CHAPTER 1: APPROACH; ISSUES TESTED

A. Approach to Essays

- Introduce the general principles of community property law
- Discuss the status of parties (married, unmarried, putative)
- Discuss any premarital agreements
- Address each item of property or debt presented in the question
- For each item of property, discuss:
  - Presumptions that apply
  - The source of the property; trace the source if necessary
  - Actions taken by either party to change the character of the property
  - Apply the rules for specific types of property
  - Explain the distribution of the property at divorce or death
- For each debt or liability presented in the question, discuss:
  - Liability of CP and SP
  - Rules for specific types of debt (Child/spouse support and torts)

B. Summary of the Issues Tested

1. General Principles of Community Property Law
2. Married and Unmarried Couples
   - Married, Unmarried, Putative Spouses
3. Premarital Agreements
4. Source & Tracing
5. Presumptions
   - CP
   - SP
   - Title
6. **Actions**
   - Transmutation
   - Equal Rights and Management
     - Gift or Sale to Third Party
   - Fiduciary Duties

7. **Specific Types of Property**
   - Separate property businesses
   - Improvements
   - Credit/Loans
   - Bank accounts
   - Educational degrees
   - Personal injury recovery
   - Stock options

8. **Distribution**
   - Divorce
   - Separate and Apart
   - Death

9. **Liability of Marital Property**
   - Liability of CP
   - Liability of SP
   - Reimbursement
   - Rules for specific types of debt (Child/spouse support and torts)

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**Substantive Issues**

A. **General Principles of Community Property Law**

*Exam Tip 1:* Always start a Community Property essay with the following introductory paragraph stating the general principles of community property law.

California is a community property state. In a community property state, the marital economic community begins upon marriage and ends at divorce, death of a spouse, or a permanent physical separation with an intent not to resume marital relationship. Property, earnings, or debt acquired during marriage are presumed to be community property. Property acquired by either spouse before marriage; by gift or inheritance during marriage; or after divorce or a permanent separation is presumed to be separate property. Finally, property acquired by a
married couple while living in a non-CP state that would be characterized as CP if the couple had been living in CA at the time of acquisition is called quasi-community property.

B. Married and Unmarried Couples

1. Married Couples

A valid marriage requires the consent of two parties who have legal capacity to enter into the contract of marriage and formal legal procedures. Married couples’ property will be distributed based on community property principles.

2. End of the Marital Community

The marital community begins upon marriage and ends at divorce, death of a spouse, or a permanent separation with an intent not to resume the marital relationship.

Editor’s Note 1: As of January 1, 2017, living separate and apart (i.e., physical separation) is no longer required for a permanent separation. Separation occurs when the parties have a complete and final break in the marital relationship. This break must be proved by evidence that: (i) at least one spouse has expressed the intent to end the marriage, and (ii) the spouse’s conduct is consistent with the intent to end the marriage. This new law applies retroactively.

Exam Tip 2: Past CA bar essays presented facts where a couple was not officially divorced, yet they were physically separated with no intent to resume their marriage. At this point in time, the marital community had ended. Read the exam facts carefully to see if there are ambiguous facts about when the marital community ended and analyze when the marital community ended.

3. Unmarried Cohabitants

An unmarried couple’s property will be distributed based on contract principles. Express contracts setting forth the distribution of property will be enforced unless they are based upon meretricious sexual services (prostitution). If there is no express contract, a court will look for an implied contract or understanding. A court may also distribute property based on unjust enrichment and fairness principles.

Exam Tip 3: A recent CA bar question presented an unmarried couple that entered into an agreement about their property prior to marriage. Later, they married and eventually divorced. The property acquired before marriage would be distributed based on their agreement. The property acquired during marriage would be governed by community property principles.

4. Putative Spouses

A putative marriage occurs when one or both spouses have a good faith belief based on objectively reasonable grounds that there is a valid marriage. The spouse(s) who have a good faith belief in the validity of the marriage is a putative spouse.
a. **Rights:**

A putative spouse may rely on community property principles. However, the putative spouse’s rights stop accruing when he/she discovers the marriage is not valid.

