"Risky Business: What Would Tom Cruise Do?"

Analysis

Business Apportionment Issues

Robert E. Blevans – CFLS, AAML, ACFTL – Napa, California
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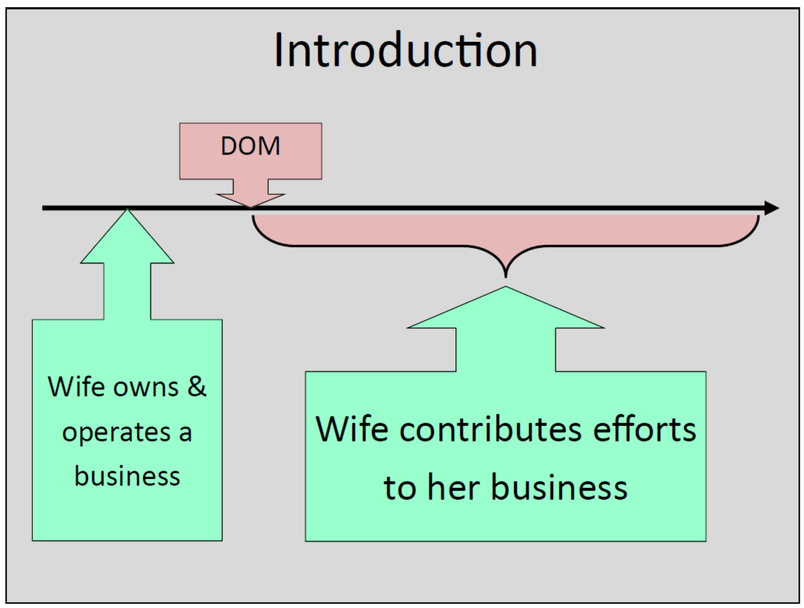
1. Introduction

When a premarital separate property business increases in value and produces income during the marriage and the efforts of one or both spouses contribute to that increase, or income, it is necessary to apportion the increase in value and the income generated by that business during the marriage to determine what portion of the increase is fairly attributable to the community efforts applied to the business and what portion of that increase represents the increase in value of the separate property business. This analysis examines apportionment theory as it applies to a separate property business and the foundational prerequisites for apportionment. This analysis reviews the typical approaches to apportionment, the *Pereira/Van Camp* methods, and examines why each case reached the result that it did.



The advanced apportionment issues examined include characterization of funds withdrawn from a business during marriage; approaches to the "gray area" portion of the increase in value of a business that exceeds both the *Pereira* rate of return measure and the *Van Camp* reasonable compensation measure; and whether the increase in the value of the business should be looked at from the perspective of the business as a whole or the specific assets involved in that business. The analysis also looks at what rights the community may have even if there is no increase in value and the effect of a decline in value of the business during the marriage. We hope to provide a useful understanding of the foundation, purpose and methodologies traditionally used in apportioning the business interests while highlighting issues that should be addressed by the practitioner dealing with a separate property premarital business in which community efforts have been invested.

2. Why do we apportion the business - the Theory:

a. <u>To provide appropriate value to the community for community efforts that were applied to the business.</u>

In *Beam vs. Bank of America* (1971) 6 Cal.3d 12, the California Supreme Court confirmed that the community must receive a "fair share" of that which is derived from community effort. The Court stated:

> "Nevertheless, long ago our court recognized that, since income arising from the husband's skill, efforts and industry is community property, the community should receive a fair share of the profits which derived from the husband's devotion of more than minimal time and effort to the handling of his separate property."

The fact that a reasonable salary was paid to the community for efforts during the marriage does not preclude apportionment of the increase in value of the business. "Whether or not the community received salary, a court must determine to what extent the increased value of the separate property business is attributable to community effort." (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 852).

b. <u>To resolve the tension between Family Code sections 760 and 770.</u>

i. Family Code 760 ("the community property presumption"). This presumption arises because the increase in value was "acquired/created" during marriage. Family Code section 760 states: "Except as otherwise provided by statute, all property real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property."

ii. Family Code 770. This section provides that property owned prior to marriage is separate property, as are the rents, issues and profits from separate property. Family Code 770 (a) states as follows:

> "Separate property of a married person includes all of the following:
>
> (1) All property owned by the person before marriage.
>
> (2) All property acquired by the person after marriage by gift, bequest, devise, or decent.
>
> (3) The rents, issues and profits of the property described in this section."

iii. The following cases illustrate the contrast in these two concepts:

In re Marriage of Cozzi (1947) 81 Cal.App.2d 229

> "Section 163 of the Civil Code [now Family Code section 770 provides: 'All property owned by the husband before marriage…with the rents, issues and profits thereof is his separate property' ***That portion of the profits of a business however, is not necessarily separate property when earned therefrom after marriage, even though such business has been owned and carried on by one of the spouses before marriage. The capital which the husband brings to the marriage partnership is for his own separate property, but it is a question for the court to determine what portion of the profits thereafter arises from the use of this capital and what part arises from the activity and personal ability of the husband. That portion of the income due to the 'personal character, energy, ability and capacity of the husband' is community property."

In re Marriage of Dekker (1993) 17 Cal.App.4th 842 at 851

> "We begin by noting that in California, property acquired prior to marriage is separate, while property acquired during the marriage is presumed community property [citing Civil Code section 5107, 5108, 5110 – now Family Code sections 760 and 770]. Income from separate property is separate, the intrinsic

> increase of separate property is separate, but the fruits of the community's expenditures of time, talent and labor are community property.
>
> Where community efforts increase the value of the separate property business, it becomes necessary to quantify the contributions of the separate capital and the community effort to the increase."

c. <u>To achieve an equitable result – public policy.</u>

The Supreme Court in *Beam v. Bank of America* (1971) 6 Cal.3d 12 noted:

> "In making such apportionment between separate and community property our courts have developed no precise criterion or fixed standard, but have endeavored to adopt that yardstick which is most appropriate and equitable in a particular situation…"

The Supreme Court went on:

> "In applying this principle of apportionment the court is not bound either to adopt a predetermined percentage as a fair rate of return on business capital which is separate property nor limit the community interest only to salary fixed as a reward for a spouse's service but may select a formula which will achieve substantial justice between the parties." Id at page 18.

d. <u>The real world application: the community property presumption means that if the separatizer does not establish that something is separate property it will most likely be characterized as community property.</u>

As a practical matter since the increase in value is "acquired" or "created" during the marriage and results, to some extent, from community efforts it will, absent evidence to the contrary, be deemed community property. As such, it will be up to the party seeking a determination the increase is separate property to establish it fits the exception to the Family Code section 760 definition of community property. That exception, contained in Family Code section 770(a)(3), requires the party seeking separate characterization to establish that the increase in value is actually "the rents, issues, and profits" of the separate property business.

The separatizer needs to show the increase in value was the result of the “natural enhancement” of the separate property business rather than the result of the efforts of a spouse. See *In re Marriage of McDuff* (1920) 48 Cal.App. 175, 178.

In re Marriage of Neilson (1962) 57 Cal.2d 733:

> “The proceeds and increment in value are apportioned entirely to the husband’s separate estate only when they are attributable solely to the natural enhancement of the property...” Id at page 741.

In re Marriage of Ney (1963) 212 Cal.App.2d 891:

> “As pointed out in Cozzi vs. Cozzi (1947) 81 Cal.App.2d 229, 232, it is not the increase during the marriage and the value of husband’s separate property and the proceeds from that property that may become community property, but only that portion of such increase and proceeds as is directly attributable to the husband’s skill and ability.” Id at page 899.

3. Foundational issues:

a. Has the separate property business increased in value during marriage?

Family Code section 770(a)(1) makes it clear that “All property owned by a person before marriage” is the separate property of that party. It follows then, if the separate property business has not increased in value it remains the separate property of the spouse who owned it prior to marriage. All of the cases dealing with the apportionment of business interests as between separate and community property discuss how to apportion the “increase” or “profit” derived from the business during marriage. *In re Marriage of Ney* (1963) 212 Cal.App.2d 891 dealt with the increase value of husband’s stock portfolio during marriage. *Pereira vs. Pereira* (1909) 156 Cal.1 dealt with the increase in the value of husband’s saloon and cigar business. *In re Marriage of Van Camp* (1921) 53 Cal.App. 17, considered the increase in value of stock in a seafood packing business.

In re Marriage of Denney (1981) 115 Cal.App.3d 543 (Section 7.e., *post*) held that, absent special circumstances, no *Pereira/Van Camp* community property interest is created where there has been no increase in value between date of marriage and date of division.

b. Did community property efforts contribute to the increase in value?

It is important to remember that the question here is one of *apportionment.* The purpose of the apportionment is to provide appropriate value to the community for community efforts that contributed to the profits of, or increase in, that business. If community efforts did not contribute to the increase in value there is no reason to apportion because the community is not entitled to any interest in the increase in value or profits of the business. See *In re Marriage of Ney* (1963) 212 Cal.App.2d 891. In that case the court held that none of the profits arising after marriage from the husband's separate property could be apportioned to the community because the increase in the value and the income was solely due to the natural enhancement of the separate property.

c. The analysis commonly ends if the answer to both questions is "No."

i. (But it ain't necessarily so.)

4. Timing issues:

a. Is the increase in value measured at date of separation or date of trial?

Efforts of a spouse after date of separation are no longer community property. (Family Code section 771). This means that after the date of separation community property contributions are not being made to any increase in value of the business. But the *Pereira/Van Camp* community property interest existing at the date of separation should still enjoy some portion of any post-separation increase in the value of the business up to the date of trial. Family Code section 2552(a) states the general rule that for the purpose of the division of community property upon dissolution of marriage the court shall value the assets and liabilities as near as practicable to the time of trial. In an apportionment case, imbedded in the business is a community property interest. While there are no more community property efforts being applied to the operation of that business after the date of separation, the proper measure of the value of the community property interest is the value of that interest at the time of trial pursuant to Family Code section 2552(a). The application of this rule may be complicated by the fact that one spouse continues to operate the business during the period from date of separation to the date of trial. To the extent that spouse's post-separation – separate property efforts contribute to the increase in the value of the business as a whole, appropriate apportionment can be done following the holding *In re Marriage of Imperato* (1975) 45 Cal.App.3d 432, 119. In *In re Marriage of Imperato* the court was dealing with a community property business that had increased in value from the date of separation to the date of trial. The operating spouse successfully argued that his post-separation separate property efforts had contributed to the increase in the value of the community property business from the date of separation to the date of trial. In that case the court held that it would be appropriate to do an apportionment which would be in the nature of a *reverse Pereira/Van Camp* analysis. There is no reason why this concept would not equally apply to a separate property business that had a *Pereira/Van Camp* community property component at the date of separation. If the separatizer could establish that his or her post-separation efforts contributed to the increase in value from date of separation to date of trial there would be a reverse *Pereira/Van Camp* type apportionment to make sure that the separatizer received appropriate return on his or her separate property efforts. The remaining increase in value would be apportioned between the separate property interest at the date of separation and the *Pereira/Van Camp* community property interest in the business at the date of separation.

By contrast, if neither spouses' post-separation efforts contributed to the increase in the value of the business from the date of separation to the date of trial the two most logical alternatives would be to either value the business at the date of trial and calculate the increase in value for the *Pereira/Van Camp* type apportionment from the date of marriage to the date of trial, *or* in the alternative, measure the increase for the initial *Pereira/Van Camp* apportionment from the date of marriage to the date of separation and then apportion the increase in value from the date of separation to the date of trial in the same ratio as the existing separate and *Pereira/Van Camp* community interests at the date of separation. Which alternative would be most beneficial to which spouse will depend on the circumstances of each case.

b. <u>When funds are withdrawn from the business during marriage.</u>

The issue of funds withdrawn from the business during marriage will be dealt with in greater detail in section 7(a) below.

i. To characterize the withdrawn funds. When funds are withdrawn from a business during the marriage an issue arises as to the character of those funds. If at the time of the withdrawal there already exists a *Pereira/Van Camp* community property interest in the business some or all of the funds withdrawn may be community property. The characterization of these funds will depend on a number of factors discussed in section 7(a) below. However, in order to determine whether there exists a *Pereira/Van Camp* community property interest at the time of withdrawal it may be necessary to do an apportionment analysis at the time of each withdrawal.

ii. To measure the community property interest remaining after the withdrawal. If at the time of a withdrawal there exists a *Pereira/Van Camp* community property interest in the business the nature and extent of that community property interest must be determined in order to analyze whether the withdrawal removed some, all, or none of the *Pereira/Van Camp* community property interest that existed in that business.

