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California Community Property Outline

Community Property (CP = community property; SP = separate property)

Essay opening:
California is a community property state. All amounts earned through the community labor of married California residents are presumptively community property, which means that they are owned together, equally, by the husband and wife (or by registered domestic partners). All items acquired through gift, bequest or devise to an individual spouse remain that spouse's separate property. Community property continues to accrue until the end of the economic community, which occurs with physical separation and an intent not to resume the marriage. Certain presumptions arise from form of title, and CP may be transferred to separate property and vice versa.

Basic Approach:

1. Characterize the Property
2. Any spousal actions or legal presumptions that change the character of the property?
3. Any Management and Control of Property Issues?
    a. Any spousal reimbursement issue?
    b. Any community reimbursement issue?
4. Distribution of the Property
    a. At Divorce
    b. At Death
    c. Choice of Law issues for Quasi-CP
5. Third-Party Rights
    a. Creditor's rights
        i. At divorce
        ii. At death
    b. Federal preemption Issues

I. Characterization of the Property
    a. Time of Acquisition
        i. RULE: CP may only be acquired during the existence of the marital economic community.
            1. Property acquired before marriage; or
            2. after permanent separation is SP
        ii. Marital economic community
            1. begins: at marriage

2. ends: death of spouse; or
    a. *permanent physical separation* (ie, actual separation and intent not to resume the marital relationship)
3. NB: <u>domestic partners</u>
    a. Economic community begins on registration

iii. Wages
1. earned before marriage = SP
2. earned during marriage = CP

b. Source of Acquisition
i. Property acquired during marriage is *presumed* CP, but can be overcome in some circumstances
ii. Certain property acquired during marriage remains a spouse's SP:
1. property received by gift, bequest, devise, or descent;
2. rents, issues, and profits from SP; and
3. property acquired in exchange for SP

c. Assets that Are Difficult to Classify
i. PI vs 3d party tortfeasor
1. if cause of action arises during marriage, any recovery is CP
    a. if after permanent sep, then recovery is SP, though may have to reimburse community for any expenses community paid for injury
    b. Divorce: CP personal injury damages will be awarded entirely to injured spouse unless justice requires otherwise
2. Pensions
    a. CP to extent benefits earned during marriage
        i. CA courts consider pensions "deferred compensation"
        ii. Courts apply a "**time rule**" to apportion SP and CP interests earned during and after marriage
        iii. NB: look out for a federal retirement plan and *federal preemption issues*!!!
    b. <u>Stock options</u> also deemed earned during marriage (not when exerciseable) and courts use a "time rule" to apportion
3. Disability pay and workers' comp
    a. CP if to replace material earnings
    b. SP if to replace post divorce earnings
4. **Business Goodwill**
    a. CP is earned during marriage
    b. Courts use one of two valuation techniques:
        i. Market sales valuation
        ii. Capitalization of past excess earnings
5. Education and Training
    a. Not property, but "equitable right of reimbursement" if:
        i. Community funds pay for education or repay educ loan; **and**

ii. Educ or training substantially enhances earning capacity of party

b. Equitable defenses to reimbursement:

i. Community has already substantially benefited (usually 10 years);

ii. Other spouse also received community-funded education; and

iii. Need for spousal support is reduced as a result of education/training

6. Life Insurance

a. Proceeds at death

i. If B is other than spouse, then B gets only deceased spouse's community share

b. Policy at Divorce

i. Current cash value of "whole life" is CP in proportion to community's payment of premiums

ii. Term policy has no value

d. Presumptions

i. RULE: <u>All property acquired during marriage presumed to be CP</u>

ii. *Overcoming* the presumption by showing any of the following:

1. statutory facts (gift, devise, rent, etc);
2. parties took title (eg, joint tenancy) in a manner showing agreement to hold it as other than CP;
3. parties agreed property would not be CP (eg, prenup, transmutation);
4. one spouse took title in form evidencing gift from another spouse;
5. purchased with funds traced to SP source (therefore SP in proportion to SP funds used)

e. Agreements Altering character of Property

i. Premarital (Antenuptial) agreement:

1. no consideration needed
2. SF must be met (writing signed by both parties) UNLESS:
   a. Executory promise was fully executed; or
   b. Promissory estoppel requires enforcement
3. may regulate property rights and support obligations
4. waiver of death rights enforceable
5. Will be UNENFORCEABLE if:
   a. Promotes divorce;
   b. Is involuntary (both parties must understand what they are giving up and have had time for deliberation)
   c. Always unenforceable if meets 2-part test:
      i. Unconscionable when executed; and
      ii. Burdened party did not have adequate disclosure of other party's wealth

ii. Agreements to Alter character of property during marriage (***transmutation***)

1. How done pre-1985:
    a. Explicit oral agreements
    b. Written agreements
    c. Donative acts
2. How done from 1985 on:
    a. Signed writing; or
    b. Acceptance by spouse whose interest was adversely affected
    c. NB: n/a to personal gifts of insubstantial value
3. Undue Influence
    a. A <u>rebuttable presumption of undue influence</u> arises with these agreements
        i. But such transactions rarely voided by courts on these grounds

iii. Agreements to change character of prop inferred from title
1. Forms of title holdings:
    a. joint tenancy
    b. tenancy in common
    c. community property
    d. community property with right of survivorship
2. Conveyance: "to A and B"
    a. Pre-1975: presumed tenancy in common
    b. 1975 on: presumed CP
    c. if "to H and W," then CP even prior to 1975
3. <u>Married Woman's Special presumption</u>
    a. Written title to property placed property in woman's name alone, it was presumptively her separate property pre-1975
        i. If title taken as TIC, then woman's share was SP and H's share was CP
    b. Today: if one spouse purchases property and puts in other spouse's name, it is presumed to be a gift

f. Disproportionate spousal contribution of SP to purchase price
i. RULE of ***Lucas***: disproportionate contributions to acquisition of property held in joint and equal form raise a presumption of gift
1. statute in 1987
    a. all property held in joint form is presumptively CP at divorce or legal separation
    b. Reimbursement:
        i. SP contributions will be reimbursed *without interest or appreciation*

g. Tracing property purchased with commingled funds
i. Presumptions for tracing funds in commingled accounts:
1. available community funds are presumed to have been used to pay for family expenses; and
2. absent evidence of reimbursement agreement, gift presumed when separate funds are used to pay family expenses

ii. Tracing methods:
    1. <u>exhaustion method</u>
        a. if asset purchased at a time when community funds in the account had been exhausted, asset must have been purchased with separate funds
    2. <u>direct tracing</u>
        a. SP funds were available at time of purchase and SP proponent intended to use those funds to purchase asset
iii. Can't use recapitulative accounting
    1. can't simply show total family expenses exceeded income and therefore SP must have been used to purchase

h. When CP funds or labor enhance SP (*see CMR, p 11*)
    i. Apportionment of Business Profits – **these only apply where business started with SP!!!**
        1. *Van Camp* accounting
            a. Use when character of business is responsible for growth
                i. Manager's services valued at market salary;
                ii. Amount of family expenses paid from business earnings subtracted;
                iii. Remainder is CP portion of business
                iv. Rest is SP
        2. *Pereira* Accounting
            a. Use when management of spouse was primary cause of growth or productivity of business
                i. SP is manager's separate capital plus a fair rate of return (eg, 10% year)
                ii. Remainder is CP
    ii. Pay down debts
        1. community owns asset in proportion to use of community funds to pay down debt
    iii. Improvements
        1. Absent reimbursement agreement, gift presumed when spouse uses community funds to improve the *other spouse's* separate estate
        2. when community funds used to improve *one's own SP*, no gift presumed

i. Credit Acquisitions
    i. Treated like cash purchases; ownership is proportional

II. Distribution of Property at Divorce
    a. Jurisdiction of Divorce court
        i. Power to divide all CP; jointly-titled SP if *one* party requests; and all SP if *both* parties request
    b. Equal Division Requirement
        i. "**In-kind division**" RULE: each spouse is entitled to a one-half interest in each community asset

            1. court has power to award any asset to one party on conditions it deems proper to effect a substantially equal division of the community estate
        ii. Deviation from Equal Division Requirement (*interests of justice*):
            1. one spouse deliberately misappropriates CP
            2. where liabilities exceed assets
                a. liabilities may be divided based on ability to pay
            3. unpaid educational debts
                a. treated as spouse's separate debt
            4. one spouse's tort liability
            5. separate debt incurred
            6. injured spouse receives community estate PI damages
    c. Time of Valuation
        i. Assets and Liabilities valued "as near to the time of trial as practicable"
    d. Income Tax consequences
        i. Txfrs btwn H and W no longer taxable events
    e. Community assets NOT distributed at divorce
        i. Are subject to future litigation
    f. Setting aside property settlement or decree
        i. Extrinsic fraud[1] or extrinsic mistake[2]
            1. NOT intrinsic fraud: an error the claimant, with exercise of due diligence, could have guarded against
        ii. Breach of Fiduciary Duty
            1. duty persists until CP is divided by court