**Example 1:** 
W enters into a putative marriage with H in 2014. W discovers that the marriage is not valid in 2015. W is entitled to community property rights for the 2014 – 2015 time period when she did not know the marriage was not valid.

b. **Quasi-Marital Property:**

All property that would have been considered CP or Quasi-CP had the marriage been valid would is labeled “Quasi-Marital Property” and the putative spouse is entitled to 1/2 at the end of theputative marriage.

c. **Separate Property:**

A putative spouse has the same rights as a surviving spouse to the other spouse’s separate property.

d. **Legal spouse and putative spouse:**

If a person has a legal spouse (valid marriage) and a putative spouse (not a valid marriage), the two spouses split the person’s estate.

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C. **Premarital Agreements**

A premarital agreement allows couples to avoid the California community property system. A premarital agreement must be in writing and signed by both parties. A premarital agreement can be invalidated if a party did not voluntarily sign it, or if the agreement was unconscionable at the time it was executed.

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D. **Presumptions**

For each item of property, start by stating the relevant presumption(s) that are raised by the facts.

1. **Community Property Presumption:**

   Any asset acquired (other than by gift, bequest, devise, or descent) or income earned by a married person while living with his/her spouse in California is presumptively CP.

2. **Separate Property Presumption:**

   Property acquired by either spouse before marriage; by gift or inheritance during marriage; or after divorce or a permanent separation is presumed to be separate property.
3. **Special Community Property Presumption:**

   Applies only at divorce and presumes that jointly held property is CP. See below for the current law under “Anti-Lucas” legislation.

   a. **Anti-Lucas Legislation (after January 1, 1984)**

      As of 1987, all jointly held property (joint tenancy, tenancy in common, tenancy by the entirety) acquired during marriage is presumed to be CP upon divorce. This presumption can be rebutted by an express writing evidencing the spouses’ intent to hold the property as SP. If a spouse contributes SP to the purchase of the property, **she/he has a right to reimbursement for the amount of contribution** (but not any increase in value).

   b. **Lucas (before January 1, 1984)**

      Property taken in joint form (joint tenancy, tenancy in common, tenancy by the entirety) was presumed to be CP upon divorce. This presumption could be rebutted by evidence that the spouses did not intend to hold the property as CP. Any SP used to purchase the property was **presumed to be gift and there was no right to reimbursement** (unless there was an agreement).

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**E. Source & Tracing**

When discussing the characterization of an item of property, start with the source of the item. Then, trace the source if it changes form or identity. An item of property may go through several changes in form or identity. To earn full credit, you should analyze each change in form or identity.

**Example 2:** From a past CA bar essay: H inherits $100,000 while married to W, which would be SP. H then purchases a necklace for $25,000. The necklace is SP. H then gives it to W as a gift. Personal gifts are usually considered to be the SP of the receiving spouse (W). However, if a gift is substantial in value, it will be viewed as the original spouse’s SP upon divorce (H). See below for rules about gifts between spouses.

**F. Actions**

Parties will often take actions that may change the character of the property (SP to CP; CP to SP) or they may gift, sell, or purchase property. Discuss each action and its effect on the item of property.

1. **Transmutation**

   A transmutation refers to changing the nature of property from SP to CP; CP to SP; or SP of one spouse to the SP of the other spouse. Prior to January 1, 1985, oral agreements were sufficient to transmute property as long as there was evidence to support the transmutation (express or implied agreements were acceptable). Under the current law, to be valid, a transmutation must
be in writing, and contain language expressly stating that ownership of property is being changed by the spouse whose interest is adversely affected.

a. **Gift Exception:**

Gifts between spouses may constitute transmutations despite the absence of a written statement. This is limited to personal, tangible gifts such as clothing and jewelry. However, if the gift is substantial in value (taking into account the financial circumstances of the marriage), a transmutation will only occur if there is a writing.