5. What do we apportion?

a. <u>Traditionally, we have apportioned only the increase in value of the business from date of marriage to date of separation (or trial).</u>

As family law lawyers we have developed a myopic view of the *Pereira/Van Camp* issue. We tend to think in terms of whether or not the business has increased in value at the date of separation or date of trial, and if so how to apportion that increase between the natural enhancement of the separate property and how much of that increase resulted from community property efforts of the spouses during marriage. Earlier cases discuss an apportionment of the income or "profits" of the business. In *Beam vs. Bank of America* the court noted that the community should receive "a fair share of the *profits* which derives from the husband's devotion of more than minimal time and effort of the handling of his separate property." The court went on to state "…Our courts now uniformly hold that '[a]n apportionment of *profits* is required'…when a husband conducts a commercial enterprise." After finding that Mr. Beam's efforts in managing his separate property throughout the marriage were more than minimal the court stated "…and thus the trial court was compelled to determine what proportion of the total *profits* should properly be apportioned as community *income*." (Emphasis in italics added). Id at page 18.

In *Pereira vs. Pereira* (1909) 156 Cal.1 the court was apportioning not only the value of the assets of the business and real estate, but also the income that was generated by the business. The court stated:

> "It is true that it is very clearly shown that the principal part of the large *income* was due to the personal character, energy, ability and capacity of the husband. This share of the *earnings* was of course community property. But without capital he could not have carried on the business. In the absence of circumstances showing a different result, it is to be presumed that some of the *profits* were justly due to the capital invested. There is nothing to show that all that was due to the defendant's efforts alone. The probable contribution of the capital to the *income* should have been determined from all of the circumstances of the case. As the business was *profitable* it would amount to at least the usual interest of a long investment well secured." (Emphasis in italics added).

In a tax court case, *Todd vs. Commissioner of Internal Revenue*, 153 F2d 553 - Court of Appeals, 9th Circuit 1945 the court, applying California community property law, dealt with the apportionment of *income* earned by a business that was a pre-marital separate property business but in which a *Pereira/Van Camp* community property interest had arisen. The court, in resolving the taxability of that income, apportioned some of the income as community property and required each party to report one-half of that income in filing their separate returns.

b. <u>What about funds generated during the marriage which have been withdrawn from the business?</u>

Will it make a difference to the apportionment if the withdrawn funds are "squandered" versus "invested"? The answer will impact characterization of the funds withdrawn and a determination of what *Pereira/Van Camp* community property interest remains in the business after the withdrawal.

c. <u>The business as a whole, or just those assets that were affected by the community property efforts?</u>

Why include real estate that appreciated only because of market forces? Why include equipment that has depreciated or been discarded? Does it make sense to include the increase in value of real estate in the increase in value of the business as a whole, particularly if that real estate only appreciated because of market forces? Similarly, should equipment that has been depreciated or been discarded be included in determining the amount of the increase, or whether or not the increase in value, was the result of community efforts? This issue will be examined in greater detail in section 7(c) below.

d. Should we treat specific business assets purchased during the marriage as being community property?

As a general rule assets acquired during marriage are considered to be community property, unless they are acquired with entirely separate property funds. (See *In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179). See also Family Code section 2640. If the asset is purchased with business revenues produced after there is a *Pereira/Van Camp* community property interest, isn't that asset being acquired with community property funds or with a mixture of community and separate property funds. As a result, the character of assets acquired with business revenues after there is a *Pereira/Van Camp* community property interest in the business may be governed by rules other than *Pereira/Van Camp* type apportionment. This issue will be discussed in greater detail in section 7(a) below.

6. How do we apportion?

a. The two typical approaches to apportionment – *Pereira* and *Van Camp*.

i. ***Pereira*:** Provide the separatizer with a "reasonable rate of return" on the date of marriage value of the separate property business during the time of the marriage, and apportion "the rest" of any increase in value to the community.

Pereira vs. Pereira
Supreme Court of California 165 C1, 103 P 488, CFLP §G.72

Frank Pereira
Operated a Profitable Saloon
& Cigar Business (1909)

How much of the issues and profits
of a successful separate property business
belong to the community?

Step 1:	**Step 2:**	**Step 3:**	**Step 4:**
Start with value of separate property business at date of separation	Subtract value at date of marriage	Subtract **rate of return** on value at date of marriage using rate for long-term well secured investment	**Residual is community interest** in the separate property business

Van Camp v. Van Camp
53 CA 17, 199 P 885, CFLP §G. 73 Filed March 26, 1921

Van Camp
Seafood Company

Was the community adequately compensated for the Respondent's efforts from a closely-held business?

Reasonable compensation of another with "equal capacity"

(need expert witness)

Community interest in the business

Salary of owner of separate property closely held business

ii. ***Van Camp*****:** Insure that the community has received "reasonable compensation" for the value of the community property services provided to the business during the marriage and apportion "the rest" of any increase in value to the separatizer.

b. Why *Pereira* and *Van Camp* reached totally different results.

i. *Pereira* – Failure of proof (only one good lawyer showed up at trial).

What is important to recognize in the *Pereira* decision was that the trial court had decided that all increases in value during the marriage were community property. This was "…upon the theory that all of his gains received after marriage, from whatever sources, were to be classed as community property, and that no allowances made in favor of his separate estate on account of interest or profit on the $15,500 invested in the business at the time of marriage." The Supreme Court noted that this $15,500 remained in the business after marriage and was used in carrying on the business. The Supreme Court then noted that the separate property should have been credited with some amount as profit on this capital. Unfortunately, husband's lawyer apparently put on no evidence whatsoever to show what portion of the increase in value or income during the marriage resulted from the fact that the business was an established profitable business at the date of marriage. The court was provided with absolutely no evidence of what a reasonable rate of return might have been for similar business during the same timeframe. As the court noted "*In the absence of circumstances showing a different result* it is to be presumed that some of the profits were justly due to the capital investment...The *probable contribution* of the capital to the income should have been determined from all circumstances of the case and as the business was profitable it would amount at least to the usual interest on the long investment well secured." (Emphasis in italics added). Id at page 8. The court then reversed and remanded the case to the trial court to determine what portion of the income and increase in value should be attributed to the separate capital, noting that there was no evidence in the record sufficient to permit the Supreme Court to make that determination.

After the original decision was issued (June 30, 1909) the court modified its opinion on July 13, 1909. In, what seems today, an unusual procedure, the wife asked the court not to remand the case for a new trial. Instead the wife consented to husband's being allowed interest at the rate of 7% on the $15,500 found to be the separate capital invested in the business. The court held that this consent removed the objection to directing a modification of the judgment. The court in its modification noted that the defendant introduced *no evidence* to show that the capital invested was entitled to a greater return than *legal interest*. The court held that since the burden of proof was on the husband to establish some greater rate than legal interest and because of his failure to do so, he would be limited to legal interest as the most he could claim. The court closed with "Her consent aforesaid avoids this necessity and leaves the case in such condition that a modification of the judgment will end the litigation with justice to both parties." The court awarded the husband a separate property rate of return of 7% per year as simple interest (the legal rate) from the date of marriage to the date of trial.

A careful examination of the *Pereira* opinion reveals that the only reason the court limited the separate property apportionment to the legal rate of interest was a complete failure on the part of husband's counsel to put on evidence establishing what portion of the increase in value and income from the operation of the business was the "rents, issues and profits" of the husband's premarital separate property business.

ii. *Van Camp* – Failure of proof (only one good lawyer showed up at trial). In *Van Camp* the trial court determined that there was a $90,000 community property interest in Mr. Van Camp's premarital separate property seafood packing corporation. Husband appealed that determination and wife cross appealed contending that the community property interest was greatly in excess of $90,000. The court of appeal reversed the trial court's judgment on the determination of the extent of the community property. The court conceded that it might be true that the success of the corporation was to a large extent due to the husband's capacity and ability, nonetheless without the investment of his capital in the corporation he could not have conducted the business. The court noted that while husband devoted his energies and personal efforts to making the business a success, the evidence established that he was paid by the corporation adequate salary measured by that amount which another person could have been secured with equal capacity to perform the same services. The court, after reviewing the holding in *Pereira v. Pereira*, stated "So, in the instant case, it is impossible to say what part of the enormous dividends paid by the Van Camp Seafood Company should be apportioned to the skill and management thereof and what part should be apportioned to the investment of capital and the favorable conditions under which the business was conducted." At least from the vantage point of the court of appeal, there was not sufficient evidence introduced at the trial level to provide a basis for the court to make a determination of what portion of the income or increase in value – beyond that used to pay salary and expenses which were allocable to the community – was the result of the skill, management and efforts of the spouse as opposed to the rents, issues and profits of separate property.

The important lesson to be learned from these two decisions is strikingly similar.

- In a *Pereira* analysis, to successfully claim a larger portion of the increase in value as the rents, issues and profits of separate property, competent evidence needs to be introduced at trial to establish what portion of the income and increase in value is attributable as the rents, issues and profits of the separate property business. Failure to do so will limit the separatizer to a reasonable rate of return based on a long term investment well secured. If no evidence on rate of return is produced the legal rate of interest will be the limit.

- In the *Van Camp* analysis the failure to establish that some portion of the income or increase in value of the business, beyond the compensation already received by the community, is directly the result of, or attributable to the skill, efforts and ingenuity of the spouse rendering services to that business will likely result in the failure to obtain for the community any apportionment of the remaining income or increase in value of the business. Good lawyering is almost always a prerequisite for a good result.

c. <u>The court is not required to use one approach or the other and can apply any method of apportionment that achieves an "equitable result" or "achieves substantial justice"</u>

Todd v Commissioner – another approach.

In *Todd v. Commissioner,* 153 F 2 d 553 – Circuit Court of Appeals, 9th Circuit 1945 the issue in dispute was how the income from a partnership should be allocated between the husband partner and the non-operating wife. Both partners in Western Door and Sash Company were married and residents of California. By application of community property law the wives acquired a half interest in the earnings of their husbands during marriage. The tax years in question were 1940 and 1941. As of January 1, 1936 the business was considered separate property of the husband partners.

There investment in the partnership in 1936 was $144,337. The court found that amount as their separate capital and it remained invested in the business through the two tax years in question.

The company was quite successful in 1936 through 1939 and the capital was "plowed back" into the business so that total capital amounted to $226,891 by January 1, 1940, the first tax year in question.

The dispute between the taxpayers and the Commissioner of Internal Revenue was what portion of the income during 1940 and 1941 was attributable to capital and therefore the separate income of the husbands and what portion was attributable to the management of the business by the husbands and therefore community property. The consequence being that all income from capital would be taxable to the husbands as their separate property. The income from managing the business would be taxable as community property and only one-half would be taxable to the husbands.

The court noted that absent evidence to show the separate capital was entitled to a larger return than the legal rate of interest, the rate of return that would apply under California law would be the legal rate of interest of 7%, citing *Pereira v. Pereira*. The court cited to evidence which reflected that a higher rate of return would be appropriate in connection with this business.

