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QUESTION 1
Crimes
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 1

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OUTLINE OF ANSWER

The task was to list the crimes committed. The crimes were as follows:

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Solicitation of Eric

- a Define Solicitation
- b “Dan subsequently informed Eric ... of his plan to take all of her computers while she was away.”
- c This is not really a solicitation because it is not a request, nor encouragement, nor incitement to induce Eric to commit a crime
- d To solicit Eric, Dan would have to inform Eric with the *specific intent* that Eric join him in the crime
- e The state would have to prove this *specific intent* beyond a reasonable doubt
- f The state may claim that Eric's answer, that he wanted nothing to do with the computers, shows that Eric thought he was being solicited
- f While this is some evidence of Dan's specific intent, it does not prove Dan's intent to solicit Eric, beyond a reasonable doubt
- g Solicitation was not committed

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Conspiracy Between Dan and Eric, or Dan and Fred

- a Define Conspiracy
- b Dan and Eric did not form an agreement to commit the target crime (burglary)
- c Dan and Fred did agree to commit the crime of receiving stolen property, but under the Wharton rule there was no conspiracy because both parties are needed to commit the basic crime
- d For the same reason, there was no conspiracy to obstruct justice

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Accessory = Accomplice = Aiding and Abetting (By Eric)

- a Define Accessory
- b Elements are easily satisfied except did Eric loan Dan the truck with the intent that the crime be committed, or was Eric indifferent to Dan's use of his truck. Address both sides.

Assault of Vickie

- a Obvious

Battery of Vickie

- a Obvious

Burglary of Vickie's Dwelling

- a Define Burglary

- b Dwelling of another-Curtlidge discussion required. Explain that the garage was within the curtledge because Vickie entered the garage directly from the house via a “connecting door”
- c Breaking – Discussion required - Dan pushed a “partially open slide door”
- d Night time - “Late that night”
- e Entry -Dan “Went into the garage”
- f Intent- Dan announced his intent

Robbery of Vickie

- a Define – Larceny by violence or intimidation
- b Violence - Argue that Dan “pushed Vickie out of the way, ran to the truck, and drove off” is an act of violence (The pushing part)
- c Also argue that one the one hand, the computers were not *acquired* by violence since they were already in the truck and arguably under Dan's control when he pushed Vickie. On the other hand, the truck was still in the garage, so perhaps Dan did not have control of the computers. Compare these facts with a purse snatch. A simple purse snatch is not a robbery because the purse was not *acquired* by violence, unless the owner struggles with the assailant, which would make the purse snatch a robbery. Here, there is an obvious analogy. Dan has a credible claim that there was no robbery

Larceny of the computers – By Dan

- a Obvious

Receiving Stolen Property – By Fred

- a Obvious

Obstruction of Justice – By Fred

- a Obvious

Accessory After the Fact – By Fred

- a A common law crime which is now abolished- worth honorable mention

Blockberger Rule on Lessor Included Crimes

- a Give rule
- b Dan cannot be convicted of larceny or assault or battery if convicted of Robbery

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QUESTION 2
Civil Procedure
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 2

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OUTLINE OF ANSWER

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How should the court rule on Perry's motion to compel Doctor to answer?

- a Doctor is being deposed. (Explain deposition)
- b According to the facts, Doctor was asked “whether she had performed any other spine surgeries using Bolton's rods and, if so, whether any of those surgeries had resulted in complications”
- c RULE: Each party may discover any relevant information from the other party, unless privileged. Doctor did not claim the information was privileged
- d Information is relevant if it reasonable likely to lead to admissible evidence
- e The answer to this question is reasonably likely to lead to admissible evidence because the answer may tend to show that Doctor knew or should have known the Bolton rods were not safe, which would tend to prove Doctor was negligent, which is what Perry has claimed
- f Doctor may claim that even if she was negligent on a prior occasion, it would not be admissible to show negligence on this occasion, therefore the prior negligence, if any, is not relevant
- g However, Perry wants the information about prior complications to show that perhaps Doctor should have known that the Bolton rod was defective. Doctors prior negligence is not admissible. However, Doctors knowledge is admissible
- h The court should rule that Doctor must answer the question

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How should the court rule on Bolton's motion to dismiss Perry's claim on the ground that the statute of limitations had run?