**Exam Tip 4:** Transmutation is a frequently tested issue on the bar. You should discuss the issue even if there is no writing to support the change and the argument for transmutation will ultimately fail. You will miss easy points if you omit the analysis of the transmutation.

2. **Title in one spouse’s name**

If a spouse takes title to an asset in his/her name alone, this will not change the nature of the property, if the source was community property.

**Exam Tip 5:** The bar examiners will frequently present facts where a spouse takes title to an asset (bank account, house, stock) in her name alone. If the source of the asset is CP, the asset will be CP, regardless of the title.

3. **Equal Rights and Management over CP**

Each spouse has equal management and control over CP. Both spouses must participate in decisions regarding CP personal and real property. If a spouse gifts personal property that is CP or sells/leases real property that is CP, there are specific rules that apply.

a. **Gifts to third parties:**

If one spouse gifts or otherwise disposes of personal CP for less than fair/reasonable value without the other spouse’s written consent, the non-consenting spouse can ratify (affirm/approve) the gift, or revoke the gift and sue to recover the gift.

b. **Sale of Lease of CP Real Property:**

Both spouses must participate in the sale or lease of real property for more than one year. If title to the CP real property is held in one spouse’s name only and an innocent party does not know of the other spouse, the innocent party’s purchase of the property will be presumed valid. The innocent spouse has one year to file an action to void the transfer.

4. **Fiduciary Duties**

Each spouse owes the other a duty to act in the highest of good faith with respect to the other spouse in management and control of the CP. Failure of a spouse to obtain the consent of the other spouse when making gifts or selling/leasing property, gives rise to a breach of duty. The innocent spouse can seek a greater share of CP due to the breach.
CHAPTER 2: SUBSTANTIVE ISSUES CONTINUED

A. Specific Types of Property

There are numerous CP rules for specific types of property. The following rules have been tested more frequently on recent bar exams.

1. Separate property businesses: Van Camp and Pereira

   o Generally, income from a SP business is SP. However, if a spouse contributes labor (which is CP) to the SP business, a court must determine how much of the business is CP upon divorce and how much is SP.

   o Two different formulas are used to calculate the community interest in an SP business: the Van Camp and Pereira approach.

   **Exam Tip 6:** Always discuss both formulas on the exam! To earn full credit, you must use the numbers (dollar amounts, years worked) provided in the fact pattern and explain the math for both formulas.

   a. The Pereira approach

      Used if the increase in value can be attributed to the personal skills and effort (which are CP) of the managing spouse. The formula for determining SP and CP is as follows:

      \[
      SP = \text{value of SP business at time of marriage} + (\text{value at time of marriage} \times \text{fair rate of return} [\text{use 10% on the exam for fair rate of return}] \times \text{years of marriage})
      \]

      \[
      CP = \text{The fair market value of the business at divorce} – SP value as calculated above.
      \]

   b. The Van Camp approach

      Used when the primary reason for the increase in value is a character of the separate property itself, rather than the labor of the spouse.

      \[
      CP = (\text{reasonable value of services} – \text{annual family expenses}) \times \text{years of marriage}
      \]

      \[
      SP = \text{The fair market value of the business at divorce} – CP value as calculated above.
      \]

2. Improvements

   Since 2005, when a spouse uses her SP to improve the other spouse’s SP, she generally has a statutory right to be reimbursed for the contribution. Since 1984, a spouse using her own SP to improve CP is entitled to reimbursement for the funds expended. When a spouse uses CP to improve the other spouse’s SP, the community is entitled to either reimbursement for the funds expended or the enhanced value of the property, whichever is greater.
3. **Credit/Loans**

In the absence of evidence that the seller relied “solely” on the purchaser’s SP in extending credit or a loan, the acquired property or loan will be characterized as community property.

