

Table of Contents

CHAPTER 1. ORIGINS AND DEVELOPMENT OF CALIFORNIA'S COMMUNITY PROPERTY PRINCIPLES

- § 1:1 In general
- § 1:2 Development of the California community property system
- § 1:3 Origins—A system of classification of property rights acquired in marriage or during a registered domestic partnership
- § 1:4 The modern system—A creature of statute
- § 1:5 —Community property may not be divided without the consent of both parties except on death, dissolution, or by judicial decree
- § 1:6 Legal incapacity and support
- § 1:7 Long-term and catastrophic illness
- § 1:8 Protecting statutes and vested rights
- § 1:9 The source rule begins: Property classified at time of acquisition
- § 1:10 The device of tracing from time of acquisition
- § 1:11 Changes of form of property
- § 1:12 Earnings after separation
- § 1:13 Unitary rights and spousal priorities in a single economic partnership
- § 1:14 The priority of the rules of protection
- § 1:15 Protective devices survive like property rights
- § 1:16 The marital status of a grantor, seller, or applicant for credit should be known
- § 1:17 The rights of spouses in community property assets are present, existing, and equal
- § 1:18 Community property rights are equal regardless of which spouse earns the property
- § 1:19 Equality means more than equal market value
- § 1:20 Evaluating marital assets
- § 1:21 A spouse's motivation to retain an asset is irrelevant
- § 1:22 Does marriage create a partnership, a trust, or a hybrid type of co-tenancy?
- § 1:23 A system of marital property only for California domiciliaries
- § 1:24 The rights of husband and wife over marital property must be exercised fairly for the benefit of each other and the family—A continuing fiduciary responsibility

- § 1:25 Interspousal management liability
- § 1:26 Costs and fees
- § 1:27 Deliberate misappropriation of community property
- § 1:28 The fiduciary role continues after separation until final division of property
- § 1:29 The equal right of husband and wife (each partner) to manage and control the community property
- § 1:30 The equal right to enhance the community
- § 1:31 Community property with right of survivorship
- § 1:32 Sharing principles by comparison
- § 1:33 “The Marriage Cases”—U. S. Supreme Court, June 26, 2013
- § 1:34 Tax note—The historical tax advantages of the community property systems

CHAPTER 2. THE COMMUNITY PROPERTY SYSTEM IS FOR MARRIED PERSONS AND REGISTERED DOMESTIC PARTNERS

I. VALID CEREMONIAL MARRIAGE

- § 2:1 In general
- § 2:2 Valid ceremonial marriage
- § 2:3 The right to marry
- § 2:4 Valid ceremonial marriage—Common law marriage
- § 2:5 —Common law marriage is not cohabitation

II. THE PUTATIVE SPOUSE

- § 2:6 In general
- § 2:7 Is a ceremony necessary to establish a putative marriage?
- § 2:8 A putative spouse—Focus on the person
- § 2:9 A “putative marriage”
- § 2:10 Good faith and religious belief
- § 2:11 Quasi-marital property
- § 2:12 The remedy in equity
- § 2:13 Wrongful death actions by a surviving putative spouse
- § 2:14 Workers’ compensation
- § 2:15 Postmortem succession
- § 2:16 —Federal benefits depending on the status accorded by California law
- § 2:17 —Federal law and status
- § 2:18 Estoppel to deny the validity of marriage

TABLE OF CONTENTS

- § 2:19 A putative spouse has the same causes of action against third parties as a legitimate spouse
- § 2:20 A putative spouse qualifies for a share of a decedent's estate as a pretermitted spouse
- § 2:21 Tax note—The putative spouse in the Internal Revenue Code

III. DOMESTIC PARTNERSHIPS

- § 2:22 Domestic partnerships registration, rights and obligations

IV. NOT COHABITATION

- § 2:23 In general
- § 2:24 The broad sweep of Marvin
- § 2:25 Not common law marriage
- § 2:26 Contracts for sexual services
- § 2:27 Reimbursement for contributions to the acquisition of property
- § 2:28 Suits against third parties
- § 2:29 Spousal/partner support and dependency
- § 2:30 Statute of limitations
- § 2:31 Child custody and support
- § 2:32 Personal jurisdiction
- § 2:33 Wrongful death suits
- § 2:34 Same sex relationships
- § 2:35 Tacking disallowed
- § 2:36 Cohabitation is just cohabitation
- § 2:37 The Marvin rehabilitation award
- § 2:38 Marvin's progeny
- § 2:39 Burden of proof
- § 2:40 Tax returns are privileged against discovery in Marvin-type cases
- § 2:41 Unemployment insurance claims allowed to an "imminent" spouse who quits employment to accompany his or her future spouse to a new location
- § 2:42 Tax note—Federal tax consequences of property agreements between unmarried cohabitants
- § 2:43 ——Income tax consequences—Transfers pursuant to express agreements
- § 2:44 ——Transfers pursuant to implied agreements
- § 2:45 ——Gift tax consequences
- § 2:46 ——Estate tax consequences

V. SAME SEX MARRIAGE

- § 2:47 Same-sex marriage—A short history

§ 2:48 —Constitutional Right protected by the Fourteenth Amendment

CHAPTER 3. SHARED PROPERTY RIGHTS IN THE COMMUNITY PROPERTY SYSTEM

I. GENERALLY—THE GOODWILL VALUE OF A BUSINESS OR PROFESSION

- § 3:1 In general
- § 3:2 The goodwill value of a business or profession
- § 3:3 —Defining “goodwill”
- § 3:4 Distinguishing the goodwill value of a business or profession from the increased earning capacity of an individual
- § 3:5 “Account books,” “incentives” and “disguised earnings”—Community property generated in financial services professions
- § 3:6 The goodwill value of a business or profession—Sale of an attorney’s practice
- § 3:7 —Inspecting a spouse’s confidential client or patient files
- § 3:8 —Goodwill, not a license to practice

II. INCREASED EARNING CAPACITY—ACQUIRED SKILLS, EDUCATION, PROFESSIONAL DEGREES, AND LICENSES

- § 3:9 In general
- § 3:10 Reimbursement to the community
- § 3:11 Increased earning capacity/imputed income
- § 3:12 Reimbursement at legal interest
- § 3:13 Loans
- § 3:14 Discretion to make adjustments
- § 3:15 Community “contributions” to education or training
- § 3:16 Exclusive remedy
- § 3:17 Retroactive application
- § 3:18 The value of an education
- § 3:19 A right to reimbursement
- § 3:20 2641 is applicable only on dissolution
- § 3:21 Subject to a contrary agreement
- § 3:22 Substantial benefit
- § 3:23 A consideration in determining support

III. OTHER KINDS OF VESTED PROPERTY INTERESTS

- § 3:24 In general—Tips and gratuities for service

TABLE OF CONTENTS

- § 3:25 Fame and publicity
- § 3:26 Executive retention incentives
- § 3:27 Severance pay
- § 3:28 Employee termination benefits
- § 3:29 Real property options
- § 3:30 Rights to intellectual property

