

TABLE OF CONTENTS

PREFACE	V
TABLE OF CASES	XIX

PART I. AN OVERVIEW OF THE CALIFORNIA COMMUNITY PROPERTY SYSTEM

Chapter 1. An Overview of the California Community Property System	3
System	3
Section 1. The Sharing Principle.....	3
Section 2. Equal, Fair, and Just.....	3
Section 3. Marriage as a Partnership.....	6
Notes	12
Section 4. Comparing Common Law Title and Community Property Systems	13
Notes	15
Section 5. The California Community Property System	20
Section 6. The Tracing Principle	29
Notes	30
Section 7. The Equality of Interest Principle	31
Section 8. The Contract Modification Principle	33
A. Premarital Agreements.....	34
1. Formalities	36
2. Postdissolution Spousal Support Waivers	36
3. General Contract Enforceability.....	37
Notes.....	40
B. Transmutations	44
Estate of Bibb	46
Marriage of Valli.....	53
Notes.....	67
Marriage of Steinberger	71
Note	75
Section 9. Chapter Summary	76

PART II. THE CHARACTERIZATION OF PROPERTY

Chapter 2. Community Property	81
Section 1. The Significance of Characterization	82
Section 2. The Community Property Principle	84
A. California Community Property and Quasi-Community Property.....	84
B. The “All . . . Except” Format of the Basic Community Property Statute.....	86

C.	“All Property, Real or Personal, Wherever Situated . . .”	87
D.	Community Property Appreciation and Rents, Issues, and Profits	88
E.	A Principle Rather than a Definition	88
Section 3.	Community Property Presumptions	89
A.	The General Community Property Presumption	89
	Wilson v. Wilson	90
	Notes	92
	Fidelity & Casualty Company v. Mahoney	97
	Notes	100
	Marriage of Ettefagh	103
	Notes	111
B.	The Statutory Joint Form Title Community Property Presumption	115
1.	Early Twentieth-Century Case Law on Property Purchased with Community Property but Titled in Joint Tenancy	119
2.	Mid-Twentieth-Century Legislative Attempts at a Statutory Joint Title Community Property Presumption	122
3.	Current Legislation: California Family Code Sections 2580 and 2581	124
	Note	126
	Marriage of Lucas	127
	Notes	128
C.	The Statutory Community Property Presumption for Sums on Deposit in Any Account of a Married Person	132
1.	Basic Terms: Money, Cash, Sums on Deposit, Loan Proceeds	132
2.	CAMPAL: Uniform Legislation on Demand Deposit Accounts	134
D.	Borrowed Funds Acquired During Marriage Are Presumptively Community Property	137
	Marriage of Grinius	140
	Notes	145
Section 4.	Onerous or Lucrative Titles	147
	Estate of Clark	148
	Notes	150
	Downer v. Bramet	151
	Notes	154
Section 5.	Chapter Summary	155
Chapter 3.	Separate Property	157
Section 1.	State Constitutional Protection for Separate Property	157
Section 2.	Separate Property Defined	157
A.	Exceptions to the Community Property Principle	157
1.	Property Owned Before Marriage	158
2.	Property Acquired During Marriage by Gift	159

3. Separate Property Appreciation Distinguished from Rents, Issues, and Profits of Separate Property	161
George v. Ransom	164
Notes	165
Section 3. Personal Injury Claims, Money, and Property	170
A. Personal Injury Claims	171
B. No Imputed Contributory Negligence as a Matter of Law	172
C. Personal Injury Settlements: Money and Property.....	176
D. Tracing Personal Injury Settlements.....	177
Marriage of Devlin.....	178
Notes.....	181
E. Personal Injury Claims Against the Other Spouse.....	183
Section 4. Earnings and Accumulations While Living Separate and Apart	185
A. The Bare Statute	185
B. Perception, Intention, Conduct—The <i>Hardin-Manfer</i> Test.....	188
C. Living Apart as Roommates: Applying California Family Code Section 70	189
Notes.....	190
Section 5. Chapter Summary	194
Chapter 4. Limits of the California Community Property System.....	197
Section 1. Property Outside the California Community Property System...	198
A. Education That Substantially Enhances Its Holder’s Earning Capacity	199
Notes.....	201
Notes.....	206
Marriage of Graham.....	207
Marriage of Watt	210
Note	214
B. The Hunt for a Colorful Month: Talent.....	215
Marriage of McTiernan & Dubrow	215
Notes.....	228
Section 2. Persons Outside the System	233
A. Valid, Void, and Voidable Marriage	234
Notes.....	238
B. Intimate Nonmarried Cohabitants.....	253
Vallera v. Vallera.....	254
Note	257
Marvin v. Marvin.....	258
Notes.....	271
C. The Domicile Requirement	274
Rozan v. Rozan	275
Note	276
Grappo v. Coventry Financial Corporation	277
Notes.....	279