In determining what portion of the income from the business was separate property a formula was used applying the ratio of the return on capital to the income from efforts. The court examined the first year the business was subject to community property law, determined the separate capital, and applied an 8% rate of return to determine that income attributed to separate property to be $12,158. To this was added the $10,000 in salary paid to the owners. This brought the total income attributable to separate property capital and community property earnings to $22,158. The court then determined that the "percentage of income attributable to capital earnings" was 54.87% and the "percentage of income attributable to managerial earnings" was the remaining 45.13%. Applying this formula through the remaining years up to the tax year in question, 1940, the tax court determined that the separate property capital (the original capital plus the yearly income allocated by the formula discussed above) was now $242,380 and that the community had left income invested in the business – after withdrawals of living expenses – of $13,904. The court then determined that the percentage of income attributable to the husband's separate property capital to be 54.62%, the percentage of income attributable to the community property capital left in the business was 3.13% and the income for services during the year was 42.25% for a total of 100%. The court then allocated the total income for 1940 of $46,204.96 using these percentages to determine the husband's share and the community share. The court allocated to the husband all of the separate property share, half of the community share and allocated to wife half of the community share. The table from the decision was as follows:

//

Table From *Todd v. Commissioner* Decision

	A	B	C	D	E	F
		Percent (Per Exhibit A)	Total Income	Community Income	Husband	Wife
1	Income from husband's separate capital	54.62%	$25,237.14		$25,237.14	
2	Community income:					
3	Community capital	3.13%	$ 1,446.22	$ 1,446.22	$ 723.11	$ 723.11
4	Income from services	42.25%	$ 19,521.60	$19,521.60	$ 9,760.80	$ 9,760.80
5	Total (lines 2 to 3)	100%	$46,204.96	$20,967.82	$35,721.05	$10,483.91
6	Reported in income tax returns				$29,284.21	$16,469.97
7	Net adjustment (line 5 minus 6)				$ 6,436.84	$ (5,986.06)

A simplification of this formula would be as follows:

1. Determine a fair rate of return on the separate property capital for the entire period which will be referred to as "fair return." Then estimate reasonable

compensation for the community efforts during the period referred to as "reasonable comp." The percentages that would then be applied to the total income would be stated as follows:

ROI for Separatizer:

$$\frac{\text{Fair Return}}{\text{Fair Return + Reasonable Compensation}}$$

ROE for Community:

$$\frac{\text{Reasonable Compensation}}{\text{Fair Return + Reasonable Compensation}}$$

This would produce percentages to be applied to the income or increase in value during the marriage. To state it numerically would be as follows:

Fair Return = \$15,000   Reasonable Comp = \$10,000

For Separatizer:

$$\frac{\$15{,}000}{\$15{,}000 + \$10{,}000} = 60\%$$

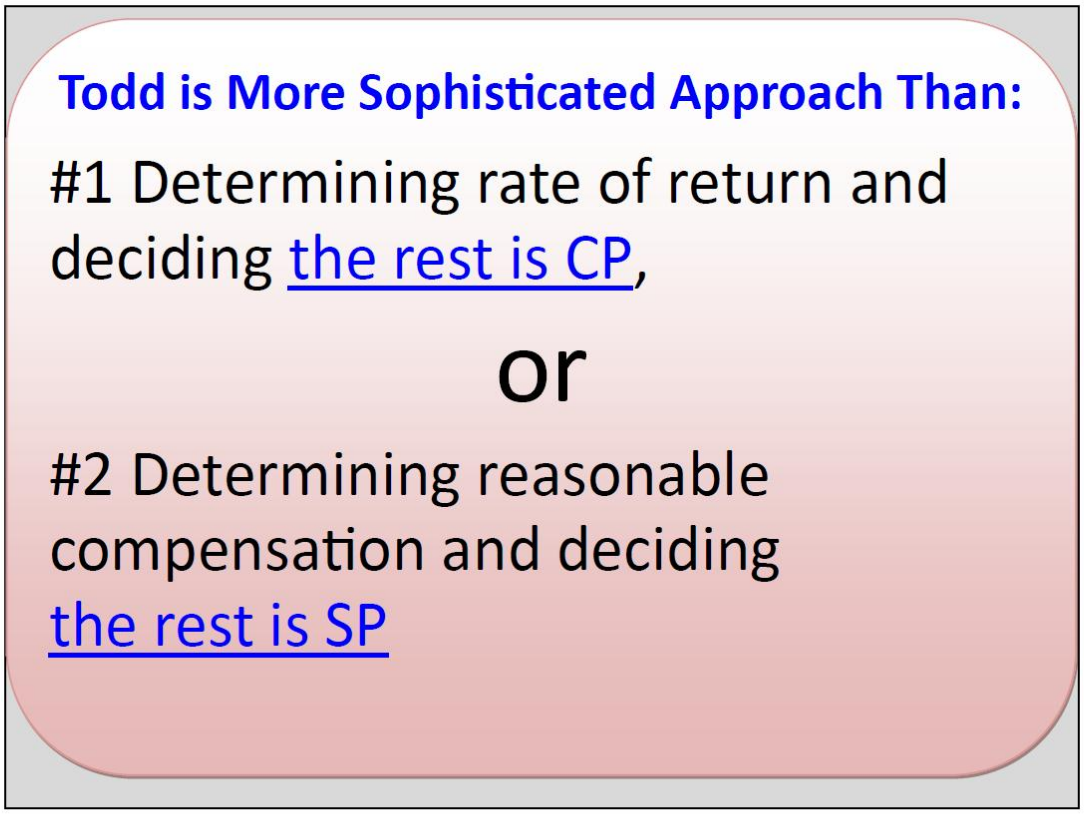
For Community:

$$\frac{\$10{,}000}{\$15{,}000 + \$10{,}000} = 40\%$$

Apportionment of Increase in Value
Total Increase in value = $80k

Separate property portion ($80k x 60%) = $48k
Community property portion ($80k x 40%) = $32k

While the *Todd v. Commissioner* formula approach is certainly not the only formula that could be devised to rationally resolve a *Pereira/Van Camp* apportionment issue, it is certainly more sophisticated than just determining a rate of return and deciding that "the rest" is community property or in the alternative just determining reasonable compensation and deciding "the rest" is all separate property.



In following the *Todd v. Commissioner* formula approach a reasonable rate of return can be determined for the particular business and assets in question. Then a determination can be made as to reasonable compensation, less the amount that had already been withdrawn for salaries or other community purposes. A ratio is then computed by comparing the rate of return to the reasonable compensation and that ratio is applied to the total increase, or in this case, income during the marriage. This approach has the benefit of looking at the apportionment problem from both ends of the spectrum, rate of return and reasonable compensation.

d. The Pereira Issue – What is a "reasonable rate of return" and how is it applied?

A reasonable rate of return is also referred to as "return on investment" ("ROI"). The question that then needs to be resolved is what rate should be applied and should that rate be a simple or compound rate of return.

i. What rate to apply?

There is considerable confusion on this question. Some practitioners and accountants believe it is limited to the "legal rate," some believe it requires the rate applicable to a "long term investment well secured" and others believe that a "market rate" should be applied. Interestingly, those who argue for the legal rate and those who argue for a rate appropriate to a long term investment well secured, are both relying on the same case. In *Pereira v. Pereira* the court ultimately held that the husband was limited to the legal rate of 7% simple interest on his separate property capital. That is in fact the result of the case.

However, that holding, as noted above, results from the wife filing a "consent" with the Supreme Court to have the legal rate of interest applied to the separate property capital, rather than having the matter remanded for trial to determine an appropriate rate of interest. In response to this "consent" the court held that in the absence of any evidence introduced by husband on an appropriate rate of interest to be used as a rate of return, husband would be limited to the legal rate of interest of 7% simple interest.

However, in the original opinion the court opined as follows:

> "The probable contribution of the capital to the income should have been determined from all the circumstances of the case, and as the business was profitable it would amount at least to the usual interest on a *long term investment well secured.*" (Emphasis in italics added).

So, those who cling to the legal rate of interest and those who believe the interest should be the usual interest on a long investment well secured, both gain their support from the same decision, *Pereira v. Pereira*.

However, *Pereira v. Pereira* sets forth what we believe to be the proper rule. "The probable contribution of the capital to the income should have been determined from all of the circumstances of the case…" This means, in our view, that the court should be provided with evidence specific to this industry. In selecting a rate of return the court should be advised through expert testimony of the risks associated with the investment, the risk experience of other businesses in the same field and what capitalization rates have been applied to determine values of other businesses to demonstrate what interest rate the market would provide for investing in this type of business or industry.

However, this is not the only approach. Evidence can be developed and introduced to show, for instance, that the average business in this industry increased in value during the marriage far in excess of an 8, 10 or 12% interest rate. By way of example, in *Gilmore v. Gilmore* (1955) 45 Cal.2d 142, the businesses were three auto dealerships over a six year marriage. The court found that during the marriage there was a tremendous increase in the automobile industry and a corresponding rise in the value of <u>all</u> dealerships during the marriage, including the husbands. While this evidence led the court in *Gilmore* to apply a *Van Camp* approach it would be the type of evidence that would help to establish that the return on investment should be much higher than an 8, 10 or 12% interest rate.

Similarly, in *Marriage of Ney* (1963) 212 Cal.App.2d 891, the court was examining whether there was a community property interest in stocks and bonds the husband had brought to the marriage, but had traded significantly during the marriage. During the fourteen years of the marriage the husband's estate grew from $39,000 to $73,000, less than doubling. However, evidence was introduced that during the same period the Dow Jones industrial average increased from 207.60 to 582.69 (yes, the Dow Jones was only a triple digit figure in the 1960s!) meaning it had almost tripled. This evidence helped to establish that a rate of return based on the circumstances of the case eclipsed the actual increase in value of the assets in question.

ii. Simple or compound rate of return?

The argument for a simple rate of return seems to be grounded in the *Pereira v. Pereira* decision. However, in *Pereira* there was never a direct determination about whether the interest rate should be simple or compound. The *Pereira* decision merely held that because there was no other evidence available on reasonable rate of return, the husband would be limited to the legal rate. The legal rate, by statute, is a simple interest rate. (Code of Civ. Proc. §685.010; *Westbrook v Fairchild* (1992) 7 Cal.App.4th 889; *Nickel v. Bank of America* (N.D.Cal.1997) 991 F. Supp. 1175.)

If the appropriate rate of return is seen as a "long term investment well secured" that will mean a compound interest rate. The same will be true with any "market rate interest," particularly where both the principal and the rate of return are left in the investment. This concept applies even to a simple bank account.

Consider the dramatic difference between simple and compound interest.

Consider the dramatic difference between simple and compound interest.

Initial investment $100,000

Years Invested	Total Due with Simple Interest at 8%	Total Due with Compound Interest at 8%
1 year	$108,000	$108,300
2 years	$116,000	$117,289
3 years	$124,000	$127,024
4 years	$132,000	$137,567
5 years	$140,000	$148,985
10 years	$180,000	$221,964
15 years	$220,000	$330,692
20 years	$260,000	$492,680
25 years	$300,000	$734,018

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e. <u>The Van Camp issue – How do we measure "reasonable compensation"? ("ROE")</u>

Another way of looking at reasonable compensation is "return on effort." ("ROE"). Remember that the theory of apportionment of a community property interest in a business or the profits from the business is, "To provide appropriate value to the community for community efforts that were applied to the business." One measure used for appropriate value is "reasonable compensation." Reasonable compensation is somewhat elusive. In *Van Camp v. Van Camp* (1921) 53 Cal.App. 17 the court concluded that the salary and expense reimbursement paid to the separate property owner (husband) was reasonable compensation and that compensation was the proper measure of the income that should have been attributed to the community for the efforts of husband applied to his separate property business during the marriage. No guidance is given in the decision as to how to determine reasonable compensation.

In *Tassi v. Tassi* (1958) 160 Cal.App.2d 680, the court stated that the test for reasonable value of services is what an independent employer would pay others to perform similar services. The court stated:

> "The salary allowed by such owners to themselves lies entirely in their own discretion and the surest standard would not be what such owners were accustomed to allow to themselves but rather what independent employers were in the habit of paying others for similar services in the free give and take of an open market." Id at page 691.