IV. CONTINGENT FUTURE INTERESTS

- § 3:31 In general
- § 3:32 Not a mere expectancy
- § 3:33 Non-vested pensions
- § 3:34 Contingent contract rights
- § 3:35 Contingent rights based on accrued causes of action
- § 3:36 Lottery tickets
- § 3:37 Rights of beneficiaries of insurance policies
- § 3:38 Stock options
- § 3:39 Stock options as income
- § 3:40 Stock options—Tax note
- § 3:41 Legal title in trust
- § 3:42 Other forms of deferred compensation—Termination commissions
 - Accrued vacation pay
 - Covenant not to compete
 - § 3:45 Employment-related housing allowance
 - § 3:46 Retiree's continuing right to health insurance coverage
 - § 3:47 Tax note—Joint filing, joint and several liability, and the innocent spouse rules
 - § 3:48 Current innocent spouse rules

CHAPTER 4. SEPARATE PROPERTY AND AGREEMENTS EXCLUDING PROPERTY FROM THE SYSTEM

I. GENERALLY—SEPARATE PROPERTY IS NOT SUBJECT TO THE COMMUNITY PROPERTY SYSTEM

- § 4:1 In general
- § 4:2 The separate property of each person is not subject to the community property system
- § 4:3 Earnings after separation
- § 4:4 Legal separation—Attempts at reconciliation
- § 4:5 Earnings after separation—The intent no longer to be married

- § 4:6 A person's earnings after separation
- § 4:7 Earnings after entry of judgment of legal separation
- § 4:8 A person's property acquired before marriage
- § 4:9 Incorporation of separate property business does not change its separate character
- § 4:10 Acquisition by inheritance, devise, or bequest
- § 4:11 Property taken in exchange
- § 4:12 Property must be owned, not the subject matter of a power of appointment
- § 4:13 Third party gifts to a spouse
- § 4:14 Donative intent
- § 4:15 Burden of proof
- § 4:16 Transmuting the classification of separate property
- § 4:17 Gambling proceeds
- § 4:18 Gifts to both husband and wife/both partners

**II. INTERSPOUSAL GIFTS AND AGREEMENTS—
THE SYSTEM CONTROLS THE PROPERTY OF
MARRIED COUPLES OR REGISTERED
PARTNER'S WHO CHOOSE NOT TO CONTRACT
FOR THEMSELVES**

- § 4:19 In general
- § 4:20 Agreements regarding future earnings
- § 4:21 —Standing to sue
- § 4:22 —An agreement is not a gift
- § 4:23 —Domestic services
- § 4:24 —Setting aside agreements
- § 4:25 Premarital agreements
- § 4:26 —Law-imposed obligations
- § 4:27 The added requirement of separate, independent legal representation
- § 4:28 Unconscionability
- § 4:29 Premarital agreements—Temporary marriage
- § 4:30 —Standards
- § 4:31 —Unmarried persons
- § 4:32 Public policy—The interests of children
- § 4:33 Premarital agreements—Premarital agreements and ERISA
- § 4:34 —The Uniform Premarital Agreement Act is prospective
- § 4:35 —Knowledge and disclosure
- § 4:36 The added requirement of “full” disclosure of assets and liabilities
- § 4:37 Waiving fraudulent concealment

TABLE OF CONTENTS

- § 4:38 Premarital agreements—Executed oral agreements—
Estoppel, part performance
- § 4:39 —Tax note—Tax aspects of premarital agreements
- § 4:40 ——Gift tax—Take advantage of the marital
deduction
- § 4:41 ——Income tax—Make it a gift, use the deduction
- § 4:42 ——Estate tax—Avoidable for gifts during marriage
or equal exchange of property
- § 4:43 During marriage or partnership—Agreements and
transmutations by the couple
- § 4:44 —Transmutations before 1985
- § 4:45 —Interspousal transfers in fraud of creditors
- § 4:46 —Interspousal transmutation agreements and third
parties
- § 4:47 —Can interpersonal gifts remain community property?
- § 4:48 —Once transmutation has occurred a change of mind
is legally ineffective
- § 4:49 A will is not admissible in the lifetime of the testator
- § 4:50 Creation of joint tenancies
- § 4:51 Requirement that the transmutation be in writing by
express declaration
- § 4:52 Dual representation
- § 4:53 Welfare of children cannot be affected directly or
indirectly by an interspousal agreement

**III. COMMON LAW TITLES, SEPARATE
INTERESTS AND THE CHANGED
PRESUMPTION OF A COUPLE'S PROPERTY
HELD IN JOINT FORM**

- § 4:54 In general
- § 4:55 The state of the title to property is not conclusive
- § 4:56 —The state of the title cedes to time, source, and
agreement presumptions
- § 4:57 —Joint tenancies and community property—
Essentially incompatible
- § 4:58 —Joint tenancies with third parties
- § 4:59 —Property in wife's name alone
- § 4:60 —Community property and partnership property
- § 4:61 —Joint tenancies in quasi-community property
- § 4:62 The joint form presumption on dissolution of
marriage—Applying Family Code §§ 2580 and 2581
- § 4:63 —The operative date of Family Code §§ 2580 and 2581
- § 4:64 —Scope—Real, personal, and out-of-state property
- § 4:65 —Written agreement of the spouses
- § 4:66 —Property acquired before marriage

- § 4:67 —Property acquired before marriage but put into joint tenancy after marriage
- § 4:68 —Multiple party accounts
- § 4:69 —Family law court jurisdiction over partition suits
- § 4:70 Using separate property to improve community property
- § 4:71 Frankie Valli's rule—California Supreme Court insists on written expression of intent for interspousal transmutation
- § 4:72 Tax note—Joint tenancies; taxes on succession

CHAPTER 5. CONSTITUTIONAL ISSUES AND CONFLICTS WITHIN THE FEDERAL SYSTEM

I. GENERALLY; QUASI-COMMUNITY PROPERTY LEGISLATION

- § 5:1 In general
- § 5:2 The constitutionality of quasi-community property legislation
- § 5:3 —The constitutional theory adopted by Addison
- § 5:4 —California domiciliaries acquiring property elsewhere
- § 5:5 —Quasi-community property classification is applicable not only in family law and probate proceedings
- § 5:6 —California domiciliaries acquiring property elsewhere—Common usage
- § 5:7 —Tracing
- § 5:8 —The new Probate Code definition of community property
- § 5:9 Family Code use of “community estate” terminology
- § 5:10 —The uses of quasi-community property
- § 5:11 —The limitations on quasi-community property
- § 5:12 Tax note—Revenue and Taxation Code § 18031—Interspousal Transfers

II. THE RETROACTIVITY OF LEGISLATIVE AMENDMENTS TO THE COMMUNITY PROPERTY SYSTEM

- § 5:13 In general
- § 5:14 The disclaimer in Addison
- § 5:15 The different meanings of retroactivity
- § 5:16 Retroactive amendment of Family Code § 910