- a According to the facts, “Shortly after the statute of limitations had run, Perry learned through a newspaper article that Bolton had been sued by several patients who alleged that they suffered severe back pain after Bolton's rod was inserted into their spines during surgery
- b Perry immediately sought and obtained leave to amend his federal complaint to join and include a claim against Bolton, alleging that iBolton had negligently designed the rod
- c Bolton immediately filed a motion to dismiss Perry's claim against it on the ground that the statute of limitations had already run
- d RULE: Amendments to complaints relate back to the date of filing of the original complaint. This means the Amendment and the Complaint will be treated as though they were filed together, at the same time
- e However, when the Amendment adds a new party, the Amendment does not relate back unless the requirements of FRCP 15(c) are satisfied
- f Pursuant to FRCP 15(c) a new party may be added shortly after the statute has run only if the new party had actual knowledge of the law suit before the statute ran, and knew or should have known that but for a clerical error, such as slight misspelling of a name, he or she would

- 1 have been served, and the clerical error is corrected promptly
- 2 g Here, Bolton cannot be added as a new defendant under FRCP 15(c) because Bolton does not
- 3 fit the rule. Bolton is not a person (or company) which knew it was sued by Perry, the failure
- 4 to serve Bolton before the statute ran was not due to a clerical error, such as a misspelled
- 5 name.
- 6 h There is no other way, under the FRCP, to add a party after the statute of limitations has run
- 7 j The court should grant Bolton's motion to dismiss Perry claim. The statute of limitations has
- 8 run
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10 **How should the court rule on Perry's motion for summary judgment on the basis of preclusion?**

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- 12 a According to the facts, Perry learned that Doctor had lost a lawsuit brought by another patient
- 13 with a back condition like his who had also alleged negligence by Doctor for inserting
- 14 Bolton's rod into his spine
- 15 b There are two basis for preclusion: Res Judicata and Collateral Estoppel
- 16 c **RES JUDICATA:** If Perry's motion is based on Res Judicata, it will fail. Res Judicata
- 17 precludes a second suit when there has been a prior suit, between the same parties, arising out
- 18 of the same transaction or occurrence, which has become final
- 19 d Here, the prior suit against Bolton by other patients is not between the same parties as this
- 20 suit. Therefore the doctrine of Res Judicata does not preclude this law suit
- 21 e **COLLATERAL ESTOPPEL:** If the claim for preclusion of this suit is based on Collateral
- 22 Estoppel, it will also fail
- 23 d Under this doctrine, a present party is estopped to deny the outcome of litigation on an issue
- 24 which was decided in a previous case if the following requirements are satisfied:
- 25 (1) The issues in the prior suit and the present suit are identical
- 26 (2) The party against whom the doctrine is applied was a party to the prior suit
- 27 (3) The decision on the issue in the prior suit was essential to the outcome of that
- 28 issue
- 29 (4) The decision is final and on the merits
- 30 (5) The party against who the doctrine is applied would have been motivated to
- 31 adequate defend
- 32 e Here
- 33 (1) The issues of medical negligence are never identical – explain fully
- 34 (2) The other elements are satisfied – explain fully
- 35 f Perry's motion for summary judgment should be denied
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QUESTION 3
Contracts
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 3

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FACT SUMMARY

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This is the problem in which Al, an elderly man, orally proposed to Betty, his physician, that
“I will give you my office building if you will care for me for the rest of my life.”
Two years later, Betty attempted to accept this offer, in writing, by putting the written
acceptance outside her front door for the mail carrier to pick up.