Some assistance is provided in the cases dealing with determining reasonable compensation for the purposes of business valuation. *In Re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 823, the court in dealing with determining reasonable compensation stated that the "'annual salary of the average salaried person' standard of *In re Marriage of Garrity and Bishton* is not the only standard for establishing reasonable compensation under the excess earnings method. Reasonable compensation may also be based upon the 'cost of hiring a non-owner outsider to perform the same services'. The *Rosen* court accepted that the, "similarly situated professional standard" would be appropriate.

In re Marriage of Iredale & Cates (2004) 121 Cal.App.4th 321, the court examined the reasonable compensation standards that were considered by the trial court. In that case the wife was a partner in a large law firm in Los Angeles. Wife's expert testified that in performing alternative calculations regarding goodwill he compared the wife's compensation with the average profits per partner of the top 100 law firms in the United States. After making certain adjustments he determined that she was not receiving excess compensation and therefore the value of her goodwill in the law firm was zero. Husband's expert instead estimated the wife's replacement cost by assessing the expense of replicating the wife's services through the salary and billable hours of an associate attorney, i.e. an employee.

The court of appeal, examining the decision in *In re Marriage of Rosen* (supra) agreed with the *Rosen* court that the "average salaried person" standard was not the only valid measure for establishing reasonable compensation. The court held that where supported by substantial evidence, use of the "similarly situated professional" standard, as advanced by wife's expert and adopted by the trial court, was appropriate. The court concluded that the use of the "similarly situated professional" standard to calculate goodwill was entirely reasonable.

In determining what portion of the increase in value of a business, or the income generated by the business, is community when using the *Van Camp* approach, credit must be given for salary that has already been paid and other expenses and perquisites that have been paid out for the benefit of the community. In other words, consideration must be given to the extent the community already received some or all of the reasonable compensation due the community. This is part of determining whether or not "appropriate value" has been provided to the community for efforts that were applied to the business.

In *Van Camp v. Van Camp* the court considered as part of the compensation received by the community for husband's services certain expense reimbursements that were paid from the business. The same approach was used in determining the community interest in *Beam v. Bank of America* (1971) 6 Cal.3d 12. The court in *Beam* stated, "Under these precedents, once a court ascertains the amount of community income, through either *Pereira* or a *Van Camp* approach, it deducts the community's living expenses from community income to determine the balance of community property." Id at page 22. The *Beam* court, quoting from the *Estate of Neilson* (1962) 57 Cal.2d 733, 742, noted "When a husband devotes his services to and invests his separate property in an economic enterprise, the part of the profits or increment in value attributable to the husband's services must be apportioned to the community. *If the amount apportioned to the community is less than the amount expended for family purposes* and if the presumption that family expenses are paid from community applies, *all assets traceable to the investment are deemed to be the husband's separate property*." Id at page 22.

f. <u>Factors that have been used to decide which approach should be applied to a particular business. The *Pereira* approach or the *Van Camp* approach.</u>

The general rule of thumb is that where the business is capital intensive, the approach is to determine the reasonable value of the services of the spouse and once reasonable compensation has been allocated for those services the balance of any increase or income would be separate property (*Van Camp v. Van Camp* (1921) 53 Cal.App. 17). The reasonable compensation to the community and the rest of the increase to the separate property owner (the *Van Camp* method) seems to be appropriate when the primary reason for the increase in value of the asset or income produced by the company results from factors not related to the skill or efforts of the spouse during the marriage. These factors would include inflation, industry conditions or other market forces. (*Tassi v. Tassi* (1958) 160 Cal.App.2d 680, 691-692). In *Tassi* the primary reason for the increase in value of a wholesale meat business was market pressures from World War II and the Korean War rather than the husband's services.

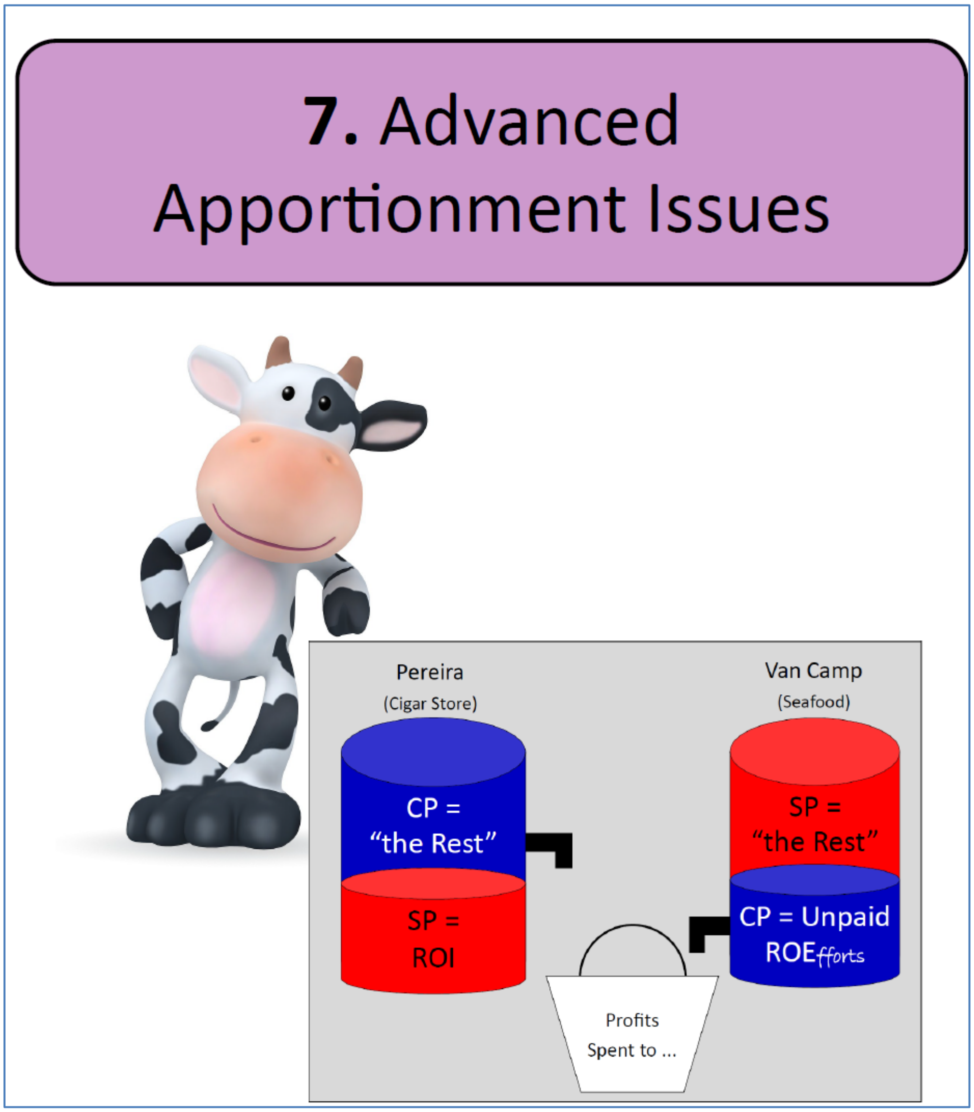
In contrast the *Pereira* approach is usually applied where capital is not a major factor in the business. This means the *Pereira* approach will usually apply to service-oriented business such as medical practices, law firms and the like.

In *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, the court stated:

> "Pereira is typically applied where business profits are principally attributed to efforts of the community. (citations omitted). Conversely, Van Camp is applied where community effort is more than minimal involved in a separate business, yet the business profits accrued are attributable to the character of the separate asset. (citations omitted). The court has discretion to

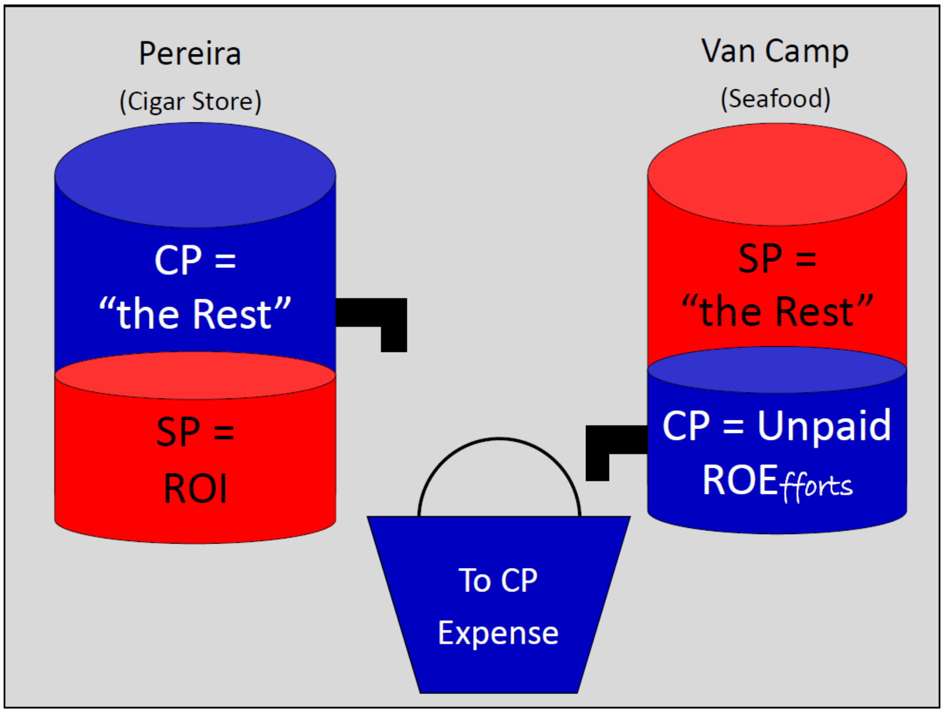
choose whichever formula will effect substantial justice." Id at page 854.

7. Advanced Apportionment Issues.

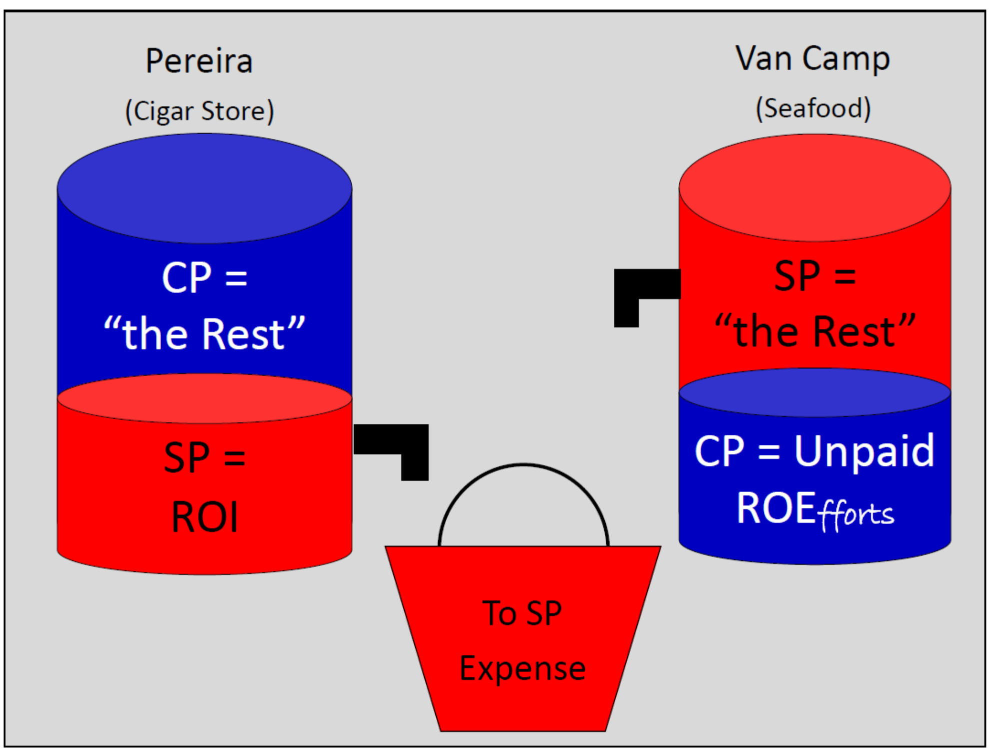


a. <u>What is the character of funds withdrawn from the business during the marriage – after there exists a *Pereira/Van Camp* community property interest?</u>

