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

Interspousal management liability § 1:25 § 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 The equal right of husband and wife (each partner) to § 1:29 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 "The Marriage Cases"—U. S. Supreme Court, June 26, § 1:33 Tax note—The historical tax advantages of the § 1:34

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

I. VALID CEREMONIAL MARRIAGE

community property systems

- § 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
- § 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 0.12 211 20110101	§ 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
§ 3:43	—Accrued vacation pay
§ 3:44	—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
8 2.18	Current innecent speuse 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

III.	COMMON LAW TITLES, SEPARATE INTERESTS AND THE CHANGED
-	indirectly by an interspousal agreement
§ 4:53	Welfare of children cannot be affected directly or
§ 4:52	Dual representation
§ 4:51	Requirement that the transmutation be in writing by express declaration
§ 4:50	Creation of joint tenancies
§ 4:49	A will is not admissible in the lifetime of the testator
§ 4:48	—Once transmutation has occurred a change of mind is legally ineffective
§ 4:47	—Can interpersonal gifts remain community property?
•	parties
§ 4:46	—Interspousal transmutation agreements and third
§ 4:45	—Interspousal transfers in fraud of creditors
§ 4:44	—Transmutations before 1985
§ 4:43	During marriage or partnership—Agreements and transmutations by the couple
	or equal exchange of property
§ 4:42	———Estate tax—Avoidable for gifts during marriage
§ 4:41	— — Income tax—Make it a gift, use the deduction
8 4.40	deduction
§ 4.33 § 4:40	— — Gift tax—Take advantage of the marital
§ 4:39	Estoppel, part performance —Tax note—Tax aspects of premarital agreements
§ 4:38	Premarital agreements—Executed oral agreements—
6 4 00	

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
$\S~4:57$	—Joint tenancies and community property—
	Essentially incompatible
§ 4:58	— —Joint tenancies with third parties
$\S~4:59$	—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 2583
§ 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

§ 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 1992 Amendments to interspousal fiduciary duties § 5:20 § 5:21 Other recent retroactive applications of legislative amendments § 5:22 Creditors' rights § 5:23 Retroactive application of family law reforms in other

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 § 5:29 — The Railroad Retirement Solvency Act of 1983 § 5:30 ——Separable Social Security treatment Military retirement provisions—The Federal § 5:31 Uniformed Services Former Spouses Protection Act of 1982 (FUSFSPA) The Federal Uniformed Services Former Spouses § 5:32 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

§ 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

§ 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

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 quasicommunity 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

η	A DI E	OF	CONTENT	nc
- 1	ARLE:	()H' !	CONTRINI	

§ 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 <i>Boggs v. Boggs</i>

II. DISABILITY PAYMENTS

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

\$ 7.40	
§ 7:40	
0 7 4	during marriage or after retirement
§ 7:41	
§ 7:42	•
§ 7:43	v v 1 v
§ 7:44	
§ 7:48	
§ 7:46	
§ 7:4'	, , , , , , , , , , , , , , , , , , , ,
§ 7:48	
§ 7:49	Distributing the tax savings resulting from the tax- exempt nature of disability payments
§ 7:50	When disability pay turns into retirement pay
§ 7:5	—Basis of recalculation
§ 7:52	2 —Continuation of health insurance coverage
§ 7:53	B —Dividing remaining disability payments on
	dissolution or legal separation
§ 7:54	Tax note—Compensation for injuries or sickness
§ 7:58	Casial Cassuits Disability Insurance (CCDI)
5 1.00	Social Security Disability Insurance (SSDI)
iII.	LIFE INSURANCE
III.	LIFE INSURANCE
III. § 7:56	LIFE INSURANCE In general
III.	LIFE INSURANCE In general Categories of life insurance—Term
\$ 7:56 \$ 7:58 \$ 7:58	LIFE INSURANCE In general Categories of life insurance—Term Ordinary life
\$ 7:56 \$ 7:57 \$ 7:58 \$ 7:58	LIFE INSURANCE In general Categories of life insurance—Term Ordinary life Endowment
\$ 7:56 \$ 7:58 \$ 7:58	LIFE INSURANCE In general Categories of life insurance—Term Ordinary life Endowment Annuity
\$ 7:56 \$ 7:55 \$ 7:55 \$ 7:66 \$ 7:66	LIFE INSURANCE In general Categories of life insurance—Term —Ordinary life —Endowment —Annuity Payment options
\$ 7:56 \$ 7:58 \$ 7:58 \$ 7:58 \$ 7:60 \$ 7:60 \$ 7:62	LIFE INSURANCE In general Categories of life insurance—Term —Ordinary life —Endowment —Annuity Payment options —Outright payment of the proceeds to the beneficiary
\$ 7:56 \$ 7:55 \$ 7:55 \$ 7:55 \$ 7:66 \$ 7:65 \$ 7:65 \$ 7:65	LIFE INSURANCE In general Categories of life insurance—Term —Ordinary life —Endowment —Annuity Payment options —Outright payment of the proceeds to the beneficiary The interest option
\$ 7:56 \$ 7:55 \$ 7:55 \$ 7:55 \$ 7:66 \$ 7:66 \$ 7:66 \$ 7:66 \$ 7:66	LIFE INSURANCE In general Categories of life insurance—Term —Ordinary life —Endowment —Annuity Payment options —Outright payment of the proceeds to the beneficiary —The interest option The fixed payment option
\$ 7:56 \$ 7:57 \$ 7:58 \$ 7:58 \$ 7:62 \$ 7:62 \$ 7:64 \$ 7:64 \$ 7:64	LIFE INSURANCE In general Categories of life insurance—Term Ordinary life Endowment Annuity Payment options Outright payment of the proceeds to the beneficiary The interest option The fixed payment option The fixed period option
\$ 7:56 \$ 7:55 \$ 7:55 \$ 7:55 \$ 7:66 \$ 7:66 \$ 7:66 \$ 7:66 \$ 7:66	LIFE INSURANCE In general Categories of life insurance—Term —Ordinary life —Endowment —Annuity Payment options —Outright payment of the proceeds to the beneficiary —The interest option —The fixed payment option —The fixed period option —The annuity option

