

Table of Contents

PART I. CONCURRENT INTERESTS

CHAPTER 1. INTRODUCTION

- § 1:1 Generally
- § 1:2 Tenancy by entireties

CHAPTER 2. ESTATES BY ENTIRETIES AND SEPARATE DEBTS

I. INTRODUCTION

- § 2:1 Generally

II. EFFECT OF MARRIED WOMEN'S PROPERTY STATUTES

- § 2:2 View that estate by entireties not subject to spouse's individual debt
- § 2:3 —Rule in Pennsylvania
- § 2:4 View that estate by entireties subject to spouse's individual debt
- § 2:5 —Character of interest that can be reached

III. PARTICULAR CLAIMS

- § 2:6 Judgments and executions in general
- § 2:7 Bankruptcy
- § 2:8 Mechanics' liens
- § 2:9 Tax claims
- § 2:10 Mortgages
- § 2:11 Promissory notes
- § 2:12 Guaranties

IV. EFFECT OF INTERSPOUSAL TRANSFERS TO AVOID ATTACHMENT OF CREDITORS

- § 2:13 Conveyance effective
- § 2:14 Conveyance ineffective

CHAPTER 3. OWNERSHIP OF PERSONALTY BY HUSBAND AND WIFE

I. INTRODUCTION

- § 3:1 Generally

- § 3:2 View that personalty may be held by the entirety
- § 3:3 View that personalty may not be held by the entirety

II. PARTICULAR INSTRUMENTS, TRANSACTIONS, ETC., GIVING RISE TO THE TENANCY

- § 3:4 Generally
- § 3:5 Acquisitions in joint names
- § 3:6 Agreement as evidence of intention to establish ownership by
entireties
- § 3:7 Mortgages and collateral
- § 3:8 Proceeds of sale of entirety property
- § 3:9 Noncash proceeds of entirety property
- § 3:10 Surplus on mortgage or execution sale
- § 3:11 Eminent domain
- § 3:12 Property purchased with entirety funds or proceeds
- § 3:13 Property in partnership of husband and wife—Joint enterprise
property and earnings
- § 3:14 Stocks and securities
- § 3:15 Trust interest vested in husband and wife
- § 3:16 Instrument indicating no tenancy by entireties
- § 3:17 Government bonds
- § 3:18 Leaseholds
- § 3:19 Property acquired or held in one name only, or made out to
bearer or indorsed in blank
- § 3:20 Personalty without instrument of title
- § 3:21 Livestock—Farm machinery or equipment
- § 3:22 Acquisitions by will or intestacy
- § 3:23 Bank accounts generally
- § 3:24 —As affected by ownership of funds deposited
- § 3:25 —As affected by deposit in one name only
- § 3:26 Joint account in names of husband and wife
- § 3:27 Certificates of deposit—Letters of credit
- § 3:28 Building and loan deposits and holdings
- § 3:29 Cash on hand
- § 3:30 Insurance proceeds

III. PROCEEDS OR DERIVATIVES OF REAL PROPERTY HELD BY ENTIRETY AS THEMSELVES HELD BY ENTIRETY

- § 3:31 Generally
- § 3:32 Voluntary sale
- § 3:33 Involuntary conversion
- § 3:34 Eminent domain
- § 3:35 Incompetent spouse
- § 3:36 Other transactions

IV. CREATION OF MARITAL PROPERTY

- § 3:37 Generally

TABLE OF CONTENTS

- § 3:38 Commingling of assets
- § 3:39 Gift

CHAPTER 4. FELONIOUS KILLING OF ONE SPOUSE BY THE OTHER AS AFFECTING LATTER'S RIGHTS IN MARITAL PROPERTY

I. INTRODUCTION

- § 4:1 Generally

II. TENANCIES BY THE ENTIRETY

- § 4:2 Killer acquires entire estate
- § 4:3 Killer acquires less than entire estate
- § 4:4 —As if tenants in common
- § 4:5 —Life estate
- § 4:6 Killer acquires nothing
- § 4:7 Killer as constructive trustee
- § 4:8 —Entire estate held in constructive trust
- § 4:9 —One-half of estate held in constructive trust

III. CONSTITUTIONAL OR STATUTORY LIMITATIONS

- § 4:10 Effect of statutes or constitution

IV. JOINT TENANCIES

- § 4:11 Killer acquires entire estate
- § 4:12 Killer acquires less than entire estate
- § 4:13 Killer acquires nothing
- § 4:14 Joint bank account—Legal interest remains unaffected
- § 4:15 —Killer divested of entire interest
- § 4:16 Insurance policies on joint lives
- § 4:17 Killer held constructive trustee

CHAPTER 5. COMMUNITY PROPERTY LEGISLATION

- § 5:1 Generally
- § 5:2 Effect of constitutional provisions
- § 5:3 Statute making income from separate property separate rather than community
- § 5:4 Statute making property community as to accretions
- § 5:5 Statute making property which was separate in jurisdiction where acquired, community property when brought into legislating jurisdiction
- § 5:6 Statute forbidding husband to make gift of community property
- § 5:7 Statute requiring wife to join in transaction involving community property