**Exam Tip 7:** A recent CA bar essay tested the issues of Improvement and Credit/Loans. A married couple, H and W, were given a loan from a bank based on salaries of H and W. The bank also asked for W to pledge her SP stock that she owned as collateral for the loan. Because the bank relied on the salaries of H and W (CP), the loan was considered to be CP. The loan money was then used to improve H’s SP. Upon divorce the community is entitled to reimbursement for the loan or the increased value of the property, whichever is greater.

4. **Commingled bank accounts**

A commingled bank account occurs when the SP of one spouse is mixed or combined with the SP of the other spouse or with CP. If a spouse wants to claim that an asset purchased with funds from the account is his own SP, the burden is on him to trace the asset back to his SP funds in the account.

**Exam Tip 8:** To earn full credit, you must use the numbers (dollar amounts) provided in the fact pattern and explain the math for both methods.

a. **Direct Tracing Method:**

The spouse proves that there were sufficient SP funds available at the time was asset was purchased and he intended to use his SP funds to purchase the asset.

b. **Exhaustion Method:**

The spouse proves that CP funds in the account were already exhausted by the payment of family expenses at the time the asset was purchased (therefore only SP was in the account and SP was used to purchase the asset).

5. **Educational degrees**

Education degrees acquired during marriage are not treated as CP. The community is entitled to reimbursement if CP funds were used to pay for the education costs, the earning capacity of the educated spouse was substantially improved, and the married couple did not contractually waive the right of reimbursement.

The educated spouse can raise the following defenses to reimbursement: the divorce occurred more than 10 years after the education was received and the community substantially benefited from the education during that time, the other spouse also received an education paid for with CP funds during marriage, or the education reduced the need for spousal support upon divorce.
6. **Personal injury recovery**

   Personal injury recovery is SP if the injury is caused by a third-party tortfeasor before the marriage. During marriage or upon death, the tort recovery is characterized as CP. However, upon divorce, a court will generally award the tort recovery to the injured spouse as SP.

7. **Stock options**

   To the extent that stock options are compensation for earnings during the marriage, the community has an apportioned interest in the value of the stocks. Courts apportion the CP interest as earned from the time when the employed spouse started working for the company and accruing stock option rights until separation or divorce. If the stock options replace earnings after divorce or separation, then the options are SP.

   **Note 1:** Other specific property rules to review in the outline: Goodwill, Retirement Pensions, Disability and Severance Pay, and Insurance.

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**B. Distribution**

**Exam Tip 9:** To earn full credit on the exam, you must explain the specific distribution each item of property. For example, if a house is worth $1,000,000, and you determine that it is CP, you must clearly state that H receives 1/2 ($500,000) and W receives 1/2 ($500,000).

1. **Division of Property at Divorce**

   There is an equal division of community property at divorce. Exceptions to this rule are when an asset is closely associated with one spouse, equal division would reduce value of property or one spouse’s earning capacity, or one spouse is better situated to bear an investment risk.

2. **Separate and Apart**

   The earnings and accumulations of a spouse while living separate and apart from the other spouse are the separate property of that spouse.

3. **Division of Property at Death**

   At death, the character of property is presumptively as expressed in the title, in other words joint tenancy property is presumed to be joint tenancy and CP is presumed to be CP. A surviving spouse takes ½ of the CP and Quasi-CP, and the decedent spouse has no interest in any quasi-CP acquired by the surviving spouse.

   a. **Intestate:**

      If a spouse dies without a will (intestate), the surviving spouse entitled to ½ of the CP as well as the other ½ that deceased spouse owned (100% of the CP). The surviving spouse is entitled to decedent’s entire SP if no other heirs, ½ of SP if decedent survived by one heir, and 1/3 of SP if decedent survived by more than one heir.
C. Liability of Marital Property

Exam Tip 10: CA essay questions frequently ask you to discuss the allocation of assets as well as debts upon divorce or death. If the question presents debts or liabilities, be sure to thoroughly analyze which party(s) are responsible for payment.

