Trading Places:

Pereira/Van Camp

and Moore/Marsden.

What Would Eddie Murphy
and Dan Aykroyd Do?

AAML SoCal
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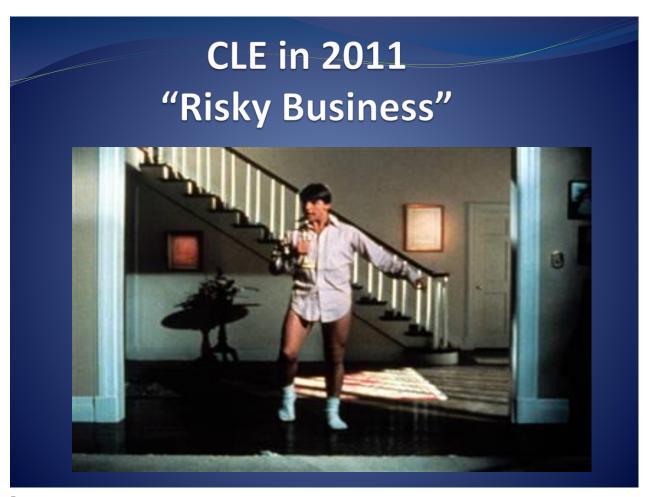
You'll learn some stuff . . .

- How Moore/Marsden principles apply to real estate parcels <u>and to businesses</u> that have increased in value primarily due to <u>marital funds</u>
- How Pereira/Van Camp principles apply to businesses and to real estate parcels that have increased in value primarily due to marital efforts
- 3. How income generated by a *Moore/Marsden* asset is a **combination of SP and CP** (*Moore, Mohler*)
- 4. How income generated by a *Pereira/Van Camp* asset is **entirely SP** (*Brandes*)
- 5. How to apply **both** *Moore/Marsden* principles **and** *Pereira/Van Camp* principles to a single business

Program Outline

- 1. Introduction
- 2. Moore/Marsden, Pereira/Van Camp principles
- 3. Four Family Law Property Permutations
- 4. Characters of Business Income
- 5. *M/M* for a Business called "Wanda's Hoagies"
- 6. PVC for a Blackacre called "Wanda's Rezone"
- 7. M/M and PVC for a business called "Harold's Two-Cut"





Risky Business: What Would Tom Cruise Do?



Robert E. Blevans CFLS, AAML, IAFL

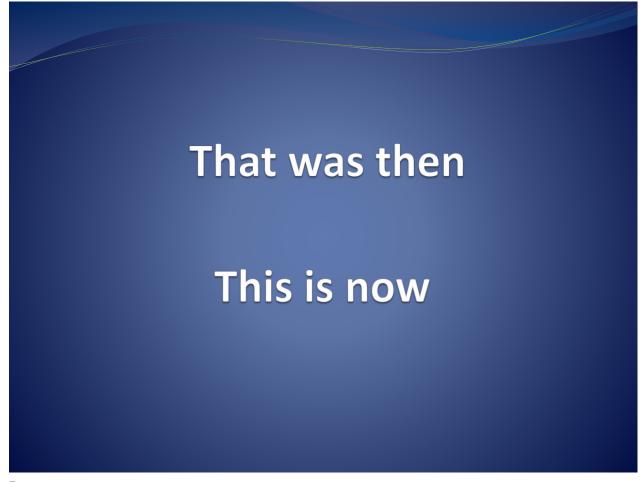
Ronald S. Granberg CFLS, AAML, IAFL



May 14, 2011 Symposium

AAML Northern California Chapter

(subsequently presented at six other venues)



Trading Places:

Pereira/Van Camp
and Moore/Marsden.

What Would
Eddie Murphy and
Dan Aykroyd Do?

Our program acronyms:

Moore/Marsden "M/M"

Pereira/Van Camp "PVC"

(BTW - 3 of Ron's Favorite Malapropisms):

I declare "under plenty of perjury"

Please run a "Ditzo-Master"

"I know all about *Piranha/Van Camp"*

IRMO Moore (1980) 113 Cal.App.3d 22

Question:

Did *Moore* hold that a *M/M* right is a

CP ownership interest

in the SP real estate?