- § 5:8 Statute giving wife sole control of her personal earnings
- § 5:9 Statute governing succession
- § 5:10 Statute vesting community interest of wife
- § 5:11 Statute establishing rebuttable presumption as to community property
- § 5:12 —Illustrations

PART II. COMMUNITY INTERESTS

CHAPTER 6. COMMUNITY PROPERTY AND BUSINESS PROFITS

- § 6:1 Preliminary observations
- § 6:2 Arizona
 - § 6:3 —Profits from husband's separate capital
 - § 6:4 —Profits from wife's separate capital
- § 6:5 California
 - § 6:6 —Rule of apportionment
 - § 6:7 —Profits attributable to capital
 - § 6:8 —Commingling capital
 - § 6:9 —Life insurance
- § 6:10 Idaho
 - § 6:11 —Commingling capital
- § 6:12 Louisiana
 - § 6:13 —Profits from husband's separate capital
 - § 6:14 —Profits from wife's separate capital
 - § 6:15 —Commingling capital
- § 6:16 Nevada
- § 6:17 New Mexico
- § 6:18 Texas—Profits from husband's separate capital
- § 6:19 —Profits from wife's separate capital
- § 6:20 —Life insurance
- § 6:21 —Piercing corporate veil
- § 6:22 Washington
 - § 6:23 —Profits from husband's separate capital
 - § 6:24 —Profits from wife's separate capital
 - § 6:25 —Commingling capital

CHAPTER 7. DIVIDENDS ON CORPORATE STOCK HELD AS SEPARATE PROPERTY

- § 7:1 Generally
- § 7:2 Arizona
- § 7:3 California
- § 7:4 Louisiana
- § 7:5 Texas
- § 7:6 Washington
- § 7:7 Idaho

TABLE OF CONTENTS

**CHAPTER 8. LEASEHOLD INTEREST AS
COMMUNITY REAL ESTATE**

§ 8:1 Generally

**CHAPTER 9. PENSIONS AND RESERVE OR
RETIRED PAY**

- § 9:1 Generally
- § 9:2 Spousal rights in retirement and pension benefits—Generally
- § 9:3 —Spousal interest in pension plan
- § 9:4 —Generally—Illustrations
- § 9:5 —Postdivorce claims of spousal interests in pensions and pension benefits
- § 9:6 —Military retirement pay
- § 9:7 —Survivorship rights
- § 9:8 —Other developments
- § 9:9 Evaluating a retirement or pension benefit—Generally
- § 9:10 —Recent developments—Present value
- § 9:11 — —Proportionate share
- § 9:12 — —Immediate or deferred award
- § 9:13 — —Tax consequences
- § 9:14 ERISA, federal preemption, and state laws
- § 9:15 Medical trusts
- § 9:16 Sex discrimination in pension plans
- § 9:17 Federal preemption of garnishment

CHAPTER 10. WIFE’S PERSONAL EARNINGS

- § 10:1 Generally
- § 10:2 Future earnings
- § 10:3 —Evidence of acquiescence
- § 10:4 Past earnings
- § 10:5 Earnings while wife lives separate and apart
- § 10:6 —What constitutes living apart

**CHAPTER 11. SPOUSE’S CAUSE OF ACTION
FOR NEGLIGENT PERSONAL INJURY**

- § 11:1 Generally
- § 11:2 Arizona
- § 11:3 —Imputed negligence
- § 11:4 California
- § 11:5 —Desertion, abandonment, separation
- § 11:6 —Imputed negligence
- § 11:7 Idaho
- § 11:8 Louisiana
- § 11:9 —Joinder of parties
- § 11:10 —Imputed negligence
- § 11:11 New Mexico
- § 11:12 New York

- § 11:13 Nevada
- § 11:14 —Imputed negligence
- § 11:15 Puerto Rico
- § 11:16 Texas
- § 11:17 —Husband as proper party plaintiff
- § 11:18 —Illustrations
- § 11:19 Washington

CHAPTER 12. SATISFACTION OF SPOUSE'S PERSONAL TORT LIABILITY

- § 12:1 Generally
- § 12:2 Arizona
- § 12:3 California
- § 12:4 Idaho
- § 12:5 Louisiana
- § 12:6 New Mexico
- § 12:7 Texas
- § 12:8 Washington
- § 12:9 Wisconsin

CHAPTER 13. JUDGMENT IN PERSONAL INJURY ACTION BY ONE SPOUSE AS *RES JUDICATA* FOR OR AGAINST OTHER SPOUSE

- § 13:1 California
- § 13:2 New Mexico
- § 13:3 Texas

CHAPTER 14. LIABILITY OF COMMUNITY PROPERTY FOR ANTENUPTIAL DEBTS AND OBLIGATIONS

- § 14:1 Generally
- § 14:2 Right of community to reimbursement
- § 14:3 Liability for specific types of antenuptial obligations