TABLE OF CONTENTS

- § 5:17 Retroactive amendment of Family Code § 781
- § 5:18 Were the military pension decisions retroactive?
- § 5:19 The joint form ownership and separate property reimbursement statutes
- § 5:20 1992 Amendments to interspousal fiduciary duties
- § 5:21 Other recent retroactive applications of legislative amendments
- § 5:22 Creditors' rights
- § 5:23 Retroactive application of family law reforms in other states

III. USING THE CONTEMPT POWER OF THE COURTS TO ENFORCE ORDERS DIVIDING PROPERTY

- § 5:24 In general
- § 5:25 Enforcement of property settlements
- § 5:26 Merger

IV. FEDERAL PREEMPTION OF STATE LAW UNDER THE SUPREMACY CLAUSE

- § 5:27 In general
- § 5:28 Federal pensions—The Railroad Retirement Act of 1974
- § 5:29 ——The Railroad Retirement Solvency Act of 1983
- § 5:30 ——Separable Social Security treatment
- § 5:31 Military retirement provisions—The Federal Uniformed Services Former Spouses Protection Act of 1982 (FUSFSPA)
- § 5:32 The Federal Uniformed Services Former Spouses Protection Act of 1982 (FUSFSPA)—FUSFSPA provisions
- § 5:33 —Military pension—Modification of decree
- § 5:34 —Designation of beneficiary of insurance
- § 5:35 California's decision to calculate military disability pay reversed
- § 5:36 FUSFSPA express limitations
- § 5:37 Limitations upon collecting arrearages
- § 5:38 Division of continuing veterans administration disability pay
- § 5:39 Non-preemption of veterans administration disability pay for support
- § 5:40 Personal jurisdiction
- § 5:41 Military separation pay
- § 5:42 Military service credit purchased during marriage

CALIFORNIA COMMUNITY PROPERTY LAW

- § 5:43 Loss of retirement benefits by the service member spouse
- § 5:44 Preemption and Social Security
- § 5:45 Preemption and ERISA
- § 5:46 Exception to ERISA's anti-alienation protections for victims' restitution orders under the Mandatory Victims Restitutionary Act
- § 5:47 California state law respecting termination of long-term disability benefits not preempted by ERISA
- § 5:48 Federal civil service retirement
- § 5:49 Preemption and federal copyright law
- § 5:50 Federal Employees' Group Life Insurance
- § 5:51 Preemption of the Federal Bankruptcy Act
- § 5:52 Foreign Service retirement and disability benefits
- § 5:53 The Federal Employers' Liability Act and the Jones Act

V. FULL FAITH AND CREDIT

- § 5:54 In general
- § 5:55 California provisions
- § 5:56 Lack of personal jurisdiction
- § 5:57 Choice of law problems
- § 5:58 —Jurisdiction where the only marital property is quasi-community property
- § 5:59 —Domiciliaries of California taking community property assets to a common law state
- § 5:60 —Domiciliaries of other states who die owning property in California
- § 5:61 —Marital property settlements made elsewhere
- § 5:62 —Local law not always controlling
- § 5:63 —Recognition of out-of-state divorces
- § 5:64 —Enforcing valid out-of-state family law decrees and orders in California
- § 5:65 —Interfamilial suits and domicile
- § 5:66 Federal jurisdiction
- § 5:67 Tax note—Should federal income tax consequences of divorce depend on state property law?

CHAPTER 6. CLASSIFYING AND SORTING OUT INTERESTS ACQUIRED DURING MARRIAGE OR DOMESTIC PARTNERSHIP

I. CLASSIFICATION

- § 6:1 In general

TABLE OF CONTENTS

- § 6:2 Classification—The presumptions of time and source of acquisition
- § 6:3 During marriage or partnership
- § 6:4 Separate property presumptions
- § 6:5 Earnings and accumulations
- § 6:6 The instrument in writing presumption abolished
- § 6:7 Establishing the community property presumption
- § 6:8 The prevailing presumption
- § 6:9 Community property aspects of executive compensation
- § 6:10 Establishing time of acquisition by presumption
- § 6:11 Third party standing to contest the classification of property

II. BORROWED MONEY ACQUISITIONS AND THE RULE OF THE LENDER'S INTENT

- § 6:12 In general
- § 6:13 Funds used to repay a loan
- § 6:14 Time of classification
- § 6:15 —Intent of the lender
- § 6:16 —Money borrowed on the basis of the credit-worthiness or the reputation for honesty and reliability of either spouse
- § 6:17 —The purpose of the loan is irrelevant

III. FAMILY LIVING EXPENSES ARE PRESUMED TO BE PAID FROM COMMUNITY EARNINGS

- § 6:18 In general
- § 6:19 The family expense doctrine
- § 6:20 Non-reimbursement where separate property used to pay community expenses

IV. COMMINGLING SEPARATE AND COMMUNITY ACCOUNTS

- § 6:21 In general
- § 6:22 Tracing
- § 6:23 Commingled funds that cannot be traced are presumptively community property
- § 6:24 —Co-signing a note
- § 6:25 —Keeping accurate records for direct tracing
- § 6:26 —The new transmutation rules do not apply to cases of commingled accounts
- § 6:27 —Married persons' joint bank accounts

- § 6:28 The loss of separate funds by commingling
- § 6:29 Commingling after separation

V. ACTIVE MANAGEMENT OF PROFITABLE SEPARATE PROPERTY

- § 6:30 In general
- § 6:31 The capital growth formula
- § 6:32 The salaried services formula
- § 6:33 —Choosing between Pereira and Van Camp
- § 6:34 —A salary is not determinative of total compensation
- § 6:35 —The percentage can vary
- § 6:36 —There are no exceptions
- § 6:37 —Fluctuating values
- § 6:38 Active management, time, and skills
- § 6:39 Community property standing to support shareholder derivative actions
- § 6:40 Active management, time, and skills—"Never marry a rich person"
- § 6:41 Tax note—The passive activity rule

VI. ACQUISITIONS USING BOTH SEPARATE AND COMMUNITY PROPERTY

- § 6:42 In general
- § 6:43 Separate property contributions to the acquisition of community property and separate property of the other spouse
- § 6:44 Separate property contributions to the acquisition of community property assets—The former presumption of gift when separate property was used for community property acquisitions
 - § 6:45 —The modern presumption of intent to reimburse
 - § 6:46 —Contributions to the acquisition of the property
 - § 6:47 —The amount reimbursed
 - § 6:48 —An express written waiver
 - § 6:49 —When does Family Code § 2640 become effective?
 - § 6:50 —Property acquired before marriage
 - § 6:51 —Fabian followed
 - § 6:52 Laws requiring reimbursement apply equally to quasi-community property
- § 6:53 Community property contributions to the acquisition of separate property assets
 - § 6:54 —The formula
 - § 6:55 —Piecemeal acquisitions
 - § 6:56 —Classifying the underlying property