Answer:

YES:

IRMO Moore

"Although the trial court designated the community's interest as an 'equitable charge on/right,' it is clear under California law that the interest is properly characterized as a community property interest in the house.

(at p. 371, fn. 1, emphasis added.)

IRMO Brandes (2015) 239 Cal.App.4th 1461

Question:

Did *Brandes* hold that a *PVC* right <u>similarly</u> is a

CP <u>ownership interest</u>

in the SP business?

Answer:

NO! Just the opposite:

IRMO Brandes

"Linda continues to conflate issues of ownership and equitable allocation. Until the community interest under *Pereira* was calculated at the time of dissolution, it was merely theoretical; it was not in the nature of a capital contribution made by the community to [the business]. ... the community does not obtain an ownership interest in a spouse's separate business." (p. 1478, emphasis added.)

meet the spouses . . .





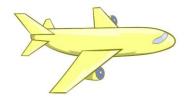
Wanda

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Harold's SP assets



Real Estate "Harold's Apartments"



Business "Harold's Transport"

CP FUNDS paid down the Apartments' mortgage







Harold

Wanda

Harold's marital **EFFORTS** increased Transport's value







Harold's Transport



Wanda

Harold's SP assets benefited from FUNDS and EFFORTS:

Harold's Apartments



Marital FUNDS

Harold's Transport







When CP funds are contributed to SP real estate

IT'S CLASSIC M/M

Harold's Apartments



CP FUNDS

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When marital efforts are applied to a SP business

IT'S CLASSIC PVC

Harold's Transport



MARITAL EFFORTS

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Is this the principal principle?

The M/M Doctrine

applies to

Real Estate

The **PVC**Doctrine

applies to

Business Entities

Or is this the principal principle?

The M/M Doctrine

applies to use of

Marital FUNDS

The **PVC**Doctrine

applies to use of

Marital
EFFORTS

We hope to convince you:

The M/M Doctrine

applies to use of

The **PVC**Doctrine

applies to use of



"Just a minute here, counselor...

...are you suggesting that if marital FUNDS...

...are contributed to SP BUSINESS...

...I should adjudicate the parties' interests under...



Judge Wise



M/M ... not PVC?"



"Yes, Your Honor"

M/M is proper whenCP FUNDSare contributed

"Are you also suggesting that if marital **EFFORTS**...

...are applied to SP **REAL ESTATE**...

...I should adjudicate the parties' interests under...



Judge Wise

PVC ... not M/M?"



"Yes again, Your Honor"

PVC is proper when **CP EFFORTS** are applied



Funds

Efforts

Blackacre

Business

Funds



Harold's Apartments

Efforts

Blackacre

Business

Funds

CP funds contributed to SP real estate

Efforts

Blackacre

Business

Funds

Classic *M/M*

Efforts

Funds

Efforts



Harold's Transport

Funds

Efforts

CP efforts
applied to SP
business

Funds

Efforts

Classic *PVC*

Blackacre

Business

Funds



Wanda's Hoagies

Efforts

Blackacre

Business

Funds

CP funds contributed to SP business

Efforts

Blackacre B

Business

Funds

"Novel *M/M"*

Efforts

Blackacre Business

Funds

Efforts



Wanda's Rezone

Blackacre Business

Funds

Efforts

CP efforts
applied to SP
real estate

Blackacre Business

Funds

Efforts "Novel PVC"

consider concepts applicable to a parcel of **REAL ESTATE**:



CP HSP WSP M/M







consider concepts applicable to a **BUSINESS**:



CP HSP WSP PVC









to what extent does the **character** of a **CP** *M/M* interest in a real estate parcel



determine the character of the parcel's rental income?



to what extent does the **character** of a business



determine the character of its profits?



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to what extent does the **character** of a cow



determine the character of its milk?





Let's hear some of Judge Wise's rulings in Wanda's and Harold's divorce trial . . .



Harold's and Wanda's marital bliss lasted 4 years: from their 1/1/17 DOM through their 12/31/20 DOS:

2017, 2018, 2019, 2020



Judge Wise



Harold's Apartments

Judge Wise ruled that by the end of the four-year marital period, the Community had acquired a 20% *M/M* pro tanto ownership interest in Harold's Apartments.