IV. CAUSES OF ACTION AND RECOVERIES FOR PERSONAL INJURY

—Limiting post-mortem recapture for insurance,

pension benefits, and annuities purchased with quasi-

—National Service Life Insurance

—Casualty insurance

community property § 7:73 Tax note—Life insurance

—Term insurance

—Federal employees' group life insurance

§ 7:74 In general

§ 7:68

§ 7:69 § 7:70

§ 7:71

§ 7:72

§ 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

§ 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
88:41	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 Dispensing with consent § 8:46 Severing a joint tenancy § 8:47 § 8:48 Establishing a homestead § 8:49 Recapping the remedies Married persons selling lands under false § 8:50

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

representations commit a felony

- § 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

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

9:10	Personal liability for necessaries of life
9:11	Post-separation liability of the spouses after division of property
9:12	A settlement in time saved mine!—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
В	. 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

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

I. THE ROLE OF THE COURT

Α	GENERALLY	_
<i>1</i> 1 •		

§ 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
В.	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

§ 10:49 § 10:50	Using spousal support payments as a way of
§ 10:51	equalizing 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. M	ARITAL 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

§ 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

- $\S~10:102$ 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

Λ	GENERALI	\mathbf{v}
A.	GENERALI	JΙ

- § 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
	OBLEMS OF DIVISION OF COMMUNITY OR JASI-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
В.	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

Retroactivity of family home award—Family Code

The deferred sale of the family home order is

§ 11:48

§ 11:49

§ 3810

discretionary

§ 11:50 § 11:51	Family home award termination 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
	ECURITY DEVICES TO PROTECT THE GREEMENT
§ 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. CO	OSTS 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
§ 11.70	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

In general
Filing status
Interspousal transfers of property on termination of marriage
California state tax law
Interspousal transfers as gifts, not sales
Incident to divorce
Taxability of interest on promissory notes
Taking the recognition
Quasi-community property
Assumption of liabilities
Assignment of income
Division of pension plans or tax-deferred retirement
accounts
Property tax implications—"Change of ownership"
Internal Revenue Code residence exclusion
Transfer of restricted stock or stock options
California community property law and federal law conflict where appreciated property is assigned to one spouse
An exception for transfer into trust
Installment payment to discharge property division agreements or orders
Transfer of an Individual Retirement Account (IRA)
Assuring death benefits
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

§ 12:24	The requirements for deductibility—Payments in cash
§ 12:25	00021
-	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, as
- § 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

§ 13:47

§ 13:48

§ 13:49

joint tenant

Mechanics' liens and tax liens

IMBLE OF	CONTENTS		
\$ 13:24 \$ 13:25 \$ 13:26 \$ 13:27 \$ 13:28	Retirement Equity Act of 1984 and its joint and survivor annuity provisions Recapture provisions for gifts of marital property —Recapture of gifts of community property —Recapture of transfers of quasi-community property —Community property generic versus specific recapture		
IV. ALLOCATION OF RESPONSIBILITY FOR DEBTS			
A.	GENERALLY—DEBTS CONTRACTED DURING LIFETIME		
§ 13:29 § 13:30 § 13:31	In general Debts contracted during lifetime—Generally California abolished state gift and inheritance tax by referendum in 1982		
§ 13:32 § 13:33 § 13:34	Personal responsibility of surviving spouse for debts Exoneration Probate homestead		
§ 13:35 § 13:36	Creditors' rights against property in revocable trust Probate, administration and settling creditors' claims		
В.	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		

Effect on judgment lien of death of judgment debtor Effect on lien on joint tenancy real property when

joint tenant dies-Mortgage or deed of trust by one

- § 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

§ 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