CHAPTER 15. USE OF COMMUNITY FUNDS FOR BENEFIT OF SEPARATE PROPERTY

- § 15:1 Generally
- § 15:2 Right to reimbursement
- § 15:3 —Husband's property
- § 15:4 —Wife's property
- § 15:5 Measure of recovery
- § 15:6 Lien or charge
- § 15:7 —Illustrations
- § 15:8 —Right to lien denied
- § 15:9 —Right to lien on wife's property denied
- § 15:10 —Right to lien on homestead

TABLE OF CONTENTS

- § 15:11 Enforcement of lien
- § 15:12 —Against third persons

CHAPTER 16. TRANSMUTATION OF PROPERTY INTO COMMUNITY OR SEPARATE PROPERTY

- § 16:1 Generally
- § 16:2 By agreement
- § 16:3 By gift
- § 16:4 By transfer or conveyance
- § 16:5 —Interspousal transfer advantages one spouse to disadvantage of other
- § 16:6 Exercise of power

CHAPTER 17. TRANSMUTATION OF COMMUNITY PROPERTY INTO A JOINT TENANCY

- § 17:1 Generally
- § 17:2 Power to transmute
- § 17:3 Mode of transmutation
- § 17:4 Proof
- § 17:5 Effect of formal joint tenancy
- § 17:6 —Bank accounts
- § 17:7 Misunderstanding

CHAPTER 18. PROPERTY ACQUIRED IN EXCHANGE FOR SEPARATE PROPERTY

- § 18:1 Generally
- § 18:2 Where separate property only part of consideration
- § 18:3 Presumptions, burden of proof, and evidence
- § 18:4 Presumption, burden of proof, and evidence—Illustrations

CHAPTER 19. TRANSFER OF COMMUNITY INTEREST BETWEEN SPOUSES

- § 19:1 Conveyance to wife by husband
- § 19:2 —By another at husband's direction
- § 19:3 Conveyance to husband
- § 19:4 Agreement to convey or transfer
- § 19:5 Louisiana
- § 19:6 Washington

CHAPTER 20. GIFT OF COMMUNITY PROPERTY TO THIRD PARTY

- § 20:1 Generally
- § 20:2 Arizona
- § 20:3 California
- § 20:4 Idaho

- § 20:5 Louisiana
- § 20:6 Nevada
- § 20:7 New Mexico
- § 20:8 Puerto Rico
- § 20:9 Texas
- § 20:10 Oklahoma
- § 20:11 Washington

CHAPTER 21. DIVORCE DECREE AS *RES JUDICATA*

- § 21:1 Generally
- § 21:2 Failure of decree to refer to community property
- § 21:3 Foreign divorce
- § 21:4 Decrees concerning out-of-state land
- § 21:5 Louisiana
- § 21:6 Decree of no community property
- § 21:7 Award of community property as affecting other property

CHAPTER 22. CHANGE OF DOMICILE AS AFFECTING CHARACTER OF PROPERTY

- § 22:1 Generally
- § 22:2 Rule that character of property not affected by change of domicile
- § 22:3 Removal from “common-law” to “community property” state; Succession to deceased spouse’s property
- § 22:4 —Division of property in matrimonial litigation
- § 22:5 —Ejectment or similar actions—Suits to quiet title
- § 22:6 —Establishment of constructive trust
- § 22:7 Removal from “community property” to “common-law” state

CHAPTER 23. SEVERANCE OR PARTITION OF COMMUNITY PROPERTY BY AN ACT OF THE SPOUSES

- § 23:1 Generally
- § 23:2 Rule condemning severance or partition
- § 23:3 Effect of separation
- § 23:4 Effect of statutes

PART III. ANTENUPTIAL AND POSTNUPTIAL AGREEMENTS

CHAPTER 24. WAIVER OF RIGHTS TO WIDOW’S ALLOWANCE

I. ANTENUPTIAL AGREEMENTS

- § 24:1 Introduction

TABLE OF CONTENTS

- § 24:2 In absence of specific statutory provisions—Generally
- § 24:3 Construction
- § 24:4 Agreements construed as waiver—Specific waiver of statutory allowance
 - § 24:5 —Waiver of homestead or dower
 - § 24:6 —Waiver of rights created by marriage
 - § 24:7 —Waiver of “rights as widow”
 - § 24:8 —Waiver of all “claims.”
 - § 24:9 —Waiver of succession rights
 - § 24:10 —Acceptance of will provision made pursuant to waiver agreement
- § 24:11 Agreements construed as not a waiver—Specific waiver of statutory allowance
 - § 24:12 —Waiver of homestead or dower
 - § 24:13 —Waiver of rights or claims created by marriage
 - § 24:14 —Waiver of right, title, or interest in husband or his property or estate
- § 24:15 Waiver in community property jurisdiction of all rights in husband’s separate property
 - § 24:16 —Waiver of right to inherit
- § 24:17 Miscellaneous waivers
- § 24:18 Under specific statutory provision