Non-Separatizer Wanda says:

"OKEY DOKEY"





Judge Wise

\$400k



Bank One

Now let's see how Judge Wise ruled regarding the \$400k on deposit in Bank One



\$400k



Bank One

"Wait a minute!

what \$400k on
deposit in Bank One?!"

(Oops, we forgot. Let us explain . . .)

Harold and Wanda saved all the net rent that Harold's Apartments earned during their 4 blissful years



Each year Harold's Apartments earned \$100k in after-tax rent, which the parties deposited in Bank One

4 years @ \$100k per year = \$400k



\$400k →

Apartment net rent



Bank One



Judge Wise

\$400k



Bank One

Now you understand that the \$400k on deposit in Bank One . . .

... is the accumulated net rental income of Harold's Apartments

(earlier question repeated):

to what extent does the <u>character</u> of a **CP** *M/M* interest in a real estate parcel



determine the character
of the parcel's rental income?



specifically:

to what extent does the **character** of the **CP** *M/M* **interest** in Harold's Apartments



determine the character of the \$400k in Bank One?



IRMO Dekker (1993) 17 Cal.App.4th 842

"It is well settled in California that income produced by an asset takes on the character of the asset from which it flows. Thus, rents, issues and profits are community property if derived from community assets, and separate property if derived from separate assets." (at p. 851.)

IRMO Moore

"Although the trial court designated the community's interest as an 'equitable charge on/right,' it is clear under California law that the interest is properly characterized as a community property interest in the house. (at p. 371, fn. 1, emphasis added.)

IRMO Mohler (2020) 47 Cal.App.5th 788

The community owned an ~34% *M/M* interest in HSP Blackacre.

H occupied his Blackacre for six postseparation years.

HELD: H owed the community *Watts* charges equal to an ~34% of Blackacre's net fair rental value.

In accordance with Dekker and Mohler:

In *M/M*, the character of the cow

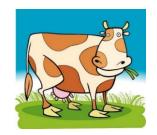


DOES
determine the
character
of its milk



In accordance with Dekker and Mohler:

the M/M
partial CP
character
of the cow



determines the partial CP character of its milk



In accordance with *Dekker and Mohler*:

the *M/M*partial CP
character
of Apartments



determines the partial CP character of the rent



Judge Wise ruled that by 2020 (the last marital-period year) the community had acquired a 20% *M/M* pro tanto ownership interest in Harold's Apartments.



Therefore, by 2020 the community also had acquired a **20%** *M/M* pro tanto ownership interest in the \$400k in Bank One.



Let's calculate the Community's year-by-year increasing *M/M* ownership interest . . .



... in the \$400k in Bank One.



Year	Deposit	<i>M/M</i> CP %	CP
2017		x 5% =	
2018		x 10% =	
2019		x 15% =	
2020		x 20% =	

Year	Deposit	<i>M/M</i> CP %	CP
2017	\$100k	x 5% =	\$5k
2018	\$100k	x 10% =	\$10k
2019	\$100k	x 15% =	\$15k
2020	\$100k	x 20% =	<u>\$20k</u>
		CP total	\$50k
	Wanda receives		

Non-Separatizer Wanda says:

"OKEY"

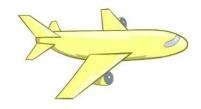




Let's hear another of Judge Wise's rulings in Wanda's and Harold's trial

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Judge Wise

Harold's Transport

Judge Wise decided that the Community would receive a \$200k *PVC* compensating payment regarding Harold's Transport.

Therefore, Wanda will receive \$100k.

Non-Separatizer Wanda says:

"OKEY"





\$400k



Bank Two

Now let's see how Judge Wise ruled regarding the \$400k on deposit in Bank Two



\$400k



Bank Two

"Wait a minute!

what \$400k on
deposit in Bank Two?!"

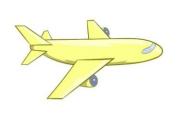
(Oops, we forgot. Let us explain . . .)