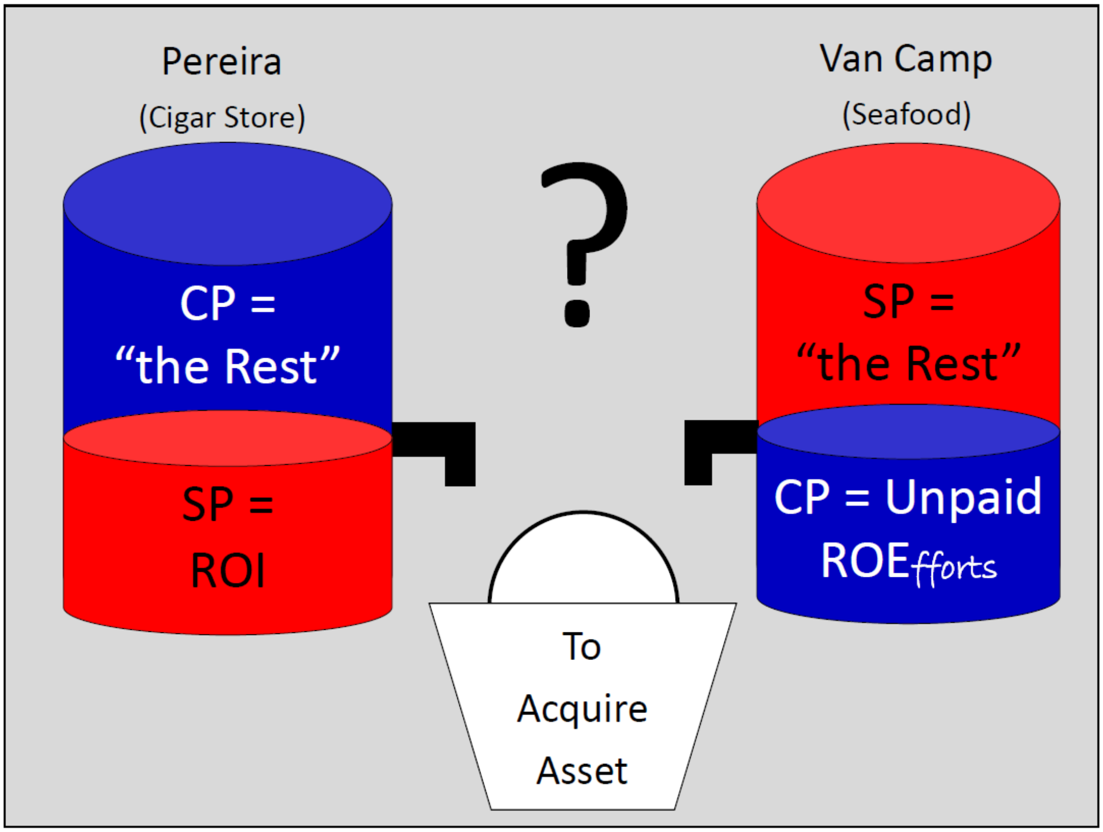
The question here turns on what is the nature of the *Pereira/Van Camp* community property interest in the separate property business. If it were just a reimbursement right then the income generated by the business would simply be separate property and the community would be limited to reimbursement, if and when, a dissolution of marriage occurred. The cases cited above make it clear that apportionment



is appropriate, not only in the increased value of the business from date of marriage to date of separation, but also in the profits and income of that business. That being said, there seems little question that the *Pereira/Van Camp* community property interest is in fact a property interest residing in the otherwise separate property business. Note in *Todd v. Commissioner* (153 F. 2d. 553 (1945)) the Ninth Circuit, applying California



community property law, determined that a portion of the income earned by the partnership in 1940 and 1941 was in fact community income. The court also determined that portion of the income that was determined to be community property *but not withdrawn* in previous years created community capital that was invested in the business and, in allocating the income in 1940 and 1941 the court provided a rate of return for both the separate property capital and the retained community property capital.



It would seem inescapable then that income generated by a premarital business in which a *Pereira/Van Camp* community property interest had arisen could not be all separate property. As a starting point it would seem the income (as found in *Todd v. Commissioner* (supra)) would be part separate and part community property. The same would be true of any other withdrawal of capital from the business after a *Pereira/Van Camp* community property interest has arisen. Since the capital of the business would then be part separate and part community the character of the withdrawals would be dictated by the purpose of the withdrawal.

Using the family expense presumption and family expense tracing methods of in *Beam v. Bank of America* (1971) 6 Cal.3d 12, the court stated:

> "A long line of California decisions has established that 'it is presumed that the expenses of the family are paid from community rather than separate funds…and thus in the absence of any evidence showing a different practice the community earnings are chargeable with these expenses.'" *Estate of Neilson* (1962) 57 Cal.2d 733, 742. Id at page 21.
>
> The court went on to state:
>
> "This 'family expense presumption' has been universally invoked by prior California decisions applying either the Pereira or Van Camp formula." *Estate of Neilson* (1962) 57 Cal.2d 733, 742, *Estate of Arstin* (1961) 56 Cal.2nd 239, *Huber v. Huber* (1946) 27 Cal.2d 784 and *Van Camp v. Van Camp* (1921) 53 Cal.App. 17, 25.

From these authorities it can be reasoned that if the withdrawal is used to pay community expenses it is "drawn from" the *Pereira/Van Camp* community interest in the business.

The corresponding effect is to reduce the remaining *Pereira/Van Camp* community property interest in the business. It is conceivable that at some point during the marriage the entire *Pereira/Van Camp* community property interest could be withdrawn from the otherwise separate property business. If this were to take place a sound argument could be made that the timeline for measuring an increase in value of the business would not begin at the date of marriage, but rather at the date at which the entire *Pereira/Van Camp* community property interest had been withdrawn, leaving only a separate property ownership of the business.

What if the funds withdrawn from a premarital business with an existing *Pereira/Van Camp* community property interest are used to acquire an asset? The character of that asset will depend upon the character of the withdrawn funds.

Consider when the withdrawal is used to purchase an asset intended to be community. If the parties make a withdrawal from the business to purchase a vacation home, Whiteacre, and title to Whiteacre is to be taken as husband and wife as joint tenants, the acquisition cost is a community expense. Under the "family expense presumption" the first funds drawn from the business would be any existing *Pereira/Van*

Camp community property interest. Only when those funds were exhausted would separate property funds be withdrawn from the business. If the *Pereira/Van Camp* community property interest in the business is sufficient to pay the acquisition cost of Whiteacre then Whiteacre is purely community property. If however, the *Pereira/Van Camp* community property interest in the business is not sufficient to pay the acquisition cost of Whiteacre and some separate property funds are withdrawn, then Whiteacre is community property subject to a Family Code section 2640 right of reimbursement.[1]

If the funds are withdrawn by the spouse who owned the premarital business and are being used for clearly separate property purpose it would seem appropriate that those withdrawals be charged to the separate property interest in the business. This would create a larger proportional *Pereira/Van Camp* community property interest in the business and the income generated by the business.

The reason it is important to examine withdrawals of funds from the business during the marriage, after there exists a *Pereira/Van Camp* community property interest is that if those funds had been left in the business the business would have greater value and the "increase in value during the marriage" would be larger. For this reason withdrawals during the marriage cannot simply be ignored or the community would not receive all the community is entitled to as a result of the application of community efforts to the business. It is clear that to the extent that community expenses are paid from the business they will be considered in determining what *Pereira/Van Camp* community property interest remains to be allocated to the community as a *Pereira/Van Camp* interest. If assets acquired with those withdrawals are not examined for their community property components, potential assets belonging to the community will be overlooked.

It has been suggested that one way to handle withdrawals from the business prior to the date of separation or date of division of property would be to simply "add back" those withdrawals in determining the total increase in value during the marriage. This may be a significant oversimplification. By way of example, if $100,000 is withdrawn from the business and no effort is made to determine what became of that $100,000, fictionally adding the $100,000 back to the value of the business only adds $100,000 to the increase in value during the marriage. If the community interest in the

[1] A debate rages as to whether or not an asset can be acquired during marriage using part community and part separate property funds and result in mixed ownership where an asset is part separate and part community. That debate will be left for some future program.

increase in the total value of the business is a small percentage, only a small percentage of that $100,000 will be community.

If, however, that $100,000 was used to purchase stock in an investment account the stock would have been acquired during the marriage. If that $100,000 would have been apportioned as $90,000 separate and $10,000 community the stock so acquired would be community property with a $90,000 - 2640 right of reimbursement. If the stock doubles in value to $200,000 the separate property interest will be limited to the $90,000 - 2640 reimbursement right. The community will receive the balance of the increase plus its original portion of the investment totaling $110,000. This example demonstrates why fictionally adding back the $100,000 withdrawal can be an oversimplification. Additionally, adding back the withdrawn $100,000 would be "double counting" funds if the community balance sheet already contains the hypothetical stock account discussed above. The authors believe that the better practice is to accept the fact that funds were withdrawn, follow those funds to determine their use so that their nature can be characterized. Then two analyses need to be done. First, determine how the withdrawal impacts the remaining separate property and *Pereira/Van Camp* community property interests in the business. Second determine the character and reimbursement rights as to any assets acquired with the withdrawn funds.

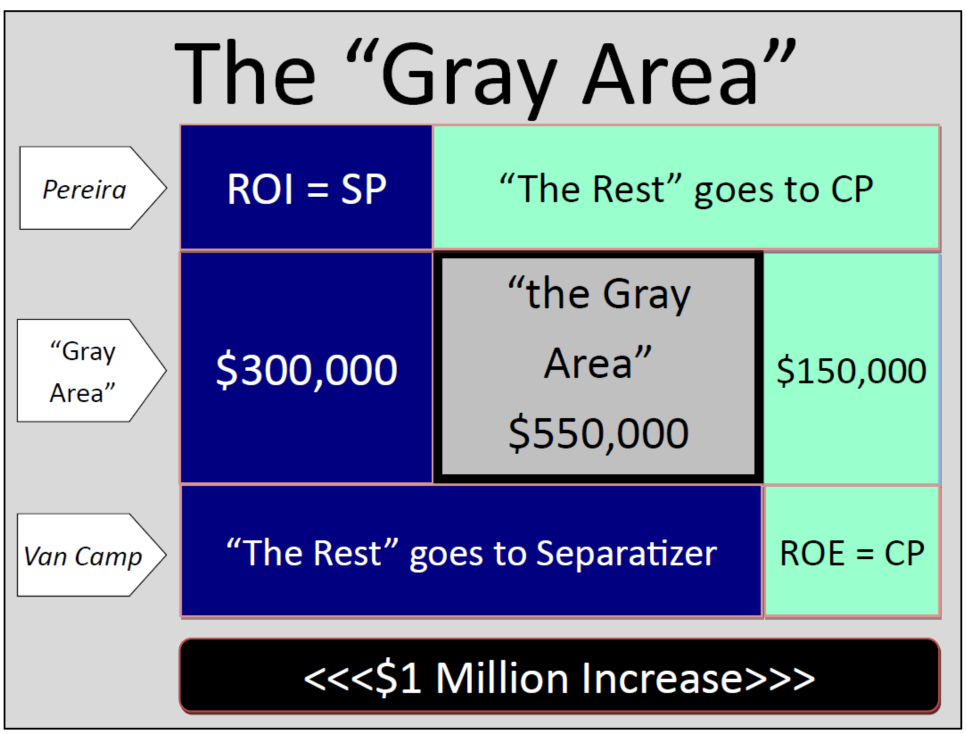
b. <u>The "Gray Area" - The portion of the increase in value of the business that exceeds both *Pereira* measure and *Van Camp* measure.</u>

Assume that a business increases in value by $1,000,000 during the marriage. Then assume that if a reasonable rate of return is applied to the date of marriage value of the business it would produce a return on investment of $300,000 during the entire marriage. Then assume if reasonable compensation, net of salary and benefits already paid, was determined to be $150,000 during the entire marriage.

