

# **JEOPARDY!**

**Teasing Out Co-Mingled  
Property: What is Community  
and What is Separate**

Moore-Marsden and Perriera Van Kamp

# JEOPARDY BOARD

FINAL JEOPARDY

**Procedures**

**Assets to Which  
the Community  
Contributed**

**SP Businesses to  
which a spouse's  
community effort  
contributed**

**Presumptions**

**Transfers and  
Transmutations**

**\$100**

**\$100**

**\$100**

**\$100**

**\$100**

**\$200**

**\$200**

**\$200**

**\$200**

**\$200**

**\$300**

**\$300**

**\$300**

**\$300**

**\$300**

**\$400**

**\$400**

**\$400**

**\$400**

**\$400**

**\$500**

**\$500**

**\$500**

**\$500**

**\$500**

# Topic 1 - \$100 Question

This type of Petition would be filed by a surviving spouse to test the extent of her community property interest in the decedent's intestate estate

[Click to see answer](#)



# Topic 1 - \$100 Answer

What is a spousal property  
petition?

[Click to return to Jeopardy Board](#)



# Topic 1 - \$200 Question

This type of Petition would be filed to contest the characterization of property as decedent's separate property under his Trust

[Click to see answer](#)



# Topic 1 - \$200 Answer

What is a PC Section  
850(a)(3) Petition?

[Click to return to Jeopardy Board](#)



# Topic 1 - \$300 Question

Under Prob C §5021, as to his or her share of an asset, the nonconsenting spouse can accomplish this result.

Click to see answer



# Topic 1 - \$300 Answer

How does a non-consenting spouse set aside a nonprobate transfer of community property that the other spouse made at death?





# Topic 1 - \$400 Question

This procedure can allow a spouse to determine how much of the appreciation of a company asset occurred during marriage, and is thus the value of the community property contribution, to which she would be entitled to a judgment of one half of the appreciation from marriage to death, even if brought more than one year after death, there being no statute of limitations on such claim

[Click to see answer](#)



# Topic 1 - \$400 Answer

What is a Complaint for declaratory relief?

[Click to return to Jeopardy Board](#)



# Topic 1 - \$500 Question

The surviving spouse may bring an action under the Family Code §§721(b) and 1100(e)) for this type of breach by the decedent during his lifetime

Click to see answer



# Topic 1 - \$500 Answer

What governs the breach of *fiduciary duty* that *impairs the claimant spouse's half interest in the community estate?*



## Topic 2 - \$100 Question

This line of cases is used to analyze and calculate the community and separate components of an asset brought into the marriage by one spouse, the mortgage payments and improvements were paid from community funds

[Click to see answer](#)



## Topic 2 - \$100 Answer

What is a “Moore/Marsden”  
analysis?

[Click to return to Jeopardy Board](#)



# Topic 2 - \$200 Question

This line of cases is used to analyze and calculate the community and separate values of a small corporate business acquired by decedent before marriage that increased greatly in value during the marriage

Click to see answer



## Topic 2 - \$200 Answer

What is the Pereira/Van  
Kamp approach?

[Click to return to Jeopardy Board](#)





## Topic 2 - \$300 Question

These types of payments from the community toward the primary residence are not considered community property under the Moore/Marsden analysis

[Click to see answer](#)



# Topic 2 - \$300 Answer

What are mortgage interest  
and property taxes?

[Click to return to Jeopardy Board](#)



## Topic 2 - \$400 Question

This portion of home expenses and payments is used to calculate the community share in the appreciation of a home during marriage and before death

[Click to see answer](#)



## Topic 2 - \$400 Answer

What are principal payments on the loan and improvements?

[Click to return to Jeopardy Board](#)



## Topic 2 - \$500 Question

As between the two main approaches to valuing the community contribution to a business that appreciated during marriage, this approach is employed when the community effort is the prime factor in causing the appreciation (e.g., a computer software company or a personal services business)

Click to see answer



# Topic 2 - \$500 Answer

What is *Pereira v Pereira*  
(1909) 156 C 1?

[Click to return to Jeopardy Board](#)



## Topic 3 - \$100 Question

Without a divorce or separation involved, these are the proper dates to value the community interest in a combined CP/SP asset

Click to see answer



# Topic 3 - \$100 Answer

What is the date of marriage  
and the date of death?

[Click to return to Jeopardy Board](#)





## Topic 3 - \$200 Question

This is performed by an express written declaration that is made or agreed to by the spouse whose interests are being adversely affected.

[Click to see answer](#)



# Topic 3 - \$200 Answer

What is a “transmutation”?

[Click to return to Jeopardy Board](#)



# Topic 3 - \$300 Question

Under *Peireira*, the appreciation in value during the marriage (to death) as between the asset itself (imposition of constructive trust on her share of the business), on the one hand, and the actual difference in value from DOM to DOD, this is the correct calculation to use

[Click to see answer](#)



# Topic 3 - \$300 Answer

What is the actual difference  
in *value* from DOM to DOD?