III. Distribution at Death
    a. Disposition by testamentary transfer
        i. RULE: a married person may transfer one-half of CP and all of his SP by will
        ii. Other transfers treated as testamentary transfers:
            1. Unauthorized inter vivos gifts of CP
                a. Unless voided by non-consenting spouse prior to death
            2. Designation of non-spouse B on insurance policy
        iii. Item Theory of Death distribution
            1. surviving spouse entitled to one-half of each item of CP
                a. Unless consents, spouse's CP claims <u>are NOT satisfied by one-half the aggregate CP</u>
        iv. Duty to elect
            1. testator may insert clause in will requiring spouse to elect to use CP rights OR take under the will
            2. without an express clause, SS may exercise both rights *as long as* won't upset decedent's testamentary plan
    b. CP and SP property passed by intestacy
        i. All intestate decedent's one-half CP and quasi-CP interest passes to SS, leaving SS with 100% interest in the property

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[1] Culpable behavior of adversary
[2] excusable neglect of claimant

ii. Decedent's SP transfers in one of 3 ways:
    1. all to SS if decedent left no surviving issue, parent, bro, sis, or issue of deceased bro or sis;
    2. 1/2 to SS if decedent leaves only one child or issue of a deceased child *or* no issue, but a parent or parents, or their issue, or issue of either of them; OR
    3. 1/3 to SS when decedent leaves more than one living child, *or* one living child and issue of one or more deceased children, *or* issue of two or more deceased children

iii. Ancestral Property Intestate Succession Statute
    1. SS dies intestate and leave neither a living spouse nor issue:
        a. Realty:
            i. Realty derived from her predeceased spouse is sent back to his family line, *provided* he died not more than 15 years before decedent
        b. Personalty:
            i. Similar rule for personalty over $10,000, *provided* predeceased spouse died not more than 5 years before decedent

IV. Choice of Law at Divorce and Death
    a. Quasi-CP
        i. <u>Def</u>: Quasi-CP is property acquired by either spouse that would have been CP had the spouse been domiciled in CA at the time of acquisition.
            1. retains its SP nature when parties become domiciled in CA; only important at divorce or death
        ii. At Divorce
            1. Treated exactly as CP
        iii. At Death (*important for intestate share valuation*)
            1. SS has a 1/2 interest in decedent's quasi-CP
            2. Decedent has no rights in SS's quasi-CP
            3. Property acquired in another CP jurisdiction
                a. Treated as CA CP, not quasi-CP, for purposes of death only
        iv. During ongoing marriage
            1. creditor may reach one spouse's quasi-CP to satisfy debt of other spouse
            2. with exception of debt collection, quasi-CP is treated as SP during marriage
    b. Out of state CP and Quasi-CP realty
        i. At Divorce
            1. court will divide all CP and quasi-CP in such a way that it is not necessary to alter the nature of interests held in the out-of-state realty; OR
            2. if this is not possible, the court will either
                a. require parties to execute whatever conveyances are necessary to divide out-of-state realty; or

b. award to money to party who would have benefited from the conveyance

c. CA probate treatment of realty owned by out-of-state decedents

i. CA applies law of decedent's domicile to disposition of his CA realty

V. Property relations for people who live in marriage-like relationships

a. CA does NOT recognize common-law marriage

b. Putative Spouse

i. Has a good faith belief based on objectively reasonable grounds that she is lawfully married. Once she learns she is not married, property rights no longer accrue.

ii. Property rights

1. same as a lawfully married spouse in CP, quasi-CP, SP

2. where decedent leaves a lawful and a putative spouse, courts equitably divide the property between them

c. Unmarried Cohabitants

i. Apply general contract principles

1. can't enforce if explicitly found on consideration of sexual services

VI. Management and Control of SP and CP

a. Separate Property

i. Each spouse has the exclusive management and control of his SP.

1. Quasi-CP is SP for purposes of management and control.

b. Community Property

i. RULE: each spouse has equal management and control of CP.