Harold and Wanda saved all the net after-tax profit that Harold's Transport earned during their 4 blissful years



Each year Harold's Transport earned \$100k in after-tax profit, which the parties deposited in Bank Two

4 years @ \$100k per year = \$400k



\$400k

Transport net profit



Bank Two



Judge Wise

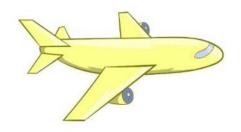


Bank Two

Now you understand that the \$400k on deposit in Bank Two . . .

... is the accumulated net profit of Harold's Transport

to what extent does the **character** of a business

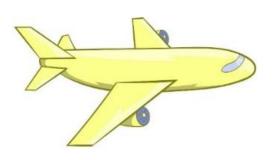


determine the character of its profits?



To what extent does the adjudicated \$200k CP

PVC compensating payment regarding Harold's Transport . . .



... determine the character of the \$400k in Bank Two?



IRMO Brandes

"Linda continues to conflate issues of ownership and equitable allocation. Until the community interest under *Pereira* was calculated at the time of dissolution, it was merely theoretical; it was not in the nature of a capital contribution made by the community to [the business]. ... the community does not obtain an ownership interest in a spouse's separate business." (p. 1478, emphasis added.)

Year Deposit PVC interest CP

2017 x 0% =

x 0% =

x 0% =

2020 x 0% =

Year	Deposit	PVC interest	CP	
2017	\$100k	x 0% =	\$0k	
2018	\$100k	x 0% =	\$0k	
2019	\$100k	x 0% =	\$0k	
2020	\$100k	x 0% =	<u>\$0k</u>	
		CP total	\$0k	
Wanda receives				

Non-Separatizer Wanda says:

"WAIT, WHAT?!"



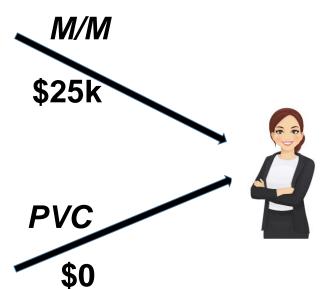


Here's the question for all you legal eagles . . .

Did Judge Wise err in awarding Wanda \$25k from Bank One . . .



One



. . . or **err** in awarding her \$0 from Bank Two?



Two



... the envelope, please ...

Judge Wise was right twice!



The community had an increasing *M/M* pro tanto **ownership interest** in the Harold's Apartments' rent (*Moore*) . . .

... but only an end-of-trial right to a mere **PVC compensating payment** regarding Harold's Transport (*Brandes*)!

Judge Wise was right twice!



The Community had a **\$50k** *M/M* ownership interest
in the \$400k in Bank One!



Bank One

The Community had <u>NO</u> **PVC "ownership interest"**in the \$400k in Bank Two!



Bank Two



Well played, Judge Wise!



The time has come for us to think "outside the box."

Next up:

Novel *M/M* for this Business



"Wanda's Hoagies"

Novel *PVC* for this Blackacre



"Wanda's Rezone"

Wanda's SP assets



Business "Wanda's Hoagies"



Real Estate "Wanda's Rezone"



Where we've been:

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Blackacre

Funds



Harold's Apartments

Blackacre

Funds Classic M/M

Business

Efforts



Business

Efforts

Classic *PVC*



Where we're headed:

Business

Funds



Wanda's Hoagies

Business

Funds

"Novel *M/M"*

Blackacre





Wanda's Rezone

Blackacre

Efforts "Novel PVC"



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Just before DOM, Wanda bought a functioning sandwich shop for \$200k (\$150k down payment with a \$50k loan).

During marriage, CP paid off the \$50k loan.

No CP efforts were used (manager ran shop).

During marriage, business value 1 by \$400k.

So, for this WSP **BUSINESS**:

CP **FUNDS** were used.

CP EFFORTS were not used.

	FMV	Mort.	Equity
DOM	200k		
Mrg.			
DOT			

	FMV	Mort.	Equity
DOM	200k	50k	
Mrg.			
DOT			

	FMV	Mort.	Equity
DOM	200k	50k	150k
Mrg.			
DOT			

	FMV	Mort.	Equity	
DOM	200k	50k	150k	
Mrg.		<u>(50k)</u>		(
DOT				

	FMV	Mort.	Equity
DOM	200k	50k	150k
Mrg.		<u>(50k)</u>	
DOT		0	

	FMV	Mort.	Equity
DOM	200k	50k	150k
Mrg.	<u>400k</u>	<u>(50k)</u>	
DOT		0	

	FMV	Mort.	Equity
DOM	200k	50k	150k
Mrg.	<u>400k</u>	<u>(50k)</u>	
DOT	600k	0	

	FMV	Mort.	Equity
DOM	200k	50k	150k
Mrg.	<u>400k</u>	<u>(50k)</u>	
DOT	600k	0	600k

Let's do the Wanda's Hoagies Moore/Marsden calculation together, shall we?