1. Debt:
A debt includes contract, tort, and other obligations, such as child or spousal support from a prior marriage.

2. CP Liability:
The community (CP and QCP) is liable for debts incurred by either spouse before or during marriage. Liability does not extend to debts incurred when spouses are living separate and apart or after divorce. The non-debtor spouse can protect her CP earnings by depositing them in a separate bank account that is not accessible to the debtor spouse.

3. SP Liability:
A spouse’s SP is liable for debts incurred before or during marriage, but not for the other spouse’s debts.

4. Reimbursement:
The non-debtor spouse has three years to bring an action for reimbursement if debts/liabilities are paid from the community.

5. Divorce:
Upon divorce, debts incurred before marriage will be assigned to spouse who incurred the debt. Debts incurred during the marriage that were not for the benefit of the community will be assigned as SP to the debtor spouse.

Exam Tip 11: In a past bar exam essay, a husband incurred gambling debt while married to his wife. During marriage, the CP and husband’s SP was liable for the debt. Upon divorce, the court would assign the debt to husband as his SP because his act of gambling was not for the benefit of the community.

D. Special Rules

1. Necessaries of Life:
   o Necessaries of life are living costs including food, clothing, shelter, and medical expenses.
   o While living together and married, a spouse’s CP and SP are liable for the other spouse’s debts relating to necessaries for life. Upon divorce, the non-debtor spouse is no longer liable.
   o While living apart, a spouse’s CP and SP are still liable for the other spouse’s debts relating to expenses that are required to sustain life (essential expenses).
Exam Tip 12: In a past CA essay question, a husband and wife separated. During the separation, wife incurred a hospital bill. The hospital bill is an essential expense, so the hospital could recover from wife’s SP as well as the CP and husband’s SP.

2. Child and Spousal Support:
   A child or spousal support obligation from a previous relationship shall be treated as a debt incurred before marriage. The CP will be liable for the debt unless the non-debtor spouse places her earnings in a separate bank account that is not accessible to the debtor spouse. If the debtor spouse had SP to pay the obligation, but used CP, the non-debtor spouse can seek reimbursement to the CP.

3. Tort Obligations:
   If the spouse who committed the tort was acting for the benefit of the community (ex: taking the couple’s child to school), the liability must first be satisfied from the CP and then from the tortfeasor’s SP. If the tortfeasor spouse was not acting for the benefit of the community, the liability must first be satisfied from the tortfeasor’s SP and then the CP.

CHAPTER 3: JULY 2017, QUESTION 1

Wanda, a successful accountant, and Hal, an art teacher, who are California residents, married in 2008. After their marriage, Wanda and Hal deposited their earnings into a joint bank account they opened at Main Street Bank from which Wanda managed the couple’s finances. Each month, Wanda also deposited some of her earnings into an individual account she opened in her name at A1 Bank without telling Hal.

In 2010, Hal inherited $10,000 and a condo from an uncle. Hal used the $10,000 as a down payment on a $20,000 motorcycle, borrowing the $10,000 balance from Lender who relied on Hal’s good credit. Hal took title to the motorcycle in his name alone. The loan was paid off from the joint bank account during the marriage.

At Wanda’s insistence, Hal transferred title to the condo, worth $250,000, into joint tenancy with Wanda to avoid probate. The condo increased in value during the marriage.

On Hal’s 40th birthday, Wanda took him to Dealer and bought him a used camper van for $20,000, paid out of their joint bank account, titled in Hal’s name. Hal used the camper van for summer fishing trips with his friends.

In 2016, Wanda and Hal permanently separated, and Hal filed for dissolution. Just before the final hearing on the dissolution, Hal happened to discover Wanda’s individual account, which contained $50,000.

What are Hal’s and Wanda’s rights and liabilities, if any, regarding:

1. The condo? Discuss.
2. The motorcycle? Discuss.

3. The camper van? Discuss.


Answer according to California Law.
Sample Answer

California is a community property state. In a community property state, the marital economic community begins upon marriage and ends at divorce, death of a spouse, or a permanent physical separation with an intent not to resume marital relationship. Property, earnings, or debt acquired during marriage are presumed to be community property. Property acquired by either spouse before marriage; by gift or inheritance during marriage; or after divorce or a permanent separation is presumed to be separate property.