1. either spouse acting alone may buy, sell, spend, or encumber all CP

ii. Real Property

1. **Both** spouses **must** join in executing any instrument by which community real property is sold, conveyed, or leased for more than one year.

2. if property in single spouse's name and he misrepresents that to innocent purchaser, non-consenting spouse has 1-year to void txfr

a. must return transferee's purchase price

iii. Personal Property

1. Exceptions to "spouse acting alone" rule

a. Personal belongings exception

i. Can't be transferred without written consent

ii. May be voided during or after marriage and no need to return purchase price

b. Business exception

i. Spouse running the business has *primary* (rather than sole) management and control

1. may act alone, but must give other spouse written notice of any sale, lease, or exchange or all or substantially all personal property used in the operation of the business

c. Bank accounts:

            i. Held in name of a married person is for the exclusive benefit of that person
        iv. General limitations on managerial power
            1. Gift of CP requires written consent of both spouses, otherwise voidable until death of donor spouse
            2. Fiduciary duty
                a. Each spouse must act in the highest good faith and fair dealing with respect to the other spouse in the management and control of CP
                i. <u>Duty</u> of managing spouse
                1. pre-2003: accounting when requested
                a. deliberate dissipation of property actionable; incompetence was not
                2. 2003+: must provide any information needed for other spouse to conduct business and affairs
                a. grossly negligent or reckless conduct is actionable
                ii. <u>Breach of Duty</u> by managing spouse
                1. actionable if breach results in
                a. substantial impairment of
                b. the nonmanager's interest
                2. SOL
                a. Within 3 years after date nonmanager has actual knowledge of the act at issue; OR
                b. At spouse's death or at divorce *regardless* of the SOL

VII. Creditor's Rights
    a. Creditor's Rights follow Management Rights
        i. Creditor may reach any property over which the debtor had the legal right of management and control.
    b. When Debt incurred
    c. Property Liable for Debts
        i. All CP and debtor's SP are liable for debts incurred *before* or *during* marriage
        ii. CP earnings of nondebtor spouse not liable for *premarital* obligation if kept in account to which debtor spouse has no right of withdrawal
        iii. Both spouses personally liable for any "necessaries" debt incurred during the marriage
            1. including necessaries purchased during period of separation
    d. Special Rule: Encumbrances on CP
        i. When spouse joins in the encumbrance to secure a debt for the other spouse, that spouse's SP not liable on debt unless that person also incurred a debt
    e. Tort Liability

i. A spouse is only liable for another spouse's torts if he would have been liable had the marriage not existed
    1. eg, one spouse employs the other; vicarious liability
ii. Satisfying tort judgments:
    1. if tort occurred while acting for benefit of community, award paid
        a. first with CP,
        b. then with tortfeasor's SP
    2. if tort occurred during act not for benefit of community, award paid
        a. first with tortfeasor's SP,
        b. then with CP
    3. NB: order does not apply to extent the liability is satisfied out of insurance proceeds

f. Creditor's Rights at Divorce
    i. Liable for debts assigned to spouse at divorce
    ii. If spouse's property is applied to satisfy debt of other spouse, then a right of reimbursement, with interest, arises

g. Creditor's Rights at Death of Spouse
    i. Probate
        1. property must be characterized as SP and CP
        2. debts allocated accordingly
    ii. Non-Probate
        1. Set-aside law
            a. SS is personally liable for debts chargeable against CP, quasi-CP, and decedent's SP

VIII. Rights of Reimbursement

a. Statutory Reimbursement for payment of certain debts
    i. One spouse may seek reimbursement against the other where:
        1. CP applied to satisfy child or spousal support of prior relationship *and* debtor had SP available to pay debt;
        2. one spouse's SP applied to necessaries debts when other spouse had SP or CP to pay for them; and
        3. when the order of satisfaction of tort debts is not followed
    ii. Right applies unless written waiver
    iii. Must be executed:
        1. within 3 years of knowledge of right arising; or
        2. at divorce or death

b. Other authorities

IX. Federal Preemption

a. Certain federal benefits preempt CP law and are deemed SP:
    i. Armed forces life insurance proceeds
    ii. Disability benefits
    iii. Railroad retirement benefits (social security type)
    iv. Social security benefits
    v. US Savings Bonds (unless fraud involved)

b. Others remain CP

i. Civil service pension
ii. Foreign services pension
iii. Military retirement benefits
iv. Supplemental railroad retirement benefits

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