Under these assumptions we could "logically" account for $300,000 of the $1,000,000 increase by applying the *Pereira* approach and we could "logically" account for $150,000 of the increase in value by applying the *Van Camp* approach. That "logically" accounts for $450,000. This leaves a "gray area" of $550,000 in increased value. This $550,000 isn't "logically" attributed to a return on investments (*Pereira*) or return on efforts (*Van Camp)*.

Using the *Pereira* approach in the above example the $300,000 of ROI is allocated to the separatizer and $700,000 is allocated to the community – even though in the hypothetical the unpaid reasonable compensation is only $150,000. In contrast, using the *Van Camp* approach only $150,000 of the $1,000,000 increase is allocated to the community and $850,000 is allocated to the separatizer - even though under the hypothetical the reasonable return on investment is only $300,000.

The "gray area" illustrates the need for good lawyering when analyzing and presenting the business apportionment issue. The separatizer will want to focus on evidence that the "natural enhancement" of the original business accounts for far more than $300,000 in the above example and will want to introduce evidence that it accounts for the entire $1,000,000. On the other hand, the spouse seeking a larger community property interest in the increase in value will want to present evidence that other businesses, without the spouse's unique skill, effort, talent and industry, did not increase in value as much as the $300,000 in the above example. That spouse will also want to examine the use made of withdrawals from the business so that not all withdrawals are by default charged under the family expense presumption towards the compensation to be paid to the community for the spouse's services. In a very real sense the lawyering involved in the business apportionment issue is very much a battle over this "gray area."



A similar but distinct problem exists when the *Pereira* ROI and the *Van Camp* ROE overlap. Assume the same $1,000,000 increase in value during the marriage. But now assume that the return on investment in a much longer marriage would be $650,000 and that the amount of unpaid reasonable compensation is $500,000. Now you have an area of "overlap" of $150,000. That means if the *Pereira* interest of $650,000 is assigned to the separatizer there will, under the hypothetical, be unpaid reasonable compensation of $150,000. And if the $500,000 in unpaid reasonable compensation is apportioned to the community the separatizer will not, under the facts of the hypothetical, receive a reasonable return on the investment. Here, it would seem, the best approach will be for the separatizer to show that the $1,000,000 increase in value during the marriage was *not the result of* community property efforts. The proponent of the community property interest should argue that absent the unique efforts, skills and talents of the spouse this company would not have earned the reasonable return on investment.

c. <u>Why treat the business as a single asset instead of a group of assets?</u>

A business is not just a single asset – it is a group of assets and liabilities. These assets and liabilities may have very different characteristics and attributes.

i. The distinction between the business as a whole versus the component parts of a business when determining the foundational issues of whether there has been an increase in value and whether community property efforts contributed to that increase.

Consider a business that has land, equipment, inventory and goodwill. The business as a whole had a value of $500,000 at the date of marriage. Three years later, at date of division of community property, the business as a whole has a value of $800,000 – a $300,000 increase in value during the marriage. For simplicity apply a 10% rate of return using simple interest on the $500,000 for three years and a *Pereira* analysis would conclude that $650,000 would be the separate property interest and $150,000 would be the community property interest. The increase in value of the business as a whole would look like this:

Business As a Whole vs. Component Parts

	Value DOM	Value DOD	Increase
Increase in Value	500k	800k	300k

However, if you examine the changes in value of the component parts it could look like this.

Component Parts	Value DOM	Value DOD	Increase
Land	100k	250k	+150k
Goodwill	100k	200k	+100k
Equipment	250k	200k	-50k
Inventory	50k	150k	+100k
Totals	500k	800k	+300k

Business As a Whole vs. Component Parts

Alternative View

Component Parts	Value DOM	Value DOD	Increase
Land	100k	250k	+150k
Goodwill, Equipment, & Inventory	400k	550k	+150k
Totals	500k	800k	+300k

By examining the business by its component parts we see that equipment did not increase in value at all, in fact it decreased. If examined separately there would be no reason to apportion equipment as there was no increase. Also, in this hypothetical there was no improvement made to the land, the increase in value of $150,000 – half of the total increase in the business – was land value and resulted from market forces alone, hence the foundational issue of whether or not community efforts contributed to the increase in value is not satisfied with respect to the land component of the business. The two components that did increase, and probably increased as a result, at least in part, from community efforts, are goodwill and inventory. By examining the component parts we see that the increase in value during the marriage that could be attributed to community efforts is only $200,000, not $300,000. An argument could be made that the value of the equipment may have been "used up" to increase inventory. Then an argument could be made that only $150,000 should be considered as the increase in value during the marriage to which community efforts may have contributed. That would significantly change the potential community property interest in this business.

ii. What about when determining what would be a "reasonable rate of return?"

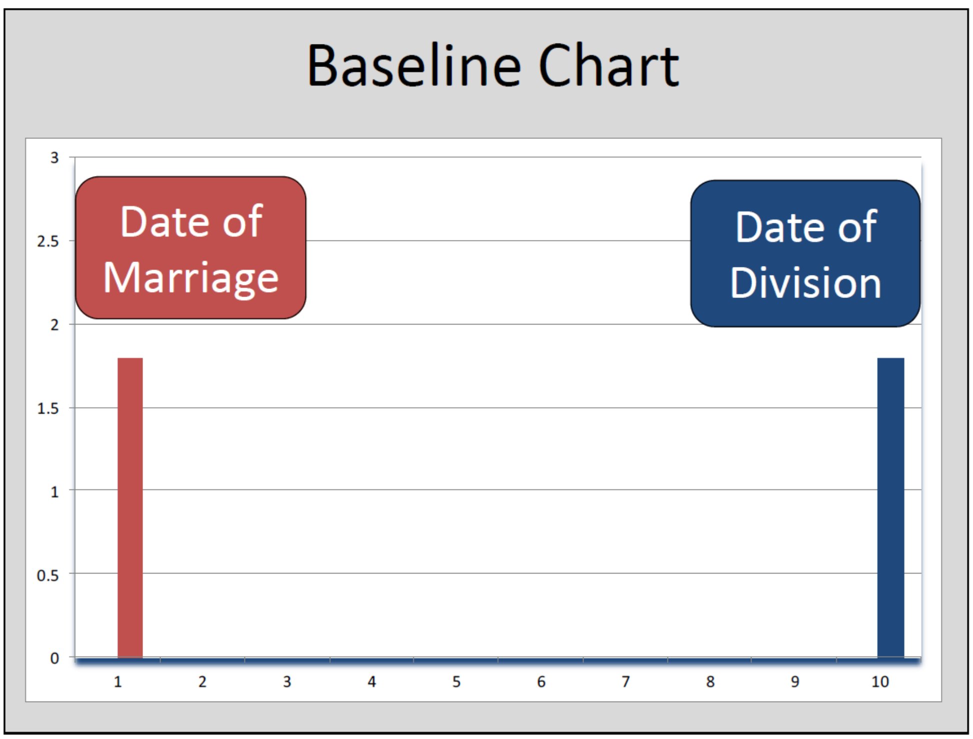
It may also be useful to look at the component parts of a business in order to determine a separate "reasonable rate of return" or "ROI" to each component part. A strong argument can be made that land should simply be taken out of the equation and dealt with as a *Moore/Marsden* asset. If no effort or community funds were used for principal pay down or improvements then there would not be a community interest. With respect to the remaining assets, a rate of return for inventory of new products, versus used equipment, versus goodwill will likely be quite different.

In *In re Marriage of Folb* (1975) 53 Cal.App.3d 862, one of the issues before the court was the trial court's application of two different rates of return to two different types of separate property capital. In *Folb* the husband's separate property interest at the beginning of the marital period consisted of cash on deposit and investments in commercial real estate ventures. The trial court applied a 7% rate of return to the virtually no-risk cash deposits and applied a 12% rate of return to the riskier commercial real estate investments. The court of appeal affirmed the trial court's use of the different interest rates, recognizing that different investment risk characteristics applied to cash as opposed to commercial investment assets.

When dealing with a business made up of distinct component parts serious consideration should be given to analyzing both the question of increase in value of each component part and the issue of what would be a reasonable rate of return for each component part. In addition, consideration should be given to excluding land from the *Pereira/Van Camp* apportionment and instead analyzing any community interest in the land using the *Moore/Marsden* approach.

d. What is the effect of no increase in value or a decline in value of the business during marriage?

The two foundational issues to a *Pereira/Van Camp* apportionment are: 1) was there an increase in value or profits generated from the business and 2) did community efforts contribute to the increase and/or profits.

