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## 524 COMMUNITY PROPERTY

UNM School of Law  
Final Examination-Part I  
Two Credits

Professor Sheryl Wolf  
Tuesday, April 8, 2003  
1:00 p.m. to 2:00 p.m.

**One Hour**

### INSTRUCTIONS

1. This is Part I of the Final Exam, consisting of three short essay questions (10 points each) and 5 multiple choice questions (4 points each).
2. Please answer all questions (including the multiple choice) in blue books or typed, double spacing and using one side only. If necessary, you may briefly explain your answer to a multiple choice question, in 25 words or less. Points will be deducted for wrong explanations to correct choices.
3. This is a limited open book exam. You may use your casebook, class handouts, and any material you prepared individually or as an active participant in a group, such as class notes or outlines. You may not consult outside references, such as treatises, commercial or bar review outlines, old exams, or other people.
4. You may use calculators. If you have trouble with any calculations, explain your answer the best you can without using numbers.
5. Unless the facts of a question indicate otherwise, assume that all relevant events and transactions take place in New Mexico, and all property is located in New Mexico. If there is no definitive New Mexico law on a question, apply general principles, discussing alternative approaches where applicable. Some events take place in the State of Harmony, which is a non-community property state. Harmony is a dual-property equitable distribution state. It has an elective share statute that allows a surviving spouse to take a one-third portion of a decedent spouse's estate.

**Good Luck!**

### Final Exam: Part I

1. Soon after Hugo and Willow married twenty years ago, Hugo inherited an auto repair shop from his Uncle Ulysses. The shop was worth \$100,000 at the time of Uncle Ulysses's death. Although Hugo began operating the shop immediately, doing simple repairs and auto maintenance, he spent a good amount of time modernizing the shop and learning mechanics at the local technical school. Hugo's earnings from the shop have always been the couple's only source of income. After many years of struggling, Hugo began specializing in expensive sports car repairs after the area around the shop became very affluent. The business has prospered and has been recently appraised at \$1 million dollars. Now, after 20 years of marriage, Hugo and Willow are divorcing. What interest, if any, does Willow have in the auto repair shop business? Please explain.

2. Henry and Wendy married on February 1, 2003. Wendy opened a checking account in both their names and deposited \$4000 from the sale of some stocks that she owned prior to marriage. Wendy was a fine artist, and on March 1, she deposited a check of \$8000 for a painting she created during February. On March 4, Wendy wrote two checks, one for \$2000 for video equipment she had been wanting for some time, and another a check for \$4000 to MasterCard to pay off expenses incurred on their honeymoon trip. Henry withdrew \$1000 in cash on March 14, which he used for his personal expenses, including massages, golf lessons, and a day at the race track. On March 27, Wendy wrote a check for \$4,000 to the dentist for Henry's dental work, which he had neglected to have done before their marriage. On April 1, Wendy deposited another check for \$8,000, for a painting she created the previous month. No withdrawals have been made this month. Wendy is starting to think that maybe this marriage was a mistake. She wants to close the joint account and keep her money separate. Wendy wants to know how much, if any, of the money in the account on April 8, 2003, is her separate property and whether the video equipment is hers. Please advise Wendy.

3. During the first years of their marriage, Herb and Wynona lived in the State of Harmony. Herb's hobby was collecting rare books, and he bought a first edition volume of a Herman Melville book for \$3,000. He used \$2,000 of money he had saved prior to marriage and \$1,000 of money he earned during marriage. Herb and Wynona moved to New Mexico several years later, and now are divorcing. The Melville book is now worth \$9,000. What interest, if any, does Wynona have in the Melville book?

4. Shortly after Hector and Wisteria married, Hector joined the United States Navy. Hector hurt his back while on duty aboard ship, but he remained in the Navy at a desk job. After 25 years of service in the Navy, Hector is retiring. Upon retirement, Hector is eligible to elect disability pay in lieu of retirement pay, to replace up to 30% of his retirement benefits. Hector has decided he wants a completely new life as a civilian and has decided to divorce Wisteria. What rights, if any, does Wisteria have in Hector's military benefits?