"You bet! - sounds fun!"

The Moore/Marsden two-step

Step I:

The community is reimbursed its **\$50k** loan principal payment.

Step II: CP pro tanto share The community receives part of Hoagies' **\$400k** during-marriage appreciation, calculated by pro tanto fraction:

Numerator. Community's **\$50k** loan principal payment (i.e., Step I).

Denominator. Hoagies' \$200k purchase price/DOM value.

The Moore/Marsden two-step

Step I:

The community is reimbursed its **\$50k** loan principal payment.

Step
II:
CP
pro
tanto
share

The Community's pro tanto share of Hoagies' during-marriage appreciation:

<u>\$50k</u> x \$400k = \$100k \$200k

Total CP Share



Step I: \$50k

Step II: <u>\$100k</u>

CP Share: \$150k



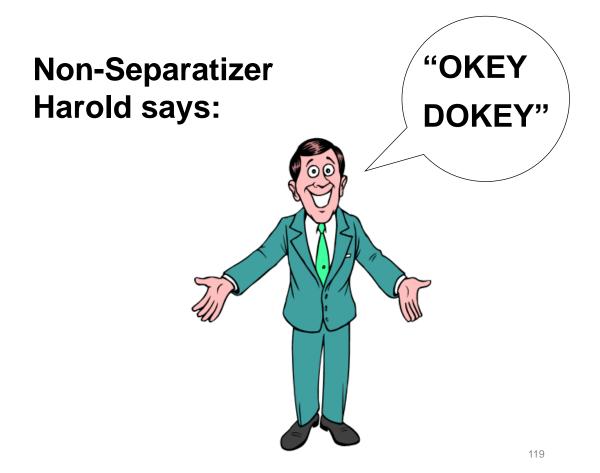
Thus, Judge Wise calculated the Community's *M/M* amount as **\$150k**.

The Community is entitled to:

\$150k

Harold is entitled to:

\$75k



(NOTE: Judge Wise could not have resolved Wanda's Hoagies with *PVC*...



... because no marital efforts had been applied to the business!)

Do you recall Judge Wise's skepticism?



Judge Wise

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"Just a minute here, counselor...

...are you suggesting that if marital FUNDS...

...are contributed to SP BUSINESS...

...I should adjudicate the parties' interests under...



Judge Wise



M/M ... not PVC?!"



"Yes, Your Honor"

M/M is proper whenCP FUNDSare contributed

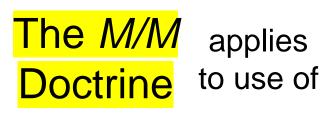
"You have convinced me that your position is correct."



Judge Wise

"Nicely played, Counselor!"

Remember we sought to convince you:









to use of



Irrespective of whether the FUNDS were contributed:

- to a Blackacre or
- to a Business!

Just Remember:



Wanda's Hoagies

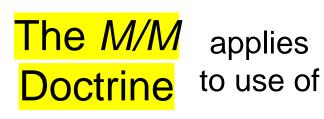
"obiter" =
"incidental,"
"on the side"

"dictum" = "statement"

(interlude) (meditation on *obiter dictum*)

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Granberg and Blevans are attempting to convince you that:





Even if the FUNDS are contributed to a **Business!**

But wait just a minute, Messrs. Smarty Pants!



Didn't the *Alacer II* Court of Appeal specifically hold that its trial court would have acted <u>inappropriately</u> if it had used a *M/M* approach—instead of the *PVC* approach it actually used—regarding Alacer Corp?

Admittedly, it did.

But listen to the Alacer II language:

Alacer II:

"[W] contends she should receive a protanto interest in Alacer. She relies on [M/M] case law giving the community a protanto interest in separate property—real property, typically—purchased, paid down, or improved with community funds."