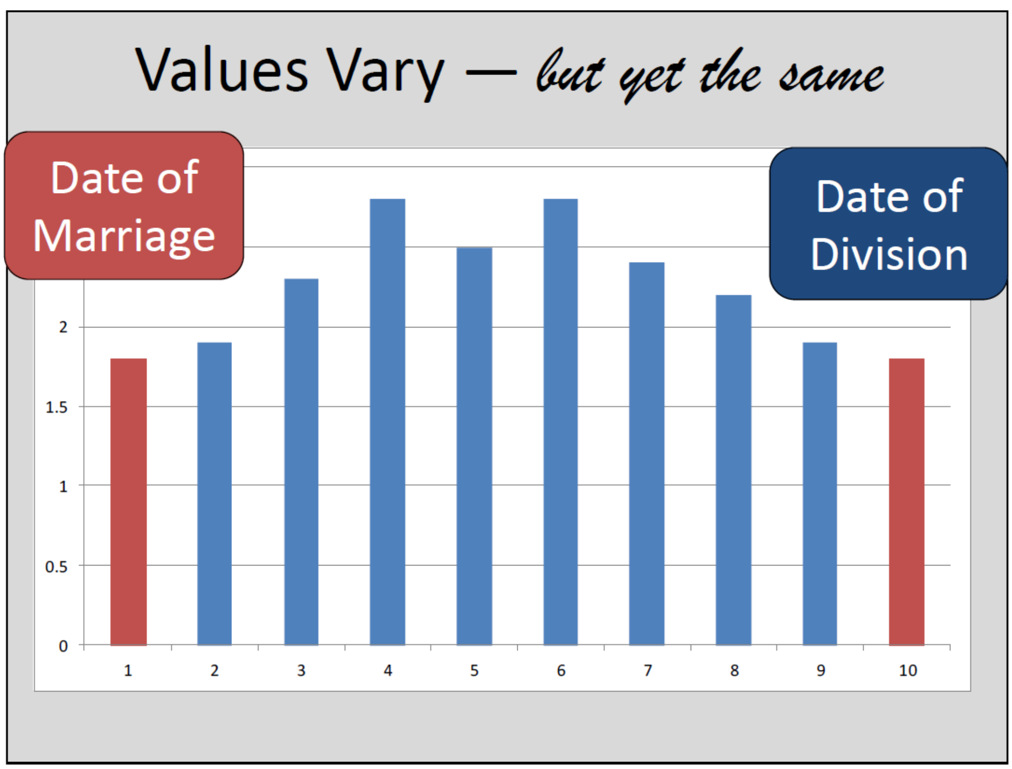


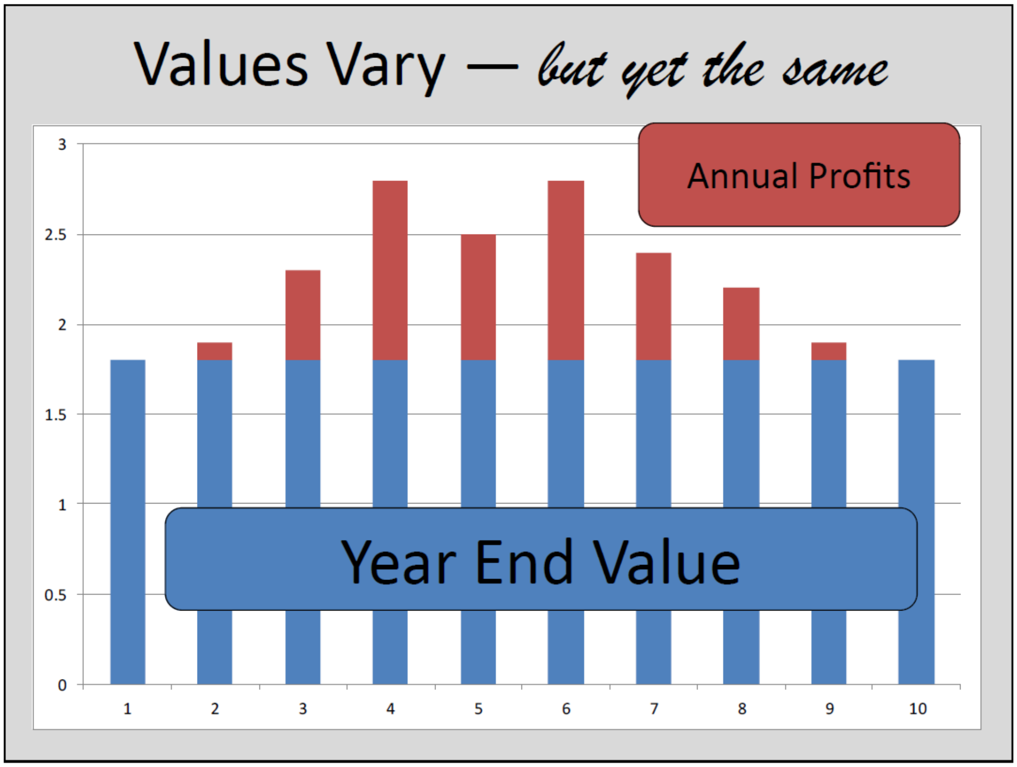
If there is no increase in value during marriage or if community efforts did not contribute to the increase (i.e., any increase was the result of the natural enhancement of the asset) does the community have any rights with respect to the business?

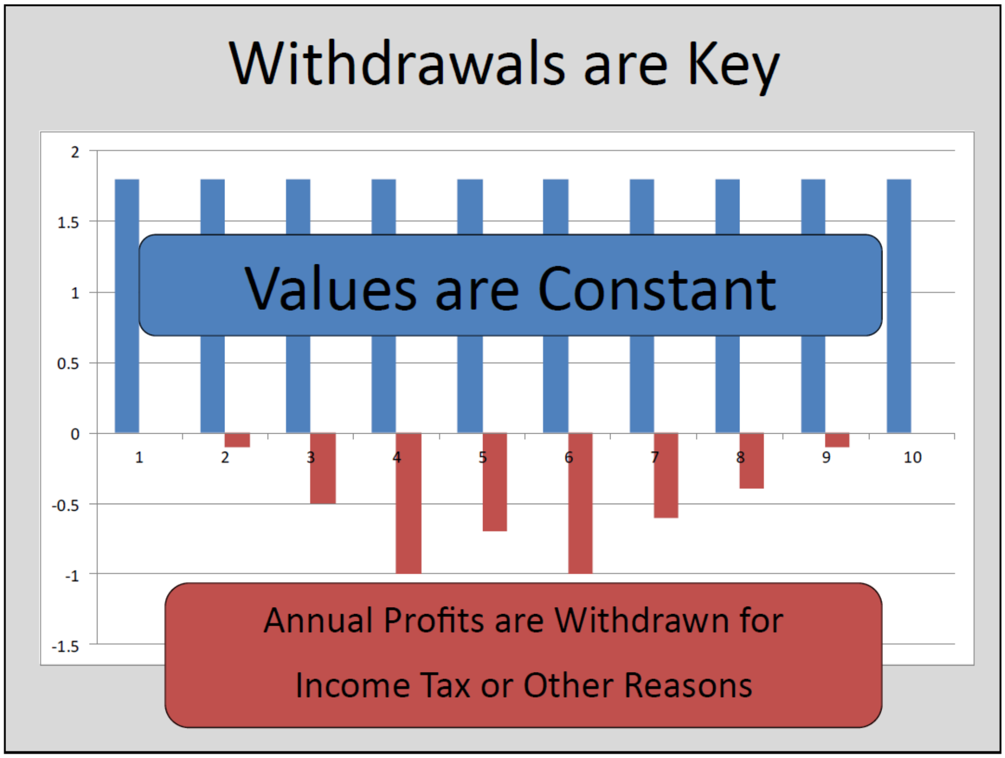
This turns on the question of what reimbursement rights, if any, the community might have for the "investment" of community efforts in operating a separate property business.

On the one hand if we apply *Moore/Marsden* type principles of reimbursement, an argument can be made that the community must be reimbursed for the reasonable value of the community services whether or not those "invested" efforts improved the value of the property. This argument would be based upon the holding of *Bono v. Clark* (2002) 103 Cal.App.4th 1409.

In *Bono v. Clark* the court was examining a claim to a *Moore/Marsden* interest in a manufactured home that was the separate property of one spouse but where community property funds had been used to "improve" the manufactured home. On appeal the matter was reversed and remanded to retry the issue of what community property rights existed as a result of the use of community funds on this manufactured home. The court of appeal held that if the evidence established that the community property funds increased the value of the manufactured home the community would be entitled to have the funds reimbursed (Step I *Moore/Marsden* reimbursement) and would







be entitled to a pro tanto share of the increase in value (Step II *Moore/Marsden* interest). But of significance was the court's holding that if the trial court on remand determined that there was no increase in the value of the manufactured home the community was nonetheless entitled to be reimbursed for community property funds used on the manufactured home. This means that even if there was not an increase in value the Step I *Moore/Marsden* reimbursement right still existed in favor of community.

If the *Bono v. Clark* principle is applied to a *Pereira/Van Camp* analysis then if the business does not increase in value or even decreases in value the community would still be entitled to reasonable compensation under the theory that when one spouse uses a community asset (here community efforts) for his own separate property, the community is entitled to restitution (i.e. reimbursement) for the value of the assets so used.

This argument is dependent on treating the time and effort of a spouse as a community <u>asset</u> whether or not it results in an increase in value of the separate property business.

Because community <u>efforts</u> are not the same as community <u>funds</u> it is questionable whether or not the *Bono v. Clark* principle should be applied in a business apportionment. This is particularly true in light of the following cases: *In re Marriage of McDuff* (1920) 48 Cal.App. 175 held that when all of the increase in value can be ascribed to the natural enhancement of the separate property and not to any improvements made through the activity, ability or capacity of the spouses *the property is to be considered all separate property.* When the court examined the facts using the *Pereira* reasonable rate of return approach the application of even a modest rate of return consumed all of the increase in value of the property and awarded no compensation at all to the community. *In re Marriage of Neilson* (1962) 57 Cal.2d 733, the court stated, "The rule that proceeds and increment in value are apportioned entirely to the husband's separate estate only when they are attributable solely to the natural enhancement of the property…" In that case the court did find that the amount of family expenses paid did reasonably compensate the community, but nonetheless the rule was stated. *In re Marriage of Ney* (1963) 512 Cal.App.2d 891, the court stated, "That the issues and profits from separate property and the increase in value thereof are separate property under Civil Code section 163 [now Family Code section 770] *and as such are not subject to the presumption the property acquired by spouses is community property.*" The court went onto to state that none of the profits arising after marriage from the use of capital that husband brings to the marriage partnership as his own separate property *can be* *apportioned to community property* as arising from the activity and personal ability of the husband where the increase in value or income is attributable solely to the natural enhancement of the property.

Applying these principles when a business does not increase in value, or actually declines in value, would seem to conflict with the *Bono v. Clark* principles used in a *Moore/Marsden* analysis.

There is, however, an entire line of cases dealing with the right of the community to be reimbursed (receive restitution) when community property is used by one spouse for his or her separate property purposes. See generally, *Complex Issues in California Family Law*, Chapter F4, *"Apportionment, Reimbursement and Other Equitable Remedies of Restitution."*

e. What is the effect of a decline in value of the business during the marriage where the business then increases in value?

Assume a business has a value of $500,000 at the date of marriage and a value of $800,000 at the date of division of property for an increase during marriage of $300,000. It would seem the issue would be how to apportion $300,000 in increase in value. But what if that business had declined in value to $200,000 within the first year or two after marriage and then rose from a low of $200,000 to $800,000 at date of division of property. Would the issue then be how to apportion the increase in value of $600,000 during the marriage? While economic logic would indicate the answer should be yes, there are two cases that confirm that logic does not always apply to family law and apportionment.

In one 1979 case a spouse who owned a separate business declared bankruptcy during the marriage and then rebuilt the business. The trial court found that the entire business was community property based on community efforts to rebuild the business from its "zero" value at the time of the bankruptcy. The court of appeal affirmed. *In re Marriage of Winn* (1979) 98 Cal.App.3d 363.

From this decision it would seem logical to conclude that if the business decreases substantially in value during the marriage and then is "rebuilt" the increase from the low point to the date of division value would be the "increase during the marriage" subject to apportionment to determine what interest the community should receive as recognition of the value of those community efforts. But not so.

In *In re Marriage of Denney* (1981) 115 Cal.App.3d 543, wife sought to introduce evidence under the *Winn* theory (supra) that her husband's business declined *to a negative value* during the marriage and therefore the rebuilding of the business during marriage was all attributable to community property. The justices however held that *Winn* should be limited to an actual declaration of bankruptcy. The court held that when the business' value at the time of separation is equal to its value at the time of marriage no evidence of community interest based on alleged decline and subsequent rise in value may be introduced. This ruling on evidence preclusion is an extremely strong statement. While there is currently no authority to support a claim that the measure of the "increase in value during the marriage" should be from the business' low point to the value at date of division, it must be remembered that under *Winn* a bankruptcy is an exception to that rule. Hopefully there will be an appropriate case, perhaps with better facts, that will provide an opportunity for the court of appeal to rethink the rule in *Denney*.

In *Denney* the evidence which wife sought to introduce was her testimony, as the manager of the donut shop, that the donut shop had decreased to a negative value during the marriage. Wife cited *In re Marriage of Winn* (supra) as the authority for her right to assert that if the business had decreased to zero during the marriage, the court should allocate all of the value of the business that had been rebuilt during the marriage to the community. Apparently the court found this to be too much work. The court stated:

> "The *Winn* decision must be limited to its facts; otherwise we can envision lengthy trials consumed by the introduction of exceedingly complex testimony concerning month-to-month fluctuations in the value of an ongoing business. The *Beam* court placed upon the trial courts the burden of determining the fair market value of a separate business at the time of marriage and again at the time of separation. It did not anticipate that the tryer of fact would be required to track the oscillations in growth or decline of a business throughout the marriage."

In reality, pursuing the theory that wife sought to pursue in *Denney* would only require the court to consider evidence of one other valuation date – the date the proponent of the community property interest asserted was the lowest valuation date during the marriage. In view of the court's obligation to determine the nature and extent of the community property, it is difficult to see how the court in *Denney* was justified in denying wife the opportunity to present this evidence simply because it involved too much work.

While discussing a different family business issue, Justice King made the following observation:

> "In the instant case, the spouses jointly operated this family business for over 15 years. The business could be awarded to one spouse with offsetting community or separate property assets used to cash out the other spouse. Under these circumstances, it would be an abuse of discretion to sell the business out from under both parties, simply because they could not agree upon its value or the one to whom it should be awarded. Those decisions are the court's responsibility. After all, such businesses do not simply represent an investment of capital; they are also an investment of sweat, toil, worry, and hopes. *No matter how difficult the decision, the trial judge must bite the bullet, value the business and award it to one of the parties. No one ever said judging was easy."* (*In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 90; emphasis supplied.)

f. What is the effect of post-separation business income allocation on child and spousal support calculations?

Pursuant to *Thatcher vs. Commissioner of Internal Revenue* (T.C. Memo 1988-537) when one spouse solely operates a community property business after separation, the post-separation business income is partially the operating spouse's separate property (Fam. Code §771) and partly community property (*In Re Marriage of Imperato* (1975) 45 Cal.App.3d 432).