The Condo

CP Presumption

The general presumption is that property acquired during the marriage is CP. Hal acquired the condo in 2010 which was during his marriage to Wanda, so there is a presumption that the condo is CP.

Source – Inheritance

However, by law, property acquired through inheritance is the separate property of the inheriting spouse. Since Hal acquired this property from his uncle through inheritance, the condo was Hal’s SP. The issue is that Hal, at Wanda's insistence, titled the property in Joint tenancy with Wanda.

Title in Joint Form

A married couple who takes title in joint form when it is inconsistent with the nature of the funds used to acquire the property will be presumed to have intended the property as CP.

Here, Hal and Wanda took title in joint form and Hal did not reserve any separate property interest, there also is no other writing that evidences an agreement between Hal and Wanda for Hal to keep a separate interest so the court will presume that because they took title in a joint form that they intended the property to be CP.

Transmutation by Deed

The issue is whether the deed from Hal to Hal and Wanda will be a valid transmutation of his interest. Typically, a deed satisfies the writing requirement for the transmutation if signed by the party adversely affected, in this case Hal. However, Hal may not have intended for interest in the property to be adversely affected. The facts indicate that he only agreed to put the condo in joint tenancy after Wanda’s insistence that he do so in order to avoid probate.

Assuming that that the deed from Hal to Wanda is a valid transmutation, then at most Hal would be allowed reimbursement for his SP that was used to acquire the condo by the community. The reimbursement will be allowed without interest or apportionment of increase in value to the items. A court would likely use the value of the property at the time it became CP which for the condo was $250,000, Hal would be reimbursed for the $250k at divorce and the remaining value of the condo would be divided in kind 50/50 between Hal and Wanda.
Fiduciary Duties of Spouses

Spouses owe one another the highest duty of care and are fiduciaries to one another. If one spouse breaches her fiduciary duty to the other and takes advantage of that spouse by gaining an interest financially or in an asset, then the non-breaching spouse may be able to set aside the conveyance on those grounds.

Here, Wanda was a successful accountant and Hal was an art teacher, there is a strong possibility that but for Wanda’s insistence that Hal put the condo in joint form that he would not have done so. By insisting that the condo be in joint title, Wanda gained a financial interest in property that she would have otherwise had no rights to because it was received by Hal through inheritance. If Hal can show that Wanda breached her duty to him in convincing him to put the condo in joint form only to benefit herself, Hal may be able to have the conveyance set aside.

The Motorcycle

CP Presumption

The general presumption is that property acquired during the marriage is CP. Hal acquired the motorcycle during his marriage to Wanda, so there is a presumption that the motorcycle is CP.

Source

When both SP and CP are used for the purchase of an asset the funds used to acquire the property will be traced to their source and the property will be characterized in accordance with funds used for acquisition. Here, the down payment was SP, but the loan and repayment of the loan might be CP. Thus, the motorcycle is likely part SP and part CP.

Title

One spouse may not appropriate CP to themselves by simply taking title to the property in their name alone. Hal took title to the motorcycle in his name alone, but this will not be determinative of its classification.

Down Payment

Property that was initially SP will continue to be SP even if the SP is exchanged or sold and the form changes. Hal inherited $10k from his Uncle - inheritance is an area of SP. Hal then took his $10k of SP and used it for a down payment on a motorcycle that he took title to in his name alone. The motorcycle cost $20k, though, so it must be determined where the other $10k came from and whether the additional $10k can be traced to other SP or to CP.

Credit - Intent of the Lender

The credit of a spouse belongs to the community during the marriage. A loan taken out during the marriage is a community debt unless it can be shown that the lender relied solely on the borrowing spouse’s separate property for repayment. When Hal borrowed the additional $10k from the lender,
the lender, relied on Hals good credit - Hal's good credit belongs to the community and so therefore, the loan for the motorcycle was a community debt.