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CALL

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Does Betty have an enforceable contract for transfer of the office building. Discuss

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OUTLINE OF ANSWER

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A Formation of a Contract requires

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- (1) Mutual assent – usually obtained by
 - i Offer and
 - ii Acceptance
 - (2) Consideration
 - (3) No effective Defenses

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B Offer requires

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- (1) Intent to contract
 - (2) Definite essential terms
 - (3) Communicated to the offeree

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a Intent to Contract

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- (1) Al intended to contract with Betty – He proposed the exchange
 - (2) Betty did not intent to contract with Al. She did not believe Al was was making a serious offer.
 - (3) Al's offer was a unilateral offer. “Take care of me... I will give..” It could only be accepted by conduct. Not by promise. Thus, Betty's attempt to accept by a writing could not form a contract with Al

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b Definite Essential Terms

- 49
- (1) Al included the identity of the parties, price, subject matter, and time for performance-(include the specific facts in your answer)

1 **c Communicated to the Offeree**

- 2 (1) Not a problem- explain that Al spoke directly with Betty

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4 **C Acceptance**

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6 **a Attempted Acceptance by a Written Note**

- 7 (1) Acceptance is assent to the terms of the offer
8 (2) Betty did not even attempt to accept for two years
9 (3) Betty's attempted acceptance two years later is invalid because the face-to-face
10 offer between Al and Betty terminates when they part company.
11 (4) If Betty's written promise had been a proper acceptance, it would have been
12 effective upon dispatch
13 (5) Dispatch occurs when the document is beyond the sender's ability to recall it.
14 (6) Betty put her written acceptance "outside her front door" which is not beyond
15 her ability to recall it.
16 (7) Therefore the acceptance was not dispatched.
17 (8) Even if the note of acceptance had been dispatched, it would not have formed a
18 contract because the offer was for a unilateral contract

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20 **b Attempted Acceptance by Conduct**

- 21 (1) Betty, the physician, may claim that she accepted Al's offer of a unilateral
22 contract by her conduct. She did what the offer required her to do. She did in
23 fact take care of Al for the rest of Al's life. Al died one day after she wrote her
24 acceptance note
25 (2) The rule is that an offer for a unilateral contract can be accepted only by conduct,
26 and the conduct must be with the intent to accept
27 (3) Here, Betty did not take care of Al with the **intent to accept** his offer
28 (4) Conclusion: Betty did not form a contract with Al for transfer of the office,
29 because there was not an acceptance

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31 **D Consideration**

- 32 (1) Not a problem – explain briefly in your answer

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34 **E No Effective Defenses**

35 Statute of Frauds Provides that a contract, which by its own terms cannot be
36 performed within the life time of the promisor, must be writing signed by the
37 person who denies the contract. Here, Betty would seek to enforce against the estate of
38 Al. She will need a document signed by Al.

39 Conclusion: If Al and Betty formed a contract, it would not be enforceable because of
40 the statute of frauds

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42 **E Conclusion:**

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44 For all the reasons above, Betty does not have an enforceable contract for the transfer of
45 the office building.

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QUESTION 4
Professional Responsibility
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 4

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FACT SUMMARY

Austin is an MD and Atty.

He serves on a local medical association committee that works to further rights of physicians in dealing with insurance companies.

He also has BHC, a health insurance company, as a client.

A class action suit has been filed by many physicians, including some of Austin's friends, alleging that BHC cause unreasonable delay in compensation, and denies and reduces claims of physicians.

Austin is representing BHC. He plans to defend the class action suit on the grounds that public policy favors containing health care cost and BHC is advancing that goal when it denies or reduces a claim.

Bertha, counsel for the class of physicians, wrote to Austin informing him that if he presents this defense to the class action suit, she will report Austin to the state bar for engaging in a conflict of interest.

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CALLS

1. What, if any, ethical violations has Austin committed as an attorney? Discuss.
2. What, if any, ethical violations has Bertha committed? Discuss.