II. POSTNUPTIAL AGREEMENTS

- § 24:19 Generally
- § 24:20 Modification of decrees based on agreements
- § 24:21 Validity of agreement
- § 24:22 Fraud, duress, undue influence
- § 24:23 Consideration
- § 24:24 Particular agreements as constituting waiver, in general
- § 24:25 Relinquishment of rights in “property” or “real estate”
- § 24:26 Relinquishment of rights in “property” or “real estate.”—Waiver of “claims”
- § 24:27 Release of “statutory” rights—Dower
- § 24:28 —Waiver of inheritance as “widow” or “spouse”

CHAPTER 25. ANTENUPTIAL AGREEMENT AFFECTING PROPERTY RIGHTS ON SEPARATION OR DIVORCE

- § 25:1 View that premarital agreements are valid as to both property division and postdivorce maintenance—Under statute
 - § 25:2 —Without reference to statute
- § 25:3 View that premarital agreements are valid as to postdivorce maintenance and nonmarital property only
- § 25:4 View that premarital agreements are valid as to property division but invalid as to postdivorce maintenance
- § 25:5 View that premarital agreements are invalid as to both property division and postdivorce maintenance

- § 25:6 Views addressing validity of premarital agreements
respecting one award without taking position as to other
award
- § 25:7 Views addressing validity of premarital agreements
respecting maintenance pending divorce
- § 25:8 Circumstances surrounding execution—Effect generally
- § 25:9 —Disclosure of parties’ assets
- § 25:10 Effect of presence or absence of counsel on fairness of
execution
- § 25:11 Requirement of adequate consideration
- § 25:12 View that property terms need not be reviewed for sufficiency
- § 25:13 Sufficiency of terms as determinant of need to examine
circumstances surrounding agreement’s execution
- § 25:14 Sufficiency of terms as requirement for enforceability
regardless of circumstances surrounding execution
- § 25:15 Enforceability as affected by public policy concerns stemming
from prohibition against promoting or encouraging divorce
- § 25:16 Enforceability as affected by change in circumstances of
parties
- § 25:17 Estoppel to challenge agreement
- § 25:18 Enforceability as affected by other policy concerns
- § 25:19 Specific provisions—Waivers
- § 25:20 —Buyouts
- § 25:21 —Life insurance
- § 25:22 —Spousal support
- § 25:23 —Acquisition of marital property
- § 25:24 —Property purchased with separate property
- § 25:25 —Arbitration agreements
- § 25:26 Effect of existence of asset protection trust on prenuptial
agreement
- § 25:27 Third-party beneficiary breach of prenuptial agreement
actions
- § 25:28 Illustrations—Court interpreting
- § 25:29 —Validity—Valid
- § 25:30 — —Invalid
- § 25:31 Checklist: Matters to be considered when drafting agreement

CHAPTER 26. POSTNUPTIAL AND SEPARATION AGREEMENTS

- § 26:1 In general
- § 26:2 Oral agreements
- § 26:3 Construction as contract
- § 26:4 —Indemnity provisions
- § 26:5 —Policies with designated beneficiaries
- § 26:6 —Statute of frauds, estoppel, unclean hands
- § 26:7 —Illustrations of interpretations of settlement agreements
- § 26:8 — —Marital residence
- § 26:9 — —Retirement provisions
- § 26:10 — —Damages provisions

TABLE OF CONTENTS

- § 26:11 — —Ambiguous provisions
- § 26:12 Enforceability in general
- § 26:13 Requirement to maintain insurance policy—Life insurance
- § 26:14 —Health insurance policy
- § 26:15 Effect of reconciliation
- § 26:16 Fraud, duress, overreaching
- § 26:17 —Duty to disclose
- § 26:18 —Illustrations of unfair, unconscionable agreements
- § 26:19 —Illustrations of no fraud, duress, overreaching
- § 26:20 Mutual mistake
- § 26:21 Waiver
- § 26:22 Effect of vacation of dissolution decree incorporating separation agreement
- § 26:23 Effect of postnuptial agreement not made in contemplation of imminent divorce on property rights on separation or divorce
- § 26:24 Modification of agreement
- § 26:25 Checklist: Matters to be considered when drafting separation agreement

CHAPTER 27. POSTNUPTIAL AGREEMENT RELEASING RIGHTS OF SURVIVING SPOUSE

- § 27:1 View that release by wife to husband is valid
- § 27:2 —Waiver of dower
- § 27:3 View that release by wife to husband is invalid
- § 27:4 —Waiver of dower

CHAPTER 28. DECLARATORY JUDGMENT AS TO CONSTRUCTION OF ANTENUPTIAL AGREEMENT

- § 28:1 Declaratory relief held proper—Generally
- § 28:2 Declaratory relief denied