TABLE OF CONTENTS

- § 6:57 ——Inception of right theory
- § 6:58 ——Non-perfected rights
- § 6:59 ——Apportioning the value of an insurance policy

VII. IMPROVING A SPOUSE'S OR PARTNER'S SEPARATE PROPERTY BY THE USE OF COMMUNITY FUNDS

- § 6:60 In general
- § 6:61 The Moore/Marsden formula used in allocating proportionate shares of business property
- § 6:62 Using community efforts to enhance the value of separate property
- § 6:63 —Implied consent to reimbursement to the community
- § 6:64 —Statute of limitations does not run during marriage
- § 6:65 —One spouse's separate property contributions to separate property of the other spouse—Reimbursable on dissolution

VIII. SEPARATE FUNDS USED TO PAY COMMUNITY DEBTS AFTER SEPARATION

- § 6:66 In general
- § 6:67 Post-separation payments—Epstein credits
- § 6:68 The payments cannot be in lieu of support
- § 6:69 Rebutting the presumption of gift for expense payments after separation

IX. MANAGING THE OTHER SPOUSE'S OR PARTNER'S SEPARATE PROPERTY

- § 6:70 In general

CHAPTER 7. PROPERTY REQUIRING SPECIAL TREATMENT

I. PENSIONS AND RETIREMENT BENEFITS

- § 7:1 In general
- § 7:2 Pensions and retirement benefits
- § 7:3 The principle
- § 7:4 Retirement plans terminology—Defined benefit plan
- § 7:5 —Defined contribution plan
- § 7:6 —Vesting and maturing
- § 7:7 —Death benefits
- § 7:8 Brown was not retroactive

- § 7:9 ERISA
- § 7:10 —ERISA regulated pensions—Death benefits and REACT
- § 7:11 —Qualified domestic relations orders assigning pension rights
- § 7:12 Civil Service Retirement Spouse Equity Act of 1984
- § 7:13 Spousal consent to options under REACT
- § 7:14 Tax note—Tax treatment of qualified retirement plans
- § 7:15 ——A qualified plan
- § 7:16 ——Taxation of distributions
- § 7:17 ——Excise taxes
- § 7:18 ——Individual Retirement Accounts (I.R.A.)
- § 7:19 Problems of division—Timing
- § 7:20 —Court discretion in ordering payout of the pension
- § 7:21 —When the non-employee elects to take a share of a matured pension—Basis of calculation
- § 7:22 —The community property claim may be against the participant, not the plan itself
- § 7:23 —The court order may not increase the amount of benefits provided by the plan
- § 7:24 —Employee options
- § 7:25 —Joining the pension plan administrator
- § 7:26 —Military variable incentive and separation pay
- § 7:27 —Post-retirement educational benefits
- § 7:28 The so-called terminable interest rule
- § 7:29 —Family Code § 2610 covers both contributory and non-contributory plans
- § 7:30 —Death of the non-employee spouse
- § 7:31 —Employee-spousal survivorship designations
- § 7:32 —The terminable interest rule is inconsistent with the philosophy of California community property law
- § 7:33 —After Chirmside—The application of Family Code § 2610
- § 7:34 —Family Code § 2610 should be applied retroactively
- § 7:35 Federally regulated (ERISA) and qualified deferred compensation plans partially preempting application of Family Code § 2610
- § 7:36 State civil service pensions follow the non-assignability rule of the Supreme Court in *Boggs v. Boggs*

II. DISABILITY PAYMENTS

- § 7:37 In general
- § 7:38 —Disability payments received before retirement
- § 7:39 —Time of retirement

TABLE OF CONTENTS

- § 7:40 —Assets acquired by disability payments received during marriage or after retirement
- § 7:41 —Choosing disability rather than retirement pay
- § 7:42 —Workers' Compensation
- § 7:43 —Military disability pay
- § 7:44 —Amounts
- § 7:45 —Direct payments for marriages of 10 years duration
- § 7:46 —Survivorship benefits
- § 7:47 —Medical, commissary, and PX privileges
- § 7:48 —The reach of Stenquist
- § 7:49 Distributing the tax savings resulting from the tax-exempt nature of disability payments
- § 7:50 When disability pay turns into retirement pay
- § 7:51 —Basis of recalculation
- § 7:52 —Continuation of health insurance coverage
- § 7:53 —Dividing remaining disability payments on dissolution or legal separation
- § 7:54 Tax note—Compensation for injuries or sickness
- § 7:55 Social Security Disability Insurance (SSDI)

III. LIFE INSURANCE

- § 7:56 In general
- § 7:57 Categories of life insurance—Term
- § 7:58 —Ordinary life
- § 7:59 —Endowment
- § 7:60 —Annuity
- § 7:61 Payment options
- § 7:62 —Outright payment of the proceeds to the beneficiary
- § 7:63 —The interest option
- § 7:64 —The fixed payment option
- § 7:65 —The fixed period option
- § 7:66 —The annuity option
- § 7:67 Community interest in insurance
- § 7:68 —National Service Life Insurance
- § 7:69 —Federal employees' group life insurance
- § 7:70 —Casualty insurance
- § 7:71 —Term insurance
- § 7:72 —Limiting post-mortem recapture for insurance, pension benefits, and annuities purchased with quasi-community property
- § 7:73 Tax note—Life insurance

IV. CAUSES OF ACTION AND RECOVERIES FOR PERSONAL INJURY

- § 7:74 In general

CALIFORNIA COMMUNITY PROPERTY LAW

- § 7:75 Personal injury recoveries are not apportioned
- § 7:76 —When does a personal injury cause of action arise?
- § 7:77 Survival of a cause of action arising during marriage
- § 7:78 Modifying the common law rule against assignment of personal injury causes of action
- § 7:79 Apportioning problems
- § 7:80 Cause of action not reduced to judgment at time of dissolution
- § 7:81 Interspousal tort recovery; consolidation of action at dissolution
- § 7:82 Awarding the recovery to the injured spouse on dissolution
- § 7:83 Commingling personal injury recoveries
- § 7:84 Assigning recoveries of money or property on dissolution
- § 7:85 Disability recovery that later becomes retirement income
- § 7:86 In the interests of justice
- § 7:87 The abolition of imputed negligence
- § 7:88 Reimbursement for medical expenses paid
- § 7:89 Personal injury recoveries exemption
- § 7:90 Uninsured motorist proceeds
- § 7:91 Recoveries for the wrongful death of a child
- § 7:92 Restitution under the Victims' Bill of Rights Act