When child and spousal support are calculated: a) should the post-separation business income be allocated entirely to the business-operating spouse, or b) should 50% of the community's interest in the income be allocated to the non-operating spouse? What difference does it make? Which allocation method benefits the business-operating spouse, and which allocation method benefits the non-operating spouse?

The attached summary sheet and eight DissoMaster printouts show that a support payee benefits (by receiving a higher percentage of net spendable income) if he or she is allocated 50% of the community's interest in business income.

NET SPENDABLE INCOME COMPARISON

	Monthly Business Income	Income Allocated to Payor	Income Allocated to Recip.	Payor Net Spendable Income	Recip.Net Spendable Income
1	5,000	5,000	0	49.0%	51.0%
2	**5,000**	**3,500**	**1,500**	**45.5%**	**54.5%**
3	10,000	10,000	0	49.1%	50.9%
4	**10,000**	**7,000**	**3,000**	**46.2%**	**53.8%**
5	40,000	40,000	0	53.0%	47.0%
6	**40,000**	**28,000**	**12,000**	**50.1%**	**49.9%**
7	80,000	80,000	0	53.6%	46.4%
8	**80,000**	**56,000**	**24,000**	**50.9%**	**49.1%**

8. Conclusion

The significant number of issues involved in apportionment of business interests where a separate property business is actively operated and managed by one or both of the spouses during the marriage are complex. Once the foundational questions of whether or not there has been an increase in value or profits and whether those increases and profits result from community efforts have been satisfied the next challenging issue is to determine what method of apportionment should be applied to that particular business. While the traditional approaches of *Pereira/Van Camp* are used extensively, other approaches such as the formulaic approach of *Todd v. Commissioner* may produce more logical and dependable results. The practitioner should not feel "locked in" to the *Pereira/Van Camp* approaches as the decisions have made it quite clear that the court is authorized to use any reasonable approach that will achieve substantial justice for the parties.

In analyzing apportionment issues due consideration must be given to withdrawals and distributions from the business during the marriage and assets acquired with those withdrawals. Also the character of the interest remaining after withdrawals must be considered. Significant attention needs to be paid to the "gray area" and the development and presentation of evidence to convince your family law judicial officer as to how that gray area should be allocated to best serve the interests of your client.

It is also important to consider whether or not treating the business as a single asset, instead of a group of assets, will overlook opportunities to more precisely analyze the factors contributing to the growth of the component parts of the business and the application of more customized rates of return to the various component parts.

Business apportionment can be one of the most contentious, and certainly the most expensive, property issues that we as family law practitioners deal with. It is the complexity and expense of business apportionment issue that creates a demand for premarital agreements.

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Take-Aways

A SP business actively run during the marriage gives rise to complex issues.

1. Fundamentals: Was there an increase in value of the business? Did community efforts contribute to the increase?

2. But—don't forget withdrawals!

3. Which method of apportionment? Don't feel married to *Pereira, Van Camp or Todd.*

4. Be sure to consider a business rebuilt during marriage.

5. Be prepared for the battle over the "Gray Area".

6. Is the business more than just a single asset, such that multiple rates of return are appropriate?

7. Should certain assets (like land) be carved out completely?

8. Business apportionment is one of the most contentious and expensive issues we deal with. For that reason it is the centerpiece of many prenups.

- End of Analysis -

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY *(NAME AND ADDRESS)*: TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$5,000/mo Income** **All to Operator/Payor**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	5,000	0
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	3,983
Payee	(16)
Total	3,967
Support	
Presumed	872
Basic CS	872
Add-ons	0
Per Kid	
Child 1	872
Santa Clara SS	1,167
Total	2,039
Proposed, tactic 9	
Presumed	872
Basic CS	872
Add-ons	0
Per Kid	
Child 1	872
Santa Clara SS	1,167
Total	2,039
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(1,689)	2,023
Net spendable income	1,944	2,023
% of combined spendable	49%	51%
Total taxes	1,017	16
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(1,689)	2,023
Net spendable income	1,944	2,023
NSI change from gdl	0	0
% of combined spendable	49%	51%
% of saving over gdl	0%	0%
Total taxes	1,017	16
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO:	
Lee Lawyer Lawyer and Howe 333 Third Avenue Local, California 99999 ATTORNEY FOR:	**$5,000/mo Income** **Allocated Between Parties**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	3,500	1,500
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	2,809
Payee	1,454
Total	4,263
Support	
Presumed	567
Basic CS	567
Add-ons	0
Per Kid	
Child 1	567
Santa Clara SS	305
Total	872
Proposed, tactic 9	
Presumed	567
Basic CS	567
Add-ons	0
Per Kid	
Child 1	567
Santa Clara SS	305
Total	872
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(807)	792
Net spendable income	1,938	2,325
% of combined spendable	45.5%	54.5%
Total taxes	691	46
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(807)	792
Net spendable income	1,938	2,325
NSI change from gdl	0	0
% of combined spendable	45.5%	54.5%
% of saving over gdl	0%	0%
Total taxes	691	46
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$10,000/mo Income** **All to Operator/Payor**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	10,000	0
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	7,025
Payee	(123)
Total	6,902
Support	
Presumed	1499
Basic CS	1,499
Add-ons	0
Per Kid	
Child 1	1,499
Santa Clara SS	2,134
Total	3,633
Proposed, tactic 9	
Presumed	1499
Basic CS	1,499
Add-ons	0
Per Kid	
Child 1	1,499
Santa Clara SS	2,134
Total	3,633
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(2,856)	3,510
Net spendable income	3,391	3,510
% of combined spendable	49.1%	50.9%
Total taxes	2,975	123
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(2,856)	3,510
Net spendable income	3,391	3,510
NSI change from gdl	0	0
% of combined spendable	49.1%	50.9%
% of saving over gdl	0%	0%
Total taxes	2,975	123
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (*NAME AND ADDRESS*): TELEPHONE NO: **Lee Lawyer** **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$10,000/mo Income Allocated Between Parties**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	7,000	3,000
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	4,940
Payee	2,258
Total	7,198
Support	
Presumed	946
Basic CS	946
Add-ons	0
Per Kid	
Child 1	946
Santa Clara SS	670
Total	1,616
Proposed, tactic 9	
Presumed	946
Basic CS	946
Add-ons	0
Per Kid	
Child 1	946
Santa Clara SS	670
Total	1,616
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(1,363)	1,473
Net spendable income	3,324	3,874
% of combined spendable	46.2%	53.8%
Total taxes	2,060	742
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(1,363)	1,473
Net spendable income	3,324	3,874
NSI change from gdl	0	0
% of combined spendable	46.2%	53.8%
% of saving over gdl	0%	0%
Total taxes	2,060	742
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (*NAME AND ADDRESS*): TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$40,000/mo Income** **All to Operator/Payor**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	40,000	0
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	27,885
Payee	(2,784)
Total	25,101
Support	
Presumed	3501
Basic CS	3,501
Add-ons	0
Per Kid	
Child 1	3,501
Santa Clara SS	11,074
Total	14,575
Proposed, tactic 9	
Presumed	3501
Basic CS	3,501
Add-ons	0
Per Kid	
Child 1	3,501
Santa Clara SS	11,074
Total	14,575
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(10,417)	11,791
Net spendable income	13,310	11,791
% of combined spendable	53%	47%
Total taxes	12,115	2,784
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(10,417)	11,791
Net spendable income	13,310	11,791
NSI change from gdl	0	0
% of combined spendable	53%	47%
% of saving over gdl	0%	0%
Total taxes	12,115	2,784
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$40,000/mo Income** **Allocated Between Parties**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	28,000	12,000
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	18,000
Payee	6,257
Total	24,257
Support	
Presumed	2140
Basic CS	2,140
Add-ons	0
Per Kid	
Child 1	2,140
Santa Clara SS	3,715
Total	5,855
Proposed, tactic 9	
Presumed	2140
Basic CS	2,140
Add-ons	0
Per Kid	
Child 1	2,140
Santa Clara SS	3,715
Total	5,855
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(4,349)	4,399
Net spendable income	12,145	12,112
% of combined spendable	50.1%	49.9%
Total taxes	10,000	5,743
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(4,349)	4,399
Net spendable income	12,145	12,112
NSI change from gdl	0	0
% of combined spendable	50.1%	49.9%
% of saving over gdl	0%	0%
Total taxes	10,000	5,743
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$80,000/mo Income** **All to Operator/Payor**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	80,000	0
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	56,951
Payee	(8,710)
Total	48,241
Support	
Presumed	6145
Basic CS	6,145
Add-ons	0
Per Kid	
Child 1	6,145
Santa Clara SS	24,934
Total	31,079
Proposed, tactic 9	
Presumed	6145
Basic CS	6,145
Add-ons	0
Per Kid	
Child 1	6,145
Santa Clara SS	24,934
Total	31,079
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(20,804)	22,369
Net spendable income	25,872	22,369
% of combined spendable	53.6%	46.4%
Total taxes	23,049	8,710
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(20,804)	22,369
Net spendable income	25,872	22,369
NSI change from gdl	0	0
% of combined spendable	53.6%	46.4%
% of saving over gdl	0%	0%
Total taxes	23,049	8,710
# withholding allowances	0	0
Net wage paycheck/mo	0	0

ATTORNEY, AGENCY, OR PARTY WITHOUT ATTORNEY *(NAME AND ADDRESS)* TELEPHONE NO:	
Lee Lawyer **Lawyer and Howe** **333 Third Avenue** **Local, California 99999** ATTORNEY FOR:	**$80,000/mo Income** **Allocated Between Parties**
DISSOMASTER REPORT 2010, Monthly	CASE NUMBER:

Input Data	Payor	Payee
Number of children	0	1
% time with NCP	20%	0%
Filing status	Single	HH/MLA
# Federal exemptions	2	1
Wages + salary	0	0
Self-employment income	56,000	24,000
Other taxable income	0	0
TANF plus CS received	0	0
Other nontaxable income	0	0
New-spouse income	0	0
Wages + salary	0	0
Self-employment income	0	0
SS paid other marriage	0	0
Retirement contrib if ATI	0	0
Required union dues	0	0
Nec job-related exp.	0	0
Adj. to income (ATI)	0	0
SS paid other marriage	0	0
CS paid other relationship	0	0
Health insurance	0	0
Itemized deductions	0	0
Other medical expenses	0	0
Property tax expenses	0	0
Ded. interest expense	0	0
Charitable contribution	0	0
Miscellaneous itemized	0	0
Required union dues	0	0
Mandatory retirement	0	0
Hardship deduction	0*	0*
Other gdl. deductions	0	0
AMT info (IRS Form 6251)	0	0
Child support add-ons	0	0

Guideline (2010)	
Nets (adjusted)	
Payor	36,534
Payee	11,058
Total	47,592
Support	
Presumed	3875
Basic CS	3,875
Add-ons	0
Per Kid	
Child 1	3,875
Santa Clara SS	8,424
Total	12,299
Proposed, tactic 9	
Presumed	3875
Basic CS	3,875
Add-ons	0
Per Kid	
Child 1	3,875
Santa Clara SS	8,424
Total	12,299
Combined Savings	0
No releases	
Default Case Settings	

Cash Flow Analysis	Payor	Payee
Guideline		
Payment (cost)/benefit	(8,841)	9,006
Net spendable income	24,235	23,357
% of combined spendable	50.9%	49.1%
Total taxes	19,466	12,942
# withholding allowances	0	0
Net wage paycheck/mo	0	0
Proposed		
Payment (cost)/benefit	(8,841)	9,006
Net spendable income	24,235	23,357
NSI change from gdl	0	0
% of combined spendable	50.9%	49.1%
% of saving over gdl	0%	0%
Total taxes	19,466	12,942
# withholding allowances	0	0
Net wage paycheck/mo	0	0

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Family Law Forensic Accounting Jim@SchaeferCPA.com www.SchaeferCPA.com