CHAPTER 29. NONDISCLOSURE OF PROPERTY INTERESTS WHEN MAKING ANTENUPTIAL AGREEMENTS

- § 29:1 Generally
- § 29:2 Duty of disclosure
- § 29:3 —Necessity of confidential relationship—Engagement
- § 29:4 Burden of proof
- § 29:5 Presumption of nondisclosure from small allowance
- § 29:6 Manner and sufficiency of disclosure
- § 29:7 —Knowledge from disclosure only
- § 29:8 —Knowledge based on both disclosure and independent source
- § 29:9 —Knowledge based on business relationship
- § 29:10 —Length of parties' acquaintance

- § 29:11 Knowledge from other sources
- § 29:12 Ratification, acquiescence, or laches

CHAPTER 30. FORM OF EXECUTION OR ACKNOWLEDGMENT AS AFFECTING VALIDITY OF ANTENUPTIAL AGREEMENT

- § 30:1 Generally
- § 30:2 Defects in form of execution
- § 30:3 Defects in form of acknowledgment
- § 30:4 Amendment and revocation

PART IV. GIFTS

CHAPTER 31. WEDDING PRESENTS

- § 31:1 Generally
- § 31:2 Gifts by relatives or friends
- § 31:3 Gifts appropriate only for use by one of the spouses
- § 31:4 Bank accounts created from gifts
- § 31:5 Gifts from one spouse to the other
- § 31:6 Gifts of household furniture
- § 31:7 Miscellaneous gifts

Appendix 31A. Uniform Premarital and Marital Agreements Act
(with Legislative Notes and Comments)

CHAPTER 32. GIFTS ACQUIRED DURING MARRIAGE

- § 32:1 Generally
- § 32:2 Overcoming presumption of marital property
- § 32:3 Illustrations—Court's treatment of gift from and to spouse
during marriage
- § 32:4 — —Rebutting the presumption
- § 32:5 —Court's treatment of gift from parent

CHAPTER 33. MARITAL MISCONDUCT AS AFFECTING GIFTS AND MARRIAGE SETTLEMENTS

- § 33:1 Antenuptial contracts—Prior misconduct
- § 33:2 —Subsequent misconduct
- § 33:3 Postnuptial contracts or gifts—Prior misconduct
- § 33:4 —Subsequent misconduct
- § 33:5 —Fraud in inception of transaction
- § 33:6 —Bigamous marriage
- § 33:7 —Trust in favor of innocent spouse

CHAPTER 34. GIFT BY HUSBAND AS FRAUD ON WIFE

I. GENERAL PRINCIPLES

- § 34:1 Introduction
- § 34:2 General rule permitting gift or transfer as to noncommunity property
- § 34:3 Exceptions—Generally
- § 34:4 —Reservation of interest by donor
- § 34:5 —Donor’s intent
- § 34:6 —Attempted testamentary gift
- § 34:7 —Homestead rights
- § 34:8 Avoidance of alimony or maintenance
- § 34:9 —Gift of personalty
- § 34:10 —Transfer of realty
- § 34:11 —Corporate schemes
- § 34:12 —Mortgaging property
- § 34:13 Schemes to forfeit property
- § 34:14 Community property—Generally
- § 34:15 Dissipation of marital assets

II. PARTICULAR KINDS OF PROPERTY OR GIFTS

- § 34:16 Personal property
- § 34:17 Real estate
- § 34:18 Trusts, generally
- § 34:19 “Totten” trusts
- § 34:20 Joint bank accounts
- § 34:21 Schemes to forfeit property
- § 34:22 Miscellaneous

PART V. UNMARRIED COHABITATION

CHAPTER 35. CONVEYANCE TO UNMARRIED PERSONS AS HUSBAND AND WIFE

- § 35:1 Generally
- § 35:2 Tenants in common
- § 35:3 Joint tenants with right of survivorship
- § 35:4 Language indicating survivorship

CHAPTER 36. PROPERTY ACCUMULATED DURING COHABITATION

I. INTRODUCTION

- § 36:1 Generally

II. WHERE COHABITATION BELIEVED TO BE LEGAL

- § 36:2 Rule that innocent party entitled to interest in property
- § 36:3 Basis of rule
- § 36:4 Applications of rule

III. ABSENCE OF GOOD FAITH

- § 36:5 Generally
- § 36:6 Agreement to pool earnings, joint venture, partnership
- § 36:7 Resulting trust

IV. CIVIL LAW RULE

- § 36:8 Louisiana
- § 36:9 Texas

V. OTHER CONSIDERATIONS

- § 36:10 Statutes authorizing property apportionment—Annulment
- § 36:11 —Cohabitation
- § 36:12 Effect of form of conveyance
- § 36:13 Remedies
- § 36:14 Pleading
- § 36:15 Jurisdiction
- § 36:16 Nonmarital partners—Generally
- § 36:17 —Contract law and nonmarital partners
- § 36:18 — —Illustrations
- § 36:19 —Alimony and the chastity belt
- § 36:20 —Recent developments
- § 36:21 Cohabitation before or after marriage