CHAPTER 8. GIFTS, HOME FURNISHINGS, AND REAL PROPERTY TRANSFERS

I. GIFTS TO THIRD PARTIES

- § 8:1 In general
- § 8:2 Gifts of community property to third parties
- § 8:3 The fiduciary principle—Managing the property for the benefit of the community
- § 8:4 Burden of proof in issues of accounting
- § 8:5 Restraining and protective orders
- § 8:6 The standard of care in managing community property
- § 8:7 Voiding community property gifts
- § 8:8 —Gifts of community real and personal property are voidable, not void
- § 8:9 —Statutes of limitations
- § 8:10 —Voidance and specific restitution
- § 8:11 —Disgorging mesne profits
- § 8:12 —One-half after death
- § 8:13 —One-half after dissolution

TABLE OF CONTENTS

- § 8:14 —What constitutes fair and reasonable value
- § 8:15 —Ratification, waiver, estoppel
- § 8:16 Survival of the right to avoid the gift
- § 8:17 —Survival of protective causes of action
- § 8:18 —The Uniform Transfers to Minors Act
- § 8:19 —Supervening incompetency tolling the statute of limitations
- § 8:20 —Duties of executors and administrators of estates
- § 8:21 —Recapture and tax liability
- § 8:22 Tax note—Gifts of community property

II. THE FAMILY'S PERSONAL PROPERTY DWELLING, CLOTHING, FURNITURE, AND HOUSEHOLD ITEMS

- § 8:23 In general
- § 8:24 With or without consideration
- § 8:25 Credit practices
- § 8:26 Absolutely void
- § 8:27 Testamentary disposition of furniture, furnishings, or fittings of the home

III. REAL PROPERTY CONVEYANCES

A. AVOIDANCE OF A UNILATERAL CONVEYANCE

- § 8:28 In general
- § 8:29 Joinder
- § 8:30 Joinder by implication—Estoppel
- § 8:31 Specific performance will be denied to an executory contract in which one spouse refuses to join
- § 8:32 Third parties cannot void unilateral spousal transactions
- § 8:33 One-half after death
- § 8:34 The one-half rule after dissolution
- § 8:35 A one-party anomaly rejected
- § 8:36 The statute of limitations cannot be used to shield fraud
- § 8:37 Interspousal conveyances of real property
- § 8:38 Voidance within one year from filing for record
- § 8:39 1102 does not apply to involuntary conveyances
- § 8:40 Voiding conveyances on common law contract grounds
- § 8:41 Conveyances in fraud of creditors
- § 8:42 Unilateral creation of family law attorney's real property lien

B. RIGHTS OF BONA FIDE PURCHASERS OF REAL PROPERTY

- § 8:43 In general
- § 8:44 The effect of voidance of the conveyance
- § 8:45 Restoration of the status quo ante—The question of equity
- § 8:46 Dispensing with consent
- § 8:47 Severing a joint tenancy
- § 8:48 Establishing a homestead
- § 8:49 Recapping the remedies
- § 8:50 Married persons selling lands under false representations commit a felony

IV. PROTECTING COMMUNITY PROPERTY AGAINST THE INCOMPETENCY OF A MANAGING SPOUSE OR PARTNER

- § 8:51 In general
- § 8:52 The durable power of attorney
- § 8:53 A conservator's role

CHAPTER 9. INTERSPOUSAL ACCOUNTING AND CREDITORS' RIGHTS

I. MISMANAGEMENT OF THE COMMUNITY PROPERTY DURING MARRIAGE OR PARTNERSHIP

- § 9:1 In general
- § 9:2 The spouse or partner operating a community business
- § 9:3 Fiduciary duties
- § 9:4 Remedies

II. THE RIGHTS OF CREDITORS AGAINST THE COMMUNITY

A. LIABILITY FOR CONTRACTUAL OBLIGATIONS

1. General Rules of Liability

- § 9:5 In general
- § 9:6 Community property
- § 9:7 —Levying on the bank account of the judgment debtor's spouse
- § 9:8 Quasi-community property
- § 9:9 Separate property

TABLE OF CONTENTS

§ 9:10	Personal liability for necessities of life
§ 9:11	Post-separation liability of the spouses after division of property
§ 9:12	<i>A settlement in time saved mine!</i> —When is community property actually divided?
§ 9:13	Right of reimbursement
	2. Premarital Debts
§ 9:14	In general
§ 9:15	Liability of quasi-community property
§ 9:16	Overpayment of debts or payment of debts not legally collectible
§ 9:17	Reimbursement as restitution
§ 9:18	Amount and conditions of reimbursement
§ 9:19	Agency
§ 9:20	Surety on a debt
§ 9:21	The earnings of the non-debtor spouse are not liable for premarital debts of the other if segregated
	3. Contractual Obligations Incurred During Marriage or Partnership
§ 9:22	Debts contracted during marriage
§ 9:23	Spousal and child support obligations
§ 9:24	—Statutory duty to support infirm parents
§ 9:25	Judgments against one spouse filed during marriage
§ 9:26	The no-reimbursement rule where community income is used to pay spousal or child support obligations from a prior marriage
§ 9:27	“Separate” and “community” debts
§ 9:28	Conveyances in fraud of creditors
§ 9:29	Necessaries of the family
§ 9:30	Interfacing the Federal Bankruptcy Act and state marital property law
§ 9:31	Either spouse, without the consent of the other, may file a petition in bankruptcy
§ 9:32	The bankruptcy court acting to effect a partition of community property
§ 9:33	A state court may adjudicate the issue of personal status and make orders accordingly
§ 9:34	Where one spouse files a petition in bankruptcy the other spouse has limited recourse
§ 9:35	The Federal Bankruptcy Court determines the classification of marital property
§ 9:36	Community property and bankruptcy—Contents of the bankrupt estate
§ 9:37	—Exemptions

CALIFORNIA COMMUNITY PROPERTY LAW

- § 9:38 ——Exemptions to discharge
- § 9:39 ——Debts incurred in the dissolution of marriage
- § 9:40 ——Debtor's fraud or defalcation
- § 9:41 Voiding preferential transfers
- § 9:42 Time of appeal—Extension for “excusable neglect”
- § 9:43 The Religious Liberty and Charitable Donation Protection Act
- § 9:44 Preemption of jurisdiction is complete
- § 9:45 Bankruptcy courts have authority to disbar an attorney
- § 9:46 Income in trust—Spendthrift limitations
- § 9:47 —Support obligations
- § 9:48 —Other creditors
- § 9:49 —ERISA-regulated pension trusts
- § 9:50 Statutory homestead
- § 9:51 Restraining creditors during pendency of dissolution proceedings
- § 9:52 After-divorce liability for community debt contracted by other spouse during marriage
- § 9:53 The Equal Credit Opportunity Act
- § 9:54 The Indian Gaming Regulatory Act

B. LIABILITY FOR TORT CLAIMS

- § 9:55 In general
- § 9:56 Liability to third parties
- § 9:57 Liability and management—The traditional link broken
- § 9:58 Agency
- § 9:59 Tracing the recovery
- § 9:60 Transmutations and creditors' rights
- § 9:61 California's permissive use statute
- § 9:62 When is liability set?
- § 9:63 Post-separation payments on the property
- § 9:64 Marital settlement agreements where tort claims may be outstanding
- § 9:65 Bank accounts
- § 9:66 Insurance proceeds used to pay damages
- § 9:67 Seven-year rule for reimbursement
- § 9:68 Interspousal tort liability
- § 9:69 Attempted murder of a spouse
- § 9:70 Forfeiture of assets