Repayment of Loan w Joint Acct $

Wages and earning of a spouse are community property if earned during the marriage. Here Wanda and Hal were putting their earnings into a joint checking acct which was used to pay off the motorcycle loan. Because CP was used to pay off half of the motorcycle loan, the community owns a 1/2 interest in the motorcycle.

In conclusion, Hal owns the motorcycle as 50% SP because half of the purchase price can be traced to his SP inheritance, the community owns the other 50% interest because community property was used to obtain the loan and pay off the loan.

Camper Van

CP Presumption

The general presumption is that property acquired during the marriage is CP. Wanda purchased the camper van during marriage so there is a presumption that the motorcycle is CP.

Source

The camper van was purchased for $20,000 from Wanda and Hal’s joint bank account. The bank account contained their earnings, which are CP. Thus, the camper van would be characterized as CP. However, Hal would argue that the camper van should be SP, as discussed below.

Title

One spouse may not appropriate CP to themselves by simply taking title to the property in their name alone. Here, Wanda purchased the camper van for H’s birthday and titled the van in his name alone. Thus, Hal will argue that the camper van is his SP. However, this will not be determinative of its classification.

Transmutation

During their marriage, the parties can enter into agreement to change the character of any particular property by transmutation. Transmutation is when the parties change CP to SP, or SP to CP, or one's SP to the other’s SP. However, for a transmutation to be valid, it must be in writing, signed by the party whose interest is adversely affected and expressly states that a change in ownership is to take place.

In this case, Hal will argue that Wanda taking him out for his 40th birthday and buying the camper van was her gifting her interest in the CP to Hal as his SP. On the other side, Wanda will argue that she did not intend to make a gift to Hal as SP, but instead intended to retain a CP interest in the van and that there was no valid transmutation from CP to Hal SP. Here, there was no signed writing by Wanda indicating her intent to change the van from CP to Hal’s SP, so there was no valid transmutation.
**Gift Exception to Transmutation**

However, there is an exception to the requirement that all transmutation be in writing. The exception is for gifts given to one spouse that are for that spouse’s personal use and that are not substantial in value.

Here Hal may argue that the van would also fall into the gift exception even if there was no writing that evidenced Wanda’s intent to make a gift. Hal did use the camper van for fishing and summer trips with his friends. There is no mention of Wanda participating in these trips which would indicate that the van was for her personal use. However the gift must also not be substantial in nature and the van cost $20k, which is likely to be found substantial in value so the exception would not apply.

If a court finds that by purchasing the van and titling it in Hal’s name alone that Wanda intended a gift of her CP to Hal SP, then the van will be considered Hal's SP at divorce. Otherwise by tracing the funds to the CP checking account the van will be deemed CP.

**A1 Bank**

**CP Presumption**

Wages earned by either spouse’s time, labor, or skill during the marriage belong to the community. Here Wanda took her earnings during the marriage which are CP and deposited them into a secret acct w/o Hal’s knowledge or name. Regardless of the fact that Hal's name is not on the account, Wanda’s wages still belong to the community and, therefore all of the money in the account ($50k) is CP.

**Title**

One spouse may not appropriate CP to themselves by simply taking title to the property in their name alone. Here, Wanda deposited some of her earnings into an individual account opened in her name alone. Thus, Wanda will argue that A1 bank account funds are her SP. However, this will not be determinative of its classification.

**Fiduciary Duties**

H may argue that W again breached her fiduciary duty to him by hiding the funds from him. He will argue that W had assumed control over the couple's finances and used that power to obtain an unfair advantage over H by hiding funds from him. He will argue that the agreement to allow her to control the couple's finances imposed a duty on W to use the duty of the highest good faith and fair dealing when she managed the finances and that she breached it by failing to disclose all the funds to H. Therefore, H has a strong argument for having the court strip W's interest in the A1 Bank account funds and reward the full 50k to H for breaching her fiduciary duties as a spouse.

[END OF HANDOUT]