PART VI. GENERAL TOPICS

CHAPTER 37. SERVICES BY WIFE IN HUSBAND'S BUSINESS

- § 37:1 Generally
- § 37:2 Wife's ability to contract with husband

CHAPTER 38. VALIDITY OF PARTNERSHIP AGREEMENT BETWEEN HUSBAND AND WIFE

- § 38:1 In absence of statute
- § 38:2 Under statute—View that agreement is valid
- § 38:3 —View that agreement is invalid

CHAPTER 39. INSURABLE INTEREST OF HUSBAND OR WIFE IN OTHER'S PROPERTY

- § 39:1 Insurable interest of husband—Generally

TABLE OF CONTENTS

- § 39:2 As tenant by the curtesy
- § 39:3 As tenant by the entirety or in common
- § 39:4 In homestead
- § 39:5 In wife's personalty
- § 39:6 Insurable interest of wife—Generally
- § 39:7 In husband's personalty
- § 39:8 In homestead
- § 39:9 Dower rights
- § 39:10 Where wife contributes to improvement

CHAPTER 40. WIFE AS HEAD OF FAMILY WITHIN HOMESTEAD EXEMPTION PROVISION

- § 40:1 Generally
- § 40:2 Support of dependents
- § 40:3 Property owned by wife
- § 40:4 Husband and wife living together
- § 40:5 —Infirmity of husband
- § 40:6 Husband and wife living apart

CHAPTER 41. CONSIDERATION OF TAX CONSEQUENCES IN MARITAL PROPERTY DISTRIBUTION

- § 41:1 Generally

I. TAX CONSEQUENCES ARISING DIRECTLY FROM COURT'S PROPERTY DISTRIBUTION ORDER

- § 41:2 Ordering filing of joint tax returns
- § 41:3 Directing withdrawal from restricted fund or account
- § 41:4 Directing transfer of interest in asset from one party to other
- § 41:5 Directing or contemplating sale of assets and division of proceeds
- § 41:6 Directing in-kind division of jointly-owned assets
- § 41:7 Directing equalizing payment of cash or note—In general
- § 41:8 —In installments or deferred payments
- § 41:9 Directing other or unspecified activity

II. TAX CONSEQUENCES ARISING OUT OF LATER EVENTS OR FUTURE DEALINGS WITH PROPERTY

A. IN DETERMINING VALUE OF ASSET OR ASSETS

- § 41:10 Pension benefits currently being paid
- § 41:11 Based on future sale of asset—Generally
- § 41:12 —Need to sell to satisfy cash award
- § 41:13 Based on future income from, or receipt of, asset—
Postretirement receipt of pension
- § 41:14 —Other income

- § 41:15 Based on early withdrawal from, or liquidation of, asset—
Generally
- § 41:16 —Need to withdraw or liquidate to satisfy cash award
- § 41:17 Based on miscellaneous or unspecified consequences

**B. IN DETERMINING METHOD OF DISTRIBUTION OR
OTHER PURPOSE**

- § 41:18 Based on future sale of asset—Generally
- § 41:19 —Need to sell to satisfy award
- § 41:20 Based on future income from, or receipt of, asset—Pension or
retirement funds
- § 41:21 —Other assets
- § 41:22 Based on early withdrawal from, or liquidation of, asset—
Generally
- § 41:23 —Need to withdraw or liquidate to satisfy cash award
- § 41:24 Based on miscellaneous or unspecified consequences

Table of Contents

PART VII. EQUITABLE DISTRIBUTION

CHAPTER 42. EQUITABLE DISTRIBUTION DOCTRINE

- § 42:1 General aspects of equitable distribution
- § 42:2 Rebutting presumption of marital property
- § 42:3 Meaning of “Equitable,” “Just,” or “Fair”
- § 42:4 —Monetary award to correct inequity
- § 42:5 Meaning of “duration of marriage”
- § 42:6 “Property interests” subject to distribution
- § 42:7 “Property interests” subject to distribution—Health insurance, health benefit accounts, and other employer provided health benefits
- § 42:8 —Trusts
- § 42:9 “Property interests” subject to distribution—Intellectual property
- § 42:10 —Marital residence—Classification
- § 42:11 “Property interests” subject to distribution—Marital residence—Allocation
- § 42:12 — — —Error/abuse of discretion in allocation
- § 42:13 “Property interests” subject to distribution—Retained earnings
- § 42:14 —Crops
- § 42:15 —Compensatory time
- § 42:16 “Property interests” subject to distribution—Bonus
- § 42:17 —Assets acquired pursuant to employment agreements (including separation agreements)
- § 42:18 —Pets
- § 42:19 Factors considered
- § 42:20 —Length of marriage
- § 42:21 —Parties’ conduct
- § 42:22 — —Nonfinancial misconduct
- § 42:23 —Inheritance
- § 42:24 —Sentimental value
- § 42:25 —Income, earning capacity
- § 42:26 —Social Security benefits
- § 42:27 —Taxes (and refunds)
- § 42:28 —Opportunity for further acquisition
- § 42:29 —Others factors deemed relevant
- § 42:30 Separate property; transmutation
- § 42:31 —Illustration of commingling/transmutation
- § 42:32 —Illustration of no commingling/transmutation