Alacer II:

"But using the *Moore/Marsden* approach here would conflict with the prevailing approach used when a separate property business is improved by the devotion of community efforts—equitable apportionment using *Pereira* or *Van Camp*. * * * The [trial] court did not err by declining to extend the *Moore/Marsden* approach to this set of facts. (pp. 1343-1344, emphasis added.)

"... prior decisions are controlling only as to cases presenting the same factual situation"

Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1157

Alacer II factual situation:



Marital efforts applied to a SP business

Wanda's Hoagies factual situation:



Marital **funds** applied to a SP business

If we re-read Alacer II:

"But using the *Moore/Marsden* approach <u>here</u> would conflict with the prevailing approach used when a separate property business is improved by the devotion of <u>community</u> <u>efforts</u>—equitable apportionment using *Pereira* or *Van Camp*. * * * The [trial] court did not err by declining to extend the *Moore/Marsden* approach <u>to this set of facts</u>. (pp. 1343-1344, emphasis added.)

If the Alacer II Court of Appeal . . .

result should have been **if marital funds** (instead of **marital efforts**) had
been contributed to Alacer Corp. . . .

. . . the Court would have been uttering mere **obiter dicta**.

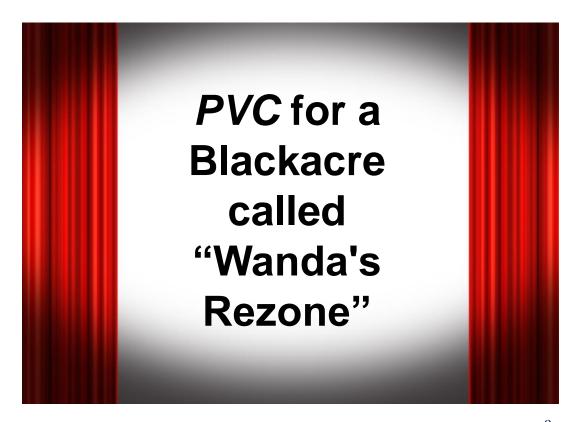
It is clear that *Alacer II* is **inapposite** to Wanda's Hoagies.

Please don't attempt to use *Alacer II*

(which concerned marital efforts)

as authority opposing our above analysis of Wanda's Hoagies

(which concerns marital funds)



Blackacre





Wanda's Rezone

Blackacre

Efforts "Novel PVC"

Wanda's Rezone

Wanda inherited slum real estate worth \$100,000 (no mortgage).



After much effort during marriage (using her incredible skills as a land use attorney) Wanda succeeded in getting the property rezoned.

Due to rezoning, Wanda sold it for \$1,100,000.

So, for this WSP **REAL ESTATE**:

CP **EFFORTS** were used.

CP **FUNDS** were <u>not</u> used.







Judge Wise considered the **\$1M** increase in Rezone's value that resulted from Wanda's marital efforts.

Judge Wise applied *Pereira* – not *Van Camp* – to the value increase.

Of course, pursuant to *Pereira*Wanda was entitled to receive an interest-rate "return on investment" ("ROI") on her \$100k SP real estate.





Judge Wise had choices regarding the interest rate:

7%?

10%?

5%?

simple interest?

14%?

compound interest?

For easy calculation, give Wanda a 10% per annum simple interest ROI:

 $100k \times 10\% \times 4 \text{ years} = 40k$

Rezone's value increase \$1,000,000

less: Wanda's ROI (\$40,000)

equals: Compensating \$960,000 payment to Community



Judge Wise calculated the Community's end-of-trial PVC Compensating Payment at \$960k.

The Community is entitled to:

\$960k

Harold is entitled to:

\$480k



(NOTE: Judge Wise could not have resolved Wanda's Rezone with M/M...



... because no marital funds had been contributed to the real estate!)

Do you recall Judge Wise's skepticism?



Judge Wise

150

"Are you suggesting that if marital **EFFORTS**...

...are applied to SP **REAL ESTATE**...

...I should adjudicate the parties' interests under...



Judge Wise

PVC ... not M/M?!"