TABLE OF CONTENTS

CHAPTER 10. DIVIDING COMMUNITY PROPERTY ON DISSOLUTION, ANNULMENT, OR JUDICIAL SEPARATION

I. THE ROLE OF THE COURT

A. GENERALLY

- § 10:1 In general
- § 10:2 Procedures for dissolution of marriage
- § 10:3 Family conciliation court
- § 10:4 Arbitration
- § 10:5 Mediation and the statutory privilege of confidentiality
- § 10:6 Summary procedure
- § 10:7 Formal, regular procedure
- § 10:8 Default actions and uncontested issues
- § 10:9 Dividing out-of-state property
- § 10:10 At the request of either party, the court may divide concurrently-held separate property
- § 10:11 Closing the proceedings

B. JURISDICTION OVER THE PERSON

- § 10:12 In general
- § 10:13 Domicile
- § 10:14 Physical presence or beneficial contacts
- § 10:15 Six months' continuous residency
- § 10:16 Out-of-state respondent notice
- § 10:17 Respondents in active military service
- § 10:18 Contesting domicile
- § 10:19 For quasi-community property both must be domiciled in California
- § 10:20 Prior court retains jurisdiction
- § 10:21 Divisible divorce—Divisible jurisdiction

C. THE COURT HAS DIRECT JURISDICTION ONLY OVER COMMUNITY PROPERTY

- § 10:22 In general
- § 10:23 No direct use of separate property
- § 10:24 Discretion of the court in dividing marital property
- § 10:25 The only competent forum to hear and decide dissolution cases is the Superior Court
- § 10:26 Court commissioners

D. THE RELIEF GRANTED IS LIMITED TO THE PETITION

- § 10:27 In general
- § 10:28 In contested cases
- § 10:29 Petitions to set aside court decrees are also limited
- § 10:30 Tax note—Dissolution of a marriage does not occur until a decree becomes final

E. THE COURT CAN DEMAND FULL ACCOUNTING AND FULL DISCLOSURE OF ASSETS

- § 10:31 In general
- § 10:32 Assets and liabilities disclosure/income and expense declaration
- § 10:33 Limitations upon discovery
- § 10:34 Compelling discovery
- § 10:35 Discovery procedures
- § 10:36 —Business and professional records
- § 10:37 Discovery of an asset not in existence at the time of separation
- § 10:38 Failure of an attorney to make adequate discovery

II. DIVIDING THE COMMUNITY PROPERTY

A. GENERALLY—THE COURT ITSELF MUST CHARACTERIZE AND DIVIDE THE PROPERTY

- § 10:39 In general
- § 10:40 The court itself must characterize and divide the property
- § 10:41 The court must make complete findings of fact regarding the classification and value of assets; the statement of decision
- § 10:42 Going forward—Burdens of proof of disputed assets and liabilities
- § 10:43 The standard of review
- § 10:44 Bifurcated trials
- § 10:45 Reaching community property held by third parties
- § 10:46 Restraining orders
- § 10:47 —Except in the usual course of business or for the necessities of life

B. SUBSTANTIAL EQUALITY IN THE DIVISION OF COMMUNITY PROPERTY

- § 10:48 In general

TABLE OF CONTENTS

- § 10:49 The meaning of substantial equality
- § 10:50 Using spousal support payments as a way of equalizing
- § 10:51 The “single asset” provision

C. IN ADDITION TO DIVIDING ASSETS THE COURT MUST ASSIGN OUTSTANDING DEBTS

- § 10:52 In general
- § 10:53 Where debts exceed assets—Assignment on ability to pay
- § 10:54 Equalizing debts and assets where assets are greater than debts
- § 10:55 Post-separation debts
- § 10:56 Assignment of debts and the protection of creditors
- § 10:57 The party contracting a debt may still be liable after assignment to the other party
- § 10:58 Outstanding educational loans
- § 10:59 Outstanding tort liability
- § 10:60 Civil damages for domestic violence
- § 10:61 Separate debts
- § 10:62 Attorney fees and costs
- § 10:63 Assignment of debts—Continuing jurisdiction
- § 10:64 —Dissolution judgment lien
- § 10:65 Notice requirements on judgments
- § 10:66 Reimbursement

D. THE JURISDICTION OF THE COURT TO DIVIDE MARITAL PROPERTY SURVIVES THE DEATH OF A SPOUSE

- § 10:67 In general
- § 10:68 Death does not abate the action
- § 10:69 Dissolution, legal separation, or declaration of nullity is presumed to sever a joint tenancy by operation of law

III. MARITAL SETTLEMENT AGREEMENTS

A. GENERALLY—THE DUTY OF DISCLOSURE

- § 10:70 In general
- § 10:71 The duty of disclosure
- § 10:72 Statute of limitations
- § 10:73 Interpreting a marital settlement agreement
- § 10:74 Can the court modify an agreement?
- § 10:75 Offers to compromise

CALIFORNIA COMMUNITY PROPERTY LAW

§ 10:76 Marital settlement agreement is not a “sale” of stock for purposes of securities laws

B. SETTING ASIDE AN AGREEMENT

§ 10:77 In general
§ 10:78 Violating the duty to disclose/preventing a fair trial
§ 10:79 Warranty clauses
§ 10:80 Mistake or disability of the parties
§ 10:81 Duress
§ 10:82 Due diligence in pursuing a claim in dissolution cases
§ 10:83 The effect of reconciliation before a decree becomes final
§ 10:84 Where only one party is represented by a competent attorney
§ 10:85 —Dual representation—Where a couple retains a single attorney to assist settlement
§ 10:86 One party’s opinion as to the value of an asset
§ 10:87 Rescission on grounds of attorney misconduct
§ 10:88 Setting aside a judgment on grounds of the court’s partiality or lack of professional competency
§ 10:89 An inequitable division of community property, by itself, is insufficient to set aside a judgment

IV. FINALITY OF JUDGMENT

§ 10:90 In general
§ 10:91 Form of action to settle claims regarding unadjudicated community property
§ 10:92 The defense of estoppel, waiver, or laches against retrospective enforcement of a claim
§ 10:93 Property mentioned but not adjudicated
§ 10:94 —Inherent power of the court to correct an erroneous ruling on its own motion
§ 10:95 Time of appeal—Finality of judgment
§ 10:96 The effect of an agreement not to submit some or all of the community property to the jurisdiction of the court
§ 10:97 The rule that unadjudicated community property is held as a tenancy in common is a measure of convenience
§ 10:98 Stipulation in open court
§ 10:99 Effect of failure to object to “open-court” property settlement stipulations
§ 10:100 Oral settlement reached in chambers
§ 10:101 Personal jurisdiction in post-judgment proceedings