- § 42:33 —Sale of marital property
- § 42:34 Appreciation
- § 42:35 —Active
- § 42:36 —Passive
- § 42:37 Gifts to one spouse from third party
- § 42:38 Debt
- § 42:39 Relationship between property division and support awards
- § 42:40 —Illustrations
- § 42:41 Bankruptcy
- § 42:42 —Relief from stay
- § 42:43 —Dischargeability
- § 42:44 —Fraudulent transfers
- § 42:45 —Claiming exemptions on behalf of nonfiling spouse
- § 42:46 —Turnover of property to estate
- § 42:47 Judgments, settlements, awards
- § 42:48 —Tort claims
- § 42:49 Property transfers pending final order of distribution
- § 42:50 Costs and attorney fees
- § 42:51 Illustrations
- § 42:52 —Classification of property as marital or separate
- § 42:53 — —Businesses and associated assets (including goodwill)
- § 42:54 — —Stocks (including dividends, voting rights)
- § 42:55 — —Employee benefits (non-retirement/pension)
- § 42:56 — —Real property
- § 42:57 — —Disability insurance proceeds
- § 42:58 — —Lawsuits
- § 42:59 — —Debt (including student loans, taxes)
- § 42:60 — —Contingency fees
- § 42:61 —Disparity in distribution of marital assets not an abuse of discretion
- § 42:62 —Distribution of marital property
- § 42:63 — —Debt
- § 42:64 — —Student loans
- § 42:65 — —Credit cards
- § 42:66 — —Taxes
- § 42:67 — —Businesses
- § 42:68 — —Stock and membership interests, corporate assets
- § 42:69 — —Real property (not marital residence)
- § 42:70 — —Inherited property
- § 42:71 — —Trusts
- § 42:72 — —Intellectual property
- § 42:73 — —Lottery winnings
- § 42:74 — —Vehicles
- § 42:75 — —Marital businesses
- § 42:76 — —Loans
- § 42:77 — —Insurance policies (including premiums)
- § 42:78 — —Pets
- § 42:79 —Dissipation of marital property and other economic misconduct

TABLE OF CONTENTS

- § 42:80 —No dissipation of marital property and other economic misconduct
- § 42:81 —Proper methods of distribution
- § 42:82 —Improper methods of distribution
- § 42:83 —Sufficiency of court's findings
- § 42:84 —Costs and attorney fees
- § 42:85 Modification, redistribution of distribution
- § 42:86 Enforcement of judgment
- § 42:87 Checklist: Older client

Appendix 42A. State Equitable Distribution Statutes

CHAPTER 43. NECESSITY THAT DIVORCE COURT VALUE PROPERTY BEFORE DISTRIBUTING IT

- § 43:1 Marital or community property—General view
- § 43:2 Expert testimony
- § 43:3 Jurisdictions with conflicting views
- § 43:4 Purchase price versus market price
- § 43:5 Burden of proof
- § 43:6 Marital residence
- § 43:7 Goodwill
- § 43:8 Pension benefits and interests in business
- § 43:9 —Intellectual property
- § 43:10 Professional or advanced degree
- § 43:11 Nonmarital or separate property; enhancements of
- § 43:12 Dissipation of assets
- § 43:13 Illustrations of valuation
- § 43:14 —Real property
- § 43:15 — —Marital residence
- § 43:16 — — —Hybrid real property
- § 43:17 — — —Mortgage debt
- § 43:18 —Stock
- § 43:19 —Corporations and other business forms
- § 43:20 — —Erroneous valuations
- § 43:21 — —Business-related assets
- § 43:22 —Professional or advanced degree
- § 43:23 —Retirement savings
- § 43:24 —Retirement health insurance benefits
- § 43:25 —Crops
- § 43:26 —Equipment
- § 43:27 —Vehicles
- § 43:28 —Jewelry
- § 43:29 —Household goods
- § 43:30 —Goodwill
- § 43:31 —Debt
- § 43:32 —Vacation, holiday time and sick leave
- § 43:33 —Leases

CHAPTER 44. PROPER DATE FOR VALUATION OF PROPERTY BEING DISTRIBUTED PURSUANT TO DIVORCE

- § 44:1 In general
- § 44:2 Jurisdictions where issue of proper date unsettled—New Jersey
- § 44:3 —New York
- § 44:4 Miscellaneous valuation dates not tied to general rules
- § 44:5 Illustrations—General rule
- § 44:6 —Different valuations dates

CHAPTER 45. EFFECT OF TRIAL COURT GIVING CONSIDERATION TO NEEDS OF CHILDREN IN MAKING PROPERTY DIVISION

- § 45:1 Where family home was sole or major asset in dispute—Award of exclusive possession
- § 45:2 Award of ownership
- § 45:3 Other dispositions of family home
- § 45:4 Consideration of needs of children as affecting trial court's property awards where substantial assets other than family home were in dispute