"Yes, Your Honor"

PVC is proper when **CP EFFORTS** are applied

"You have convinced me that your position is correct."



Judge Wise

"Nicely played, Counselor!"

Remember we sought to convince you:

THIS IS THE PRINCIPAL PRINCIPLE!



The PVC applies

Doctrine to use of



Irrespective of whether the EFFORTS were applied:

- to a Business or
- to a Blackacre!

The PVC applies

Doctrine to use of



Just Remember:

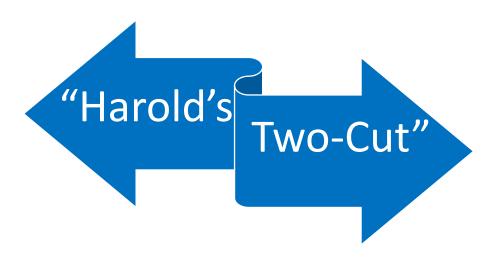


Wanda's Rezone



We now consider our fifth – and final – divorce asset:

Harold's SP service business called "Harold's Two-Cut."



During marriage:

Harold's and Wanda's' **CP FUNDS** paid down the premarital loan that Harold had used to acquire Two-Cut, <u>and</u>

Harold's **MARITAL EFFORTS** substantially increased the value of Two-Cut.

Therefore, Harold's Two-Cut is subject to **both** a *M/M* CP claim and a *PVC* CP claim.

Question: Should the M/M or the PVC

calculation be performed first?

Answer: The *M/M* calculation.

Reason:

PVC determines the compensating payment due to the Community **from a SP business**.

M/M will have already awarded the Community a partial **CP ownership interest** in that business.

The PVC compensating payment should come only from the portion of the business that M/M has not already made CP!

During marriage, Harold's Two-Cut's value increased by \$500k.

Judge Wise's three-part allocation:



CP portion (M/M)



CP payment(PVC)





Judge Wise first made these *M/M* rulings:

M/M Step I: CP loan principal payments

\$50k

M/M Step II: CP's pro tanto share of the during-marriage value increase

+ \$150k

this portion of the \$500k during-marriage value increase has thus been adjudicated CP

CP's total M/M

\$200k

The Community's \$200k M/M amount has been calculated.

Now let's calculate the Community's **PVC** compensating payment.

During-marriage value increase \$500k

Less: M/M Step II ownership share the Community already received (\$150k)

Subject to the *PVC* compensating payment due to the Community \$350k



Do not permit the Community to

DOUBLE DIP

your SP business' duringmarriage value increase!

Separatizer Beware!



Do not permit the Community to take a second "PVC slice" of the \$150k it already received

your SP business' duringmarriage value increase!

as its "M/M slice" of







Judge Wise applied *Pereira* to the **\$350k** portion of Two-Cut's value increase that was subject to the PVC compensating payment.

Harold's \$562,500 beginning SP value entitled him to a return on investment of (\$562,500 *times* 10% per annum *times* 4 years *equals*) \$225,000.

Two-Cut value increase subject to *PVC* compensating payment

\$350,000

less: Harold's ROI

(\$225,000)

equals: Compensating payment to Community

\$125,000

Allocation of Two-Cut's' **\$500k** during-marriage value increase:

To Community (M/M)	\$200k
To Community (PVC)	\$125k
Remainder to Harold	<u>+ 175k</u>

During-marriage value increase \$500k

What the Community gets, what Wanda gets

to Community (M/M)



\$200,000

to Community (PVC)



+ \$125,000

to Community (total)

\$325,000

to Wanda

\$162,500

Non-Separatizer Wanda says:

"OKEY"



You learned some stuff . . .

- How Moore/Marsden principles apply to real estate parcels <u>and to businesses</u> that have increased in value primarily due to <u>marital funds</u>
- 2. How *Pereira/Van Camp* principles apply to businesses <u>and to real estate parcels</u> that have increased in value primarily due to marital efforts
- 3. How income generated by a *Moore/Marsden* asset is a **combination of SP and CP** (*Moore, Mohler*)
- 4. How income generated by a *Pereira/Van Camp* asset is **entirely SP** (*Brandes*)
- 5. How to apply **both** *Moore/Marsden* principles **and** *Pereira/Van Camp* principles to a single business