Section 3. Constitutional Limitations.....	279
A. The Due Process and Privileges and Immunities Clauses	280
Addison v. Addison	281
Notes.....	286
B. Retroactivity Problems.....	288
Marriage of Bouquet.....	288
Marriage of Heikes	295
C. The Supremacy Clause.....	305
Wissner v. Wissner	305
Notes.....	310
Boggs v. Boggs	312
Notes.....	319
Section 4. Chapter Summary	320
Chapter 5. Commingled Assets.....	323
Section 1. General Definitions and Rules.....	323
Section 2. Demand Deposit Accounts.....	325
A. Account Access: The Contract of Deposit.....	325
B. Beneficial Ownership of Sums on Deposit	330
C. “Net Deposits” and the Family Expense Presumption	332
D. Confirming Sums and Purchases as Separate Property.....	333
E. Statutory Reimbursement Rights Compared with Excess Withdrawal Claims	334
Section 3. Purchases from a Commingled Deposit Account	336
A. The Exhaustion Method: Rebutting the General Community Property Presumption.....	337
See v. See	339
Notes.....	343
B. The Direct Tracing Method of Rebuttal for the General Community Property Presumption	345
Marriage of Mix	346
C. Standard Bank Records Insufficient for Rebuttal.....	349
Marriage of Frick.....	350
Notes.....	352
Section 4. Commingled Credit Acquisitions.....	353
A. Credit Acquisitions During Marriage	354
Marriage of Aufmuth.....	355
Notes.....	358
B. Credit Acquisitions Before Marriage	358
Vieux v. Vieux.....	359
Notes.....	362
Marriage of Moore	363
Notes.....	367
Marriage of Marsden.....	368
Note	371
Marriage of Frick.....	371
Marriage of Geraci.....	373

Section 5. Separate Property Business Profits.....	376
A. Substantial Justice: <i>Pereira</i> or <i>Van Camp</i> ?.....	376
<i>Pereira v. Pereira</i>	379
Notes.....	381
<i>Van Camp v. Van Camp</i>	383
Notes.....	385
B. A Separate Property Business Distinguished from an Income Stream.....	388
<i>Austin v. Austin</i>	388
Notes.....	392
C. The Minimum-Plus Labor Standard	393
<i>Beam v. Bank of America</i>	394
Notes.....	398
Section 6. Work Benefits.....	399
A. Deferred Earnings	399
Notes.....	401
<i>Marriage of Green</i>	403
B. Signing Bonuses and Client Books.....	409
<i>Marriage of Finby</i>	409
Notes.....	421
Section 7. Chapter Summary	421

PART III. MANAGEMENT AND CONTROL

Chapter 6. Community Property Management and Control	427
Section 1. Equal Management and Control.....	428
A. Property Ownership in Relation to Management and Control	429
B. Non-Statutory Claims Arising from the Property Right	429
<i>Wilcox v. Wilcox</i>	430
Note	431
<i>Meinhard v. Salmon</i>	432
Notes.....	436
C. A Right to Destroy?	441
<i>People v. Kahanic</i>	441
<i>People v. Wallace</i>	445
Section 2. Community Personal Property	448
A. The Managerial System	449
B. The Right to Avoid.....	450
<i>Spreckels v. Spreckels</i>	452
Notes.....	454
C. Reimbursement Rights	458
D. The “Other than Testamentary” Limitation.....	460
<i>Tyre v. Aetna Life Insurance Co.</i>	461
Notes.....	463
Section 3. Community Real Property.....	463
<i>Lezine v. Security Pacific Financial Services, Inc.</i>	465
Note	476