- A. Federal law will prevent Wisteria from obtaining any of either Hector's disability or retirement pay.
- B. Federal law will prevent Wisteria from obtaining any of Hector's disability pay but not his retirement pay.
- C. Federal law will prevent Wisteria from obtaining any of Hector's retirement pay but not his disability pay.
- D. Both federal law and New Mexico state law will entitle Wisteria to one-half [ $\frac{1}{2}$ ] of Husband's retirement pay and one-half [ $\frac{1}{2}$ ] of Hector's disability pay.
- E. The divorce court may order Hector to take all his benefits as retirement pay and award Wisteria one-half [ $\frac{1}{2}$ ].

5. Horatio and Wanda married in 1980. In 1985, Horatio used his annual bonus to purchase 1000 shares of HighRysk stock for \$100,000. The stock certificates were registered to "Horatio and Wanda, as Joint Tenants with Right of Survivorship." Wanda died in 2000, when the stock was worth \$400,000. Horatio has just sold the HighRysk stock for \$500,000. For income tax purposes, how much capital gain did Husband incur on the sale of the HighRysk stock?

A. \$400,000.

B. \$300,000.

C. \$250,000.

D. \$200,000.

E. \$100,000.

F. \$0.

G. Other (specify) \_\_\_\_\_

6. Prior to his marriage to Wilda, Harvey purchased a house, taking a large mortgage on the house. The deed and mortgage remained in Harvey's name alone during marriage. Harvey and Wilda lived in the house, and Harvey continued to make the house payments from his earnings. The monthly mortgage payment included an amount for homeowner's insurance. When the house was hit by a tornado, Wilda's valuable collection of Beanie Babies was destroyed. Wilda had received the Beanie Baby collection in her share of the property distribution in her divorce from her previous husband. The homeowner's insurance company paid \$20,000 for loss of the Beanie Babies. Wilda deposited the \$20,000 in a savings account in her name alone. Harvey and Wilda are divorcing. How should the \$20,000 be classified?

- A. Harvey's separate property because the house is his separate property.
- B. Community property, because the homeowner's insurance was paid from community funds.
- C. Wilda's separate property, because the Beanie Baby collection was her separate property.
- D. Community property, because the house was transmuted to community property.
- E. Partly Wilda's separate property and partly community property, in proportion to the separate property and community property contributions to house.
- F. Wilda's separate property because the savings account in her name alone.

7. Walenda began working for Apex Plumbing Services five years prior to her marriage to Harley. Apex provides a \$200,000 face value group term life insurance policy for each of its employees, at no cost to the employee. Apex pays a \$40 premium to LifeGuard Insurance Co. on the first day of each month on behalf of each employee. Walenda designated her elderly mother as the beneficiary of her life insurance policy, and she did not change that designation after she married Harley. After 5 years of marriage, Harley and Walenda were divorced on March 8, 2003. The divorce decree did not address the LifeGuard Insurance policy. On March 18, Walenda was tragically killed in a freak plumbing accident. Harley claims he has an interest in the LifeGuard insurance policy. To how much, if anything, is Harley entitled?

- A. \$200,000.
- B. \$100,000.
- C. \$50,000.
- D. \$25,000.
- E. One-half [ $\frac{1}{2}$ ] of the total premiums paid by Apex during marriage.
- F. One-half [ $\frac{1}{2}$ ] of the last premium paid by Apex.
- G. \$0.

8. Prior to marrying Widona last year, Harry had been ordered to pay child support for the children of his previous marriage. Harry not made any child support payments for the past three years. Harry's ex-wife has sued Harry for both past-due and future child support. Harry has no separate property. Widona is concerned that her earnings may be attached to pay Harry's child support obligation. Which of the following statements is most correct?

- A. Widona's earnings cannot be attached because the child support obligation is Harry's separate debt.
- B. All of Widona's earnings may be attached because her earnings are community property.
- C. None of Widona's earnings may be attached because her earnings are her separate property.
- D. Some of Widona's earnings may be attached, but only for child support that accrued since her marriage to Harry.
- E. Some of Widona's earnings may be attached, for child support that accrued both prior to and since her marriage to Harry.
- F. Some of Widona's earnings may be attached, but only to the extent that Harry's current earnings are insufficient to satisfy the obligation.

**End of Part I**