TABLE OF CONTENTS

- § 10:102 The military pension exception to the finality of judgments
- § 10:103 Judgment nunc pro tunc

CHAPTER 11. SPECIAL PROBLEMS IN EVALUATING AND DIVIDING COMMUNITY ASSETS

I. PROBLEMS OF EVALUATION

A. GENERALLY

- § 11:1 In general
- § 11:2 Time of evaluation
- § 11:3 Time of evaluation and Family Law Court delays
- § 11:4 Valuation date for assets and/or liabilities where judgment set aside
- § 11:5 Offsetting use value where a community asset is enjoyed by one spouse alone after separation
- § 11:6 Different community assets may be valued at different times
- § 11:7 Notice requirement for alternative valuation date
- § 11:8 Good cause
- § 11:9 Where a community asset increases in value between separation and time of trial
- § 11:10 Changing values during separation
- § 11:11 Appraisal experts
- § 11:12 Evaluation opinion of a spouse
- § 11:13 Stipulating to value

B. TAX CONSIDERATIONS IN EVALUATION

- § 11:14 In general
- § 11:15 Where tax consequences remain hypothetical
- § 11:16 Where tax consequences are immediate and specific
- § 11:17 —Assigning tax liability
- § 11:18 —Interspousal property transactions are not taxable events
- § 11:19 —Tax consequences as a factor in property valuation and division

C. A REASONABLE METHOD OF EVALUATION MUST EXCLUDE FUTURE EARNINGS

- § 11:20 In general
- § 11:21 Value of the goodwill of a professional practice

- § 11:22 —Gross income multiplier method
- § 11:23 —Capitalized “excess earnings” method
- § 11:24 —Comparable prior sales
- § 11:25 —Opinion of a party
- § 11:26 —Other methods
- § 11:27 Evaluating a professional practice
- § 11:28 Sharing risk of future liability
- § 11:29 Evaluating a family business
- § 11:30 Awarding a business to the spouse most able to operate it
- § 11:31 Dividing encumbered property
- § 11:32 Ignoring corporate status for purposes of evaluating community property
- § 11:33 Evaluating real property
- § 11:34 Respecting personal preferences

II. PROBLEMS OF DIVISION OF COMMUNITY OR QUASI-COMMUNITY PROPERTY

A. GENERALLY—OFFSET FOR FRAUD OR DELIBERATE MISAPPROPRIATION OF ASSETS

- § 11:35 In general
- § 11:36 Innocent misappropriation requires restitution
- § 11:37 Deliberate misappropriation—An additional award or offset against existing property

B. DEFERRING SALE OF THE FAMILY HOME

- § 11:38 In general
- § 11:39 The deferred sale of the family home to benefit minor or disabled children
- § 11:40 Retaining jurisdiction over the future sale of the home
- § 11:41 Needs of minor and dependent children
- § 11:42 Is the home still a preferred asset if there are no children or dependents?
- § 11:43 Use of notes and deeds of trust
- § 11:44 Cotenancy
- § 11:45 Refinancing and buyout
- § 11:46 Costs of sale
- § 11:47 Accrued interest on delayed sale
- § 11:48 Retroactivity of family home award—Family Code § 3810
- § 11:49 The deferred sale of the family home order is discretionary

TABLE OF CONTENTS

- § 11:50 Family home award termination
- § 11:51 Tax note—Sale of the home

C. DIVIDING PENSION BENEFITS AND ANNUITY CONTRACTS

- § 11:52 In general
- § 11:53 The clash of rights
- § 11:54 Should the courts reserve jurisdiction in dividing pensions?
- § 11:55 The “time rule”
- § 11:56 Right to control pension benefits during marriage
- § 11:57 Post-separation court control of employee options
- § 11:58 Present value
- § 11:59 Cashing out the pension rights
- § 11:60 Evaluation of stock options
- § 11:61 Joining and garnishing or attaching a pension administrator
- § 11:62 —Plan administrator’s duty to pay out arrearages owed
- § 11:63 Tax note—Tax considerations in dividing pension benefits

III. SECURITY DEVICES TO PROTECT THE AGREEMENT

- § 11:64 In general
- § 11:65 Securing marital settlement agreements
- § 11:66 Discharge in bankruptcy of liens or deeds of trust against residential property subject to homestead exemption
- § 11:67 Merger in the court decree

IV. COSTS AND FEES

- § 11:68 In general
- § 11:69 Setting attorney fees
- § 11:70 Award of attorney fees and costs as sanctions
- § 11:71 Attorney fees and costs as sanctions against party in breach of fiduciary duties
- § 11:72 Attorney fees as marital debts
- § 11:73 Attorney fees under RURESA
- § 11:74 Attorney’s fees under UFMJRA
- § 11:75 Awards of attorney fees and costs—Income and needs
- § 11:76 From third parties
- § 11:77 Court-ordered payment of attorney fees may be enforced by contempt

- § 11:78 In nullification of marriage actions—To the innocent spouse
- § 11:79 Fees and costs under ERISA
- § 11:80 Sanctions for frivolous appeals
- § 11:81 The family law attorney's real property lien
- § 11:82 —Attorney substitutions and court orders reserving jurisdiction to award fees and costs for prior services
- § 11:83 Tax note—Fees and costs in marital litigation

CHAPTER 12. TAX ASPECTS OF PROPERTY DIVISION AND SUPPORT

I. GENERALLY

- § 12:1 In general
- § 12:2 Filing status
- § 12:3 Interspousal transfers of property on termination of marriage
- § 12:4 California state tax law
- § 12:5 Interspousal transfers as gifts, not sales
- § 12:6 Incident to divorce
- § 12:7 Taxability of interest on promissory notes
- § 12:8 Taking the recognition
- § 12:9 Quasi-community property
- § 12:10 Assumption of liabilities
- § 12:11 Assignment of income
- § 12:12 Division of pension plans or tax-deferred retirement accounts
- § 12:13 Property tax implications—“Change of ownership”
- § 12:14 Internal Revenue Code residence exclusion
- § 12:15 Transfer of restricted stock or stock options
- § 12:16 California community property law and federal law conflict where appreciated property is assigned to one spouse
- § 12:17 An exception for transfer into trust
- § 12:18 Installment payment to discharge property division agreements or orders
- § 12:19 Transfer of an Individual Retirement Account (IRA)
- § 12:20 Assuring death benefits
- § 12:21 Transfer of property to a third party in behalf of a spouse