Section 4. Transactions Between the Spouses	477
A. Fiduciary Duties	477
B. Disclosure Without Demand	479
C. Impairment Claims	482
Note	484
Marriage of Rossi	485
Notes	491
Section 5. Creditors' Claims	496
A. During Marriage	498
B. After a Date of Separation	499
C. Contract Debts for Non-Support Related Expenses	500
D. Tort Judgment Creditors	500
E. Liability of Quasi-Community Property	501
F. Liability of Quasi-Marital Property	501
G. Liability of Community Real Property Located in Another State	502
H. Liability for Premarital Debts	502
I. Liability for Premarital Support Obligations	502
Section 6. Primary and Exclusive Management and Control of Community Property	508
A. One Spouse Has Exclusive Access to a Sole Bank Account	509
B. One Spouse Operates or Manages a Community Property Business	509
C. One Spouse Has a Conservator, the Other Spouse Has Legal Capacity	510
D. One Spouse Obtains a Court Order	511
1. Ex Parte Restraining Orders During Dissolution	512
2. Domestic Violence Prevention Act Restraining Orders	514
3. Obtaining Exclusive Management and Control to Prevent Financial Abuse	516
4. Economic Abuse	518
Notes	522
Section 7. Chapter Summary	524

PART IV. AT MARRIAGE'S END

Chapter 7. Division of Community Property at Dissolution	529
Section 1. Dissolution, Legal Separation, Nullity	529
Notes	534
Section 2. Division by Marriage Settlement Agreement	537
A. Mediation, Arbitration, Disclosure Standards, and Support Modifications	538
Elden v. Superior Court	539
Marriage of Hufford	549
Notes	556
B. Collaborative Law	558

Section 3. Division by Court Order	558
A. Powers of the Court to Divide and Dispose of Property	559
B. Jurisdiction to Divide Property	563
Gionis v. Superior Court	564
Robinson v. Robinson	566
Notes.....	567
Muckle v. Superior Court.....	568
Note	577
C. Power to Defer Sale of the Family Home.....	577
Marriage of Stallworth.....	577
Notes.....	584
D. The Equal Division Requirement for Litigated Decisions	586
Marriage of Tammen.....	587
Note	589
Marriage of Eastis	590
Notes.....	591
E. The Valuation Requirement for Litigated Divisions.....	593
Marriage of Micalizio.....	594
Note	599
F. Confirmation and Assignment of Liabilities.....	600
Note	602
G. Tax Consequences of Division	602
Marriage of Harrington.....	603
Note	606
H. Omitted Assets	607
Henn v. Henn.....	607
Notes.....	611
Aloy v. Mash	613
Note	621
Section 4. Chapter Summary	621
Chapter 8. Postdissolution Remedies	623
Section 1. The Importance of Disclosure at Dissolution.....	623
Section 2. Money Sanctions in an Ongoing Dissolution Proceeding.....	633
Marriage of Feldman.....	634
Notes	652
Section 3. Postjudgment Set-Aside Orders.....	655
Section 4. Grounds to Set Aside a Final Judgment of Dissolution	658
A. The Pre-Statutory Doctrine	658
Marriage of Baltins	659
Notes.....	672
B. The Current Statutory Framework.....	674
Marriage of Varner.....	675
Note	687
Marriage of Kieturakis.....	689
Note	700

C. Timely Filing.....	700
Marriage of Georgiou & Leslie.....	700
Section 5. Chapter Summary	710
Chapter 9. Distribution of Community Property at Death	713
Section 1. Community and Quasi-Community Property	714
A. Probate Code Basics	714
B. The Surviving Spouse’s Exalted Status	718
Estate of Ben-Ali.....	720
Note	729
Section 2. Basics of Nonprobate Transfers	730
A. Joint Tenancy at the Death of a Spouse	730
Estate of Levine	731
Notes.....	733
B. Nonprobate Transfers at the Death of a Former Spouse.....	736
Life Insurance Company of North America v. Ortiz.....	739
Notes.....	748
Section 3. Basics of Intestate Distribution and Administration	751
Section 4. Allocating Debt/Creditors’ Rights	758
Dawes v. Rich	765
Notes	774
Collection Bureau of San Jose v. Rumsey.....	776
Note	788
Section 5. Chapter Summary	788
Appendix A. Statutory Appendix.....	791
Appendix B. Judicial Council Forms.....	879
Appendix C. Example Business Valuation Materials	887
Franchise Business Valuation Examples	888
Law Firm Business Valuation Example.....	893
INDEX.....	897