[Click to return to Jeopardy Board](#)



## Topic 3 - \$400 Question

These are indispensable parties under *Peireira* and must be joined (as defendants or respondents) in a proceeding to determine the community interest in a business for which the SP spouse contributed substantial skill, labor and effort during the marriage.

[Click to see answer](#)



# Topic 3 - \$400 Answer

Who are the non-spouse  
(other) beneficiaries? (Or  
heirs at law in case of  
intestacy)

[Click to return to Jeopardy Board](#)



## Topic 3 - \$500 Question

In a *Peireira* action, this additional amount is added to the surviving spouse's ( $\frac{1}{2}$ ) community interest in the appreciation to compensate her for her intervening loss of use

[Click to see answer](#)



# Topic 3 - \$500 Answer

What is prejudgment  
interest?

[Click to return to Jeopardy Board](#)





## Topic 4 - \$100 Question

For marriages after 1975,  
this presumption prevails  
over the “form of title”  
presumption under Evid.  
Code Section 662

[Click to see answer](#)



# Topic 4 - \$100 Answer

What is the “community property presumption” under Fam.C Section 760 concerning property acquired during the marriage

[Click to return to Jeopardy Board](#)



## Topic 4 - \$200 Question

Under this Fam. Code Section, When the community property presumption of §2581 applies and cannot be rebutted, a spouse or RDP who made separate property contributions to acquire community property may nevertheless be entitled to reimbursement

[Click to see answer](#)



# Topic 4 - \$200 Answer

What is Fam. Code Section  
2640?

[Click to return to Jeopardy Board](#)



## Topic 4 - \$300 Question

These presumptions, for community property and for contributions of separate property, do not apply on death of the spouse

[Click to see answer](#)



# Topic 4 - \$300 Answer

What is the joint title  
community property  
presumption of Fam C §2581  
and the right to  
reimbursement under Fam C  
§2640?

[Click to return to Jeopardy Board](#)



## Topic 4 - \$400 Question

This is the effect of contributions from the community to improvements in one spouse's separate property asset

Click to see answer



# Topic 4 - \$400 Answer

What is:

- Dollar-for-dollar reimbursement for contributions to capital improvements (even if the improvements did not enhance the property's value); and
- An interest in the appreciation of the separate property, provided the improvements actually increase the value of the property?

[Click to return to Jeopardy Board](#)





## Topic 4 - \$500 Question

A transmutation cannot be a part of this type of agreement entered into prior to the marriage taking effect.

Click to see answer



# Topic 4 - \$500 Answer

What is a premarital agreement?

[Click to return to Jeopardy Board](#)



## Topic 5 - \$100 Question

These types of property and assets are excluded from the “express written declaration” requirement of transmutation agreements

[Click to see answer](#)



# Topic 5 - \$100 Answer

What are “clothing, wearing apparel, jewelry, or other tangible articles of a personal nature” that is used solely or principally by the spouse to whom the gift is made and is not substantial in value, taking into account the circumstances of the marriage. FC 852

[Click to return to Jeopardy Board](#)



## Topic 5 - \$200 Question

The mere filing of this type of income tax return does not, in itself, trigger a transmutation to community property

Click to see answer



# Topic 5 - \$200 Answer

What is a “married filing jointly” (Joint) tax return (Form 1040)

[Click to return to Jeopardy Board](#)



## Topic 5 - \$300 Question

Absent a written waiver or premarital agreement, all income derived during the marriage from the skill, labor and efforts of a spouse is this type of property

[Click to see answer](#)



# Topic 5 - \$300 Answer

What is community property?

[Click to return to Jeopardy Board](#)





## Topic 5 - \$400 Question

Unless this technical aspect of a transmutation is accomplished, a written transmutation of real property is not effective as to third parties.

Click to see answer



# Topic 5 - \$400 Answer

What is recording with the  
County Recorder's Office?

[Click to return to Jeopardy Board](#)



## Topic 5 - \$500 Question

A husband who transfers his community property interest in real property to his wife “to protect property from other parties” has caused or created this type of transfer

[Click to see answer](#)



# Topic 5 - \$500 Answer

What is a fraudulent conveyance? (Or voidable transfers under the UVTA)


[Click to return to Jeopardy Board](#)



FINAL

# JEOPARDY!

Topic: Separate Property  
Appreciation

Click to see question 

# Final Jeopardy Question

Under this approach, Husband's very modest time incurred, during his marriage to Wife, managing his \$10M closely-held membership interest in his family's LLC, is valued and considered "community." The balance of all appreciation above the value of his time is deemed to be separate in character and subject to 100% disposition by him at his death.

Click to see answer



# Final Jeopardy Answer

What is the *Van Kamp* approach?

[Click to return to Jeopardy Board](#)