CHAPTER 46. APPOINTMENT OR DISCHARGE OF RECEIVER FOR MARITAL OR COMMUNITY PROPERTY

- § 46:1 Grounds for appointment
- § 46:2 Grounds for termination
- § 46:3 Third party interests

CHAPTER 47. SPOUSE'S PROFESSIONAL DEGREE OR LICENSE AS MARITAL PROPERTY

- § 47:1 Generally
- § 47:2 Professional goodwill
- § 47:3 Professional or business goodwill as marital property
- § 47:4 Illustrations—Professional degree or license as marital property
- § 47:5 — —Cases finding not marital property

CHAPTER 48. PENSION OR RETIREMENT BENEFITS AS SUBJECT TO AWARD OR DIVISION

- § 48:1 Generally
- § 48:2 Benefits subject to division or award
- § 48:3 —Illustrations—Early retirement benefits
- § 48:4 — —General dispositions

TABLE OF CONTENTS

- § 48:5 — —As compensation for disability and economic loss
- § 48:6 — —Cases finding retirement benefits/accounts nonmarital property
- § 48:7 — —Errors in classification of retirement benefits as nonmarital or marital property
- § 48:8 — —Cases finding error in distribution in retirement benefits
- § 48:9 Military retirement benefits
- § 48:10 —Jurisdiction
- § 48:11 —Illustrations
- § 48:12 —As nonmarital stream of income
- § 48:13 Survivorship rights
- § 48:14 Valuation
- § 48:15 —Illustrations
- § 48:16 Derivative nature and consequences
- § 48:17 Federal preemption
- § 48:18 ERISA-specific issues
- § 48:19 Distribution of tax refunds

CHAPTER 49. ACCRUED VACATION, HOLIDAY TIME, AND SICK LEAVE AS MARITAL OR SEPARATE PROPERTY

- § 49:1 Generally
- § 49:2 Illustrations

CHAPTER 50. WORKERS' COMPENSATION BENEFITS AS MARITAL PROPERTY

- § 50:1 Generally
- § 50:2 Effect of commingling of benefits
- § 50:3 Classification of pending claims and choses in action
- § 50:4 Illustrations—Classifying as separate or marital
- § 50:5 —Distribution

CHAPTER 51. METHOD OF VALUATION OF LIFE INSURANCE POLICIES IN CONNECTION WITH TRIAL COURT'S DIVISION OF PROPERTY

- § 51:1 Generally

CHAPTER 52. PREJUDGMENT INTEREST AWARDS

- § 52:1 Generally
- § 52:2 Instances where court has granted prejudgment interest
- § 52:3 Instances where court has not granted prejudgment interest

CHAPTER 53. APPRECIATION IN VALUE OF SEPARATE PROPERTY DURING MARRIAGE WITHOUT CONTRIBUTION BY EITHER SPOUSE AS SEPARATE OR MARITAL PROPERTY

- § 53:1 Generally
- § 53:2 Illustrations—Appreciation as marital asset
- § 53:3 —Appreciation as separate property

CHAPTER 54. TREATMENT OF STOCK OPTIONS FOR PURPOSES OF DIVIDING MARITAL PROPERTY

- § 54:1 Stock options as marital property
- § 54:2 Treatment of stock options subject to division or award in marital dissolution
- § 54:3 Case illustrations

CHAPTER 55. VALUATION OF STOCK OPTIONS FOR PURPOSES OF DIVORCE COURT'S PROPERTY DISTRIBUTION

- § 55:1 Generally
- § 55:2 Illustrations applying methods for allocating and valuing options

CHAPTER 56. AWARD OF INTEREST ON DEFERRED INSTALLMENT PAYMENTS OF MARITAL ASSET DISTRIBUTION

- § 56:1 General considerations
- § 56:2 Factors affecting determination

CHAPTER 57. AWARD OF POST-JUDGMENT INTEREST

- § 57:1 Generally
- § 57:2 Bankruptcy-related matters
- § 57:3 Illustrations

CHAPTER 58. PROPRIETY OF USING CONTEMPT PROCEEDING TO ENFORCE PROPERTY SETTLEMENT AWARD OR ORDER

- § 58:1 Generally
- § 58:2 Payment to third parties
- § 58:3 Lump sum or installment payments
- § 58:4 Noncash transfers
- § 58:5 Other issues
- § 58:6 Illustrations—Cases where contempt proceedings upheld

TABLE OF CONTENTS

- § 58:7 —Cases where contempt not proper
- § 58:8 —Impermissible modification
- § 58:9 —No impermissible modification

**CHAPTER 59. DISPOSITION OF FROZEN
PREEMBRYOS**

- § 59:1 Generally
- § 59:2 Case illustrations

Table of Laws and Rules

Table of Cases

Index