in any way.

Thus, the action is SP.

PRESUMPTION

Here, H did not ask W to sign an agreement acknowledging the change to the CP. Therefore, although the action of H indicated SP, but because of the lack of transmutation the character of the CP did not change.

Thus, there is no transmutation.

In conclusion, the loan is CP.

3. the auto repair garage?

THE Source

Here, Any income made from the business is considered to be CP because the repair garage was established during W and H marriage and all the money or profit earned during the marriage from the garage belong to CP.

Thus, the source is CP.

THE ACTION

Pierera Method

If a business becomes successful due to the skills and knowledge and expertise of the individual, the CP must be calculated based on the Pierera method.

Here, H worked in an auto mechanic and finally opened its own. This shows that A was talented and had the reasonable skills to open a new garage.

Thus, Pierera method applies.

THE PRESUMPTION

here, the CP's characterization did not change. therefore the garage stayed as CP without any transmutation.

Thus, the garage is cp.

4. the W's investments?

here, because the investment occurred after the permanent separation of W from H the source of the investments are

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END OF EXAM