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OUTLINE OF ANSWER TO CALL #1

1. Austin represents BHC, a health insurance company, and serves on the medical committee which recommends compensation from to physicians by the insurance company.
2. This is a concurrent conflict.
3. ABA Model Rules of Professional Conduct Sec. 1.7 provides

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“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exist if:

- (1) the representation of one client will be directly adverse to another client; or*
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*
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QUESTION 5
Real Property
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 5

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FACT SUMMARY

- 11 **1975 Andy ==> Beth & Chris** “jointly with right or survivorship”
12 “If Blackacre, or any portion of Blackacre, is transferred to a third
13 party, either individually or jointly, by Beth or Chris, Andy shall
14 have the right to immediately re-enter and repossess Blackacre”
15
16 **1976 Beth ==> Frank** Without knowledge of Chris
17
18 **1977 Beth & Frank Died** Mona is Frank's heir
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20 **1978 Chris & Andy** Learned about the 1976 conveyance by Beth
21 Chris told Mona that he was the sole owner of Blackacre, and
22 posted no trespassing signs
23 Chris probably began adverse possession
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CALLS

- 27 1. What right, title, or interest in Blackacre, if any, did Andy initially convey to Beth, Chris
28 and himself? Discuss
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30 2. What right title, or interest in Blackacre, if any are held by Andy, Chris, and Mona?
31 Discuss
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OUTLINE OF ANSWER TO CALL # 1

35 In 1975 Andy conveyed to Beth and Chris a joint tenancy subject to a condition subsequent. The
36 condition subsequent is that if any part of the property is transferred to a third party, Andy has a right
37 of reentry. In the few jurisdictions which do not recognize the joint tenancy (Oregon), B and C have a
38 tenancy in common, subject to a condition subsequent.
39

40 Andy's interest is a right of reentry. It is not subject to the rule against perpetuities. Some jurisdictions
41 place a maximum number of years that a right of reentry can exist, typically around 60 years. This one
42 was created in 1975, and is 36 years old at the time of this bar examination. Andy's has owned the right
43 of reentry for 36 years, and has not reentered during this period. His rights are not affected by this
44 delay.
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1 **OUTLINE OF ANSWER TO CALL #2**

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3 **1. CHRIS AND MONA**

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5 In 1975, Chris received a 1/2 interest in Blackacre as a joint tenant with Beth, subject to a condition
6 Subsequent. When Beth conveyed to Frank in 1976, Frank and Chris became tenants in common,
7 subject to a condition subsequent. When Frank died, his interest descended to Mona, his only heir. At
8 that time, Mona and Chris became tenants in common, subject to the condition subsequent.
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10 **2. CHRIS – ADVERSE POSSESSION CLAIM**

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12 **a. Chris did not have color of title**

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14 Chris is claiming all of Blackacre based on adverse possession.
15 Based on the facts given, you can establish that Chris occupied the land openly, notoriously,
16 exclusively, for the statutory period (more than 21 years), claim of right, paid taxes. However, Chris
17 does not have color of title and this will defeat his adverse possession claim in a minority of
18 jurisdictions. Color of title is a document which led the adverse possessor to have a good faith belief in
19 ownership. Chris does not have this color of title for Mona's 1/2 of Blackacre. In these jurisdictions,
20 Chris and Mona will own 1/2 each, all subject to the condition subsequent
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22 **b. Chris must oust the cotenant (Mona)**

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24 The other key problem with Chris's adverse possession claim is that Chris must oust his cotenant,
25 Mona, in order to adversely possess against her. Some jurisdictions will require a written notice to oust
26 a cotenant. Other jurisdictions will start the running of the statute of limitations from the time the
27 cotenant is orally told, and prohibited from entry. The theory is that the cotenant has a cause of action
28 upon being told of the ouster. As a consequence, the statute of limitations begins to run at that time.
29 Here, Chris told Mona she had no rights in the property, and Chris put up no trespassing signs. This is
30 probably enough to oust Mona.
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32 **3. ANDY'S RIGHT OF REENTRY**