II. SPOUSAL SUPPORT

- § 12:22 In general
- § 12:23 Alimony and separate maintenance payments

TABLE OF CONTENTS

- § 12:24 The requirements for deductibility—Payments in cash
- § 12:25 Taxable income to the payee
- § 12:26 —Payments made pursuant to a written instrument
- § 12:27 —The obligation to make support payments must end with the death of the recipient spouse
- § 12:28 The obligation to make support payments must end with the remarriage of the recipient spouse
- § 12:29 Taxable income to the payee—Payments for spousal support cannot be contingent on children in any way
- § 12:30 —Payments cannot be payments for child support
- § 12:31 —Unallocated family support payments
- § 12:32 —Part or all of the payment can be specified as either non-includable or non-deductible
- § 12:33 —Spouses must live separately for payments to be deductible
- § 12:34 —Spouses must file separate returns
- § 12:35 —Spouses are required to include the Social Security number of the other spouse in their return
- § 12:36 Three-year recapture rule
- § 12:37 Exceptions to recapture
- § 12:38 Support payments by way of annuity contracts
- § 12:39 Alimony trusts
- § 12:40 Payment of life insurance premiums to secure spousal support
- § 12:41 Alimony and property settlements
- § 12:42 —Gross income includes amounts received as alimony or separate maintenance

III. CHILD SUPPORT

- § 12:43 In general
- § 12:44 Child support distinguished from “family support”
- § 12:45 26 U.S.C.A. § 71—Emancipation
- § 12:46 —College expenses
- § 12:47 26 U. S. C. § 529—Prepaid Tuition and College Savings Plans
- § 12:48 Dependency exemptions
- § 12:49 Medical expenses
- § 12:50 Head of household
- § 12:51 Child care credit

IV. DEDUCTIBILITY OF FEES AND EXPENSES INCURRED IN OBTAINING TAX ADVICE

- § 12:52 In general

V. TAX ISSUES FOR UNMARRIED COUPLES AND REGISTERED DOMESTIC PARTNERS

§ 12:53 In general

CHAPTER 13. SUCCESSION TO COMMUNITY PROPERTY WHEN A SPOUSE OR PARTNER DIES

I. GENERALLY

- § 13:1 In general
- § 13:2 Simplified procedure for community property succession
- § 13:3 Expanded definition of community property
- § 13:4 Powers of the Probate Court—Generally
- § 13:5 Interspousal transmutation agreements
- § 13:6 Waiver of spousal or partner rights
- § 13:7 Joint form—Community property presumption not applicable on death of a spouse or partner
- § 13:8 Severing joint tenancy property
- § 13:9 Community property with right of survivorship
- § 13:10 Standing to contest and the notion of privity with the decedent's estate
- § 13:11 The former safe-harbor provisions
- § 13:12 Enforceability of no-contest clauses
- § 13:13 A surviving spouse's or partner's right to serve as representative of a decedent spouse's or partner's estate
- § 13:14 Surviving spouse or partner—Final judgment rule
- § 13:15 Clearing title without probate—Summary confirmation
- § 13:16 —Compromise and settlement

II. THE SURVIVING SPOUSE'S OR PARTNER'S RIGHT TO ELECT

- § 13:17 In general
- § 13:18 When can, and when must, a surviving spouse elect?
- § 13:19 Survival of the right to elect
- § 13:20 Claiming both
- § 13:21 “All my property”
- § 13:22 Renunciation or disclaimer

III. COMPLICATIONS OF SUCCESSIVE RELATIONSHIPS

§ 13:23 In general

TABLE OF CONTENTS

- § 13:24 Retirement Equity Act of 1984 and its joint and survivor annuity provisions
- § 13:25 Recapture provisions for gifts of marital property
- § 13:26 —Recapture of gifts of community property
- § 13:27 —Recapture of transfers of quasi-community property
- § 13:28 —Community property generic versus specific recapture

IV. ALLOCATION OF RESPONSIBILITY FOR DEBTS

A. GENERALLY—DEBTS CONTRACTED DURING LIFETIME

- § 13:29 In general
- § 13:30 Debts contracted during lifetime—Generally
- § 13:31 California abolished state gift and inheritance tax by referendum in 1982
- § 13:32 Personal responsibility of surviving spouse for debts
- § 13:33 Exoneration
- § 13:34 Probate homestead
- § 13:35 Creditors' rights against property in revocable trust
- § 13:36 Probate, administration and settling creditors' claims

B. CHARGES AND EXPENSES OF ADMINISTRATION

- § 13:37 In general
- § 13:38 Compensation for ordinary and extraordinary legal services
- § 13:39 Expenses of litigation—Fee-shifting in probate and trust cases
- § 13:40 Apportioning a decedent's debts to separate and community property
- § 13:41 Distribution of separate property of a deceased spouse or partner
- § 13:42 Revocation of a will by dissolution of marriage
- § 13:43 Family allowance
- § 13:44 Property charged with the family allowance
- § 13:45 Omission of a spouse or child
- § 13:46 Share of an omitted spouse
- § 13:47 Effect on judgment lien of death of judgment debtor
- § 13:48 Effect on lien on joint tenancy real property when joint tenant dies—Mortgage or deed of trust by one joint tenant
- § 13:49 Mechanics' liens and tax liens

CALIFORNIA COMMUNITY PROPERTY LAW

- § 13:50 Judgment lien on interest of one joint tenant
- § 13:51 Conservatorship and accounting
- § 13:52 Survival of cause of action on the death of a joint tenant plaintiff

V. TESTAMENTARY CAPACITY—INTESTATE SUCCESSION

- § 13:53 In general—Testamentary capacity
- § 13:54 —Ascertaining testator's intent—Admitting evidence to reform a will
- § 13:55 —Admission of a will to probate-jurisdiction
- § 13:56 —Testamentary conditions in restraint of marriage
- § 13:57 Intestate succession
- § 13:58 Intestate succession for registered domestic partners
- § 13:59 Nonprobate transfers—The Uniform Transfer on Death Security Registration Act
- § 13:60 Multiple party accounts and the presumption of community property
- § 13:61 Testamentary capacity over quasi-community property and quasi-marital property
- § 13:62 Simultaneous death of spouses or partners
- § 13:63 Children conceived postmortem by the use of parental genetic material
- § 13:64 Who can validly execute a will?
- § 13:65 —Donative transfers to drafters of wills, care-givers, custodians and their relatives
- § 13:66 Contracts to make a will
- § 13:67 Intentional interference with an expected inheritance
- § 13:68 Unmarried cohabitants
- § 13:69 The ancestral source rule
- § 13:70 The murderer-beneficiary rule
- § 13:71 Elder abuse
- § 13:72 Inter-spousal or partner transfers of real property—No reassessment for property taxes
- § 13:73 Prorating payment of estate taxes

VI. TAX NOTE—ESTATE AND GIFT TAXES

- § 13:74 In general
- § 13:75 Unified system for both estate and gift taxes
- § 13:76 Marital deduction
- § 13:77 Annual gift tax exclusions
- § 13:78 Increases in exemption amounts/decreases in tax rates
- § 13:79 The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

TABLE OF CONTENTS

§ 13:80 —The American Taxpayer Relief Act of 2012
§ 13:81 Community property step-up in basis

Table of Laws and Rules

Table of Cases

Index