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34 Andy retains his right of reentry. Chris cannot adversely possess against a right of reentry because this
35 is not a possessory estate.
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37 The passage of time does not terminate Andy's right of reentry. As mentioned, some statutes will
38 terminate the right after about 60 years.
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40 Finally, none of the parties recorded their deeds, and it is not clear who has inquiry notice. I must
41 assume these issues were not to be considered.
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QUESTION 6
Community Property
July 2011 California Bar Exam
Summary of Issues

File: JULY 2011 QUEST 6

9 Upon dissolution of marriage, what are Wendy's and Hanks rights and liabilities with respect to:

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1. The Car
 2. The \$30,000 in additional salary under the settlement.
 3. The \$50,000 owed to the casino.

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OUTLINE OF ANSWER

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19 The Trace is as follows:

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1. The money from W's trust fund is her SP.
 2. This money was put into a bank account in both names before marriage.
 - a. This may be a gift of $\frac{1}{2}$ of the bank account to Hank.
 - b. The test is her intent. Did Wendy intend to make a gift of $\frac{1}{2}$ the account to Hank?
 - c. Putting both names on the account is evidence of intent, but not conclusive.
 - d. As a general rule, property is presumed to be owned the way the title says it is.
 - e. The party who claims it is owned in some other way has the burden of proof, and the standard is usually clear and convincing evidence, for both real and personal property.
 - f. The rules regulating transmutations during marriage, FLA 852, do not apply to single people, unless there is sufficient evidence that Hank and Wendy wanted the CP rules to begin applying to their property when they were living together before marriage.
 - g. There is no such evidence. Therefore, general contract principles apply. Under these principles, the car is owned $\frac{1}{2}$ by Hank, unless Wendy can prove with the preponderance of the evidence, that she did not intend to transfer ownership. For example, she might claim she put his name on the title for convenience only.
 - h. If the bank account money was owned $\frac{1}{2}$ each, then the car is owned $\frac{1}{2}$ each.
 3. If the money remaining in the bank account was not partly donated to Hank, then it remained her SP.
 4. In this case, the car was bought with her SP, and the car will be her SP.
 5. However, she put the car in both names.
 6. Therefore, she might have donated $\frac{1}{2}$ of the car to Hank.
 7. Again, whether or not she donated $\frac{1}{2}$ the car to Hank turns on her intent.
 8. Putting both names on the title is evidence of intent, but not conclusive.
 9. Wendy might argue that putting both names on property was for convenience only.
 10. The evidence points more to a gift, $\frac{1}{2}$ the car to each.

1 **II THE ADDITIONAL \$30,000**

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1. Property acquired during marriage is separate property, unless a statute provides otherwise.
2. Property acquired before marriage or after separation is separate property.
3. Here, W was underpaid while teaching at the university.
4. The underpayment occurred during 2006, 2007, 2008, while she was married and living with Hank and teaching at the university.
5. As a consequence, all of the \$30,000 was earned as CP.
6. It should be divided equally.
7. It is not relevant that the money was received after dissolution.

13 **III THE \$50,000 GAMBLING DEBT**

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1. The general rule is that debts acquired during marriage are community debts, to be paid from CP
2. Under this rule, Hank and Wendy would be equally liable for the gambling debt.
3. However, where the CP has been spent in bad faith, courts may require the faulty spouse to reimburse the community.
4. Here, Hank has accumulated a large gambling debt, without her knowledge.
5. The debt would probably be found to be a bad faith expenditure of CP. A gambling debt can be a family norm. But his would require additional facts showing this norm.
6. Assuming the gambling is a bad faith debt, Hank will be required to reimburse the CP.
7. This amounts to Hank becoming liable for the entire \$50,000.