

Community Property

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Class 1 [1-49]

Community Property

- n A form of title
- n A marital property system
- n A classification of property within the community property system -- characterization

Form of Title

- n Tenancy in Common

- n Joint Tenancy

- n Community Property

Marital Property Systems

n Title—

n Common Law Marital Property

n Community Property

Property Division

n *Title*

Wirth v. Wirth p. 12

n Common Law

“Marital Property” / Elective Share / Equitable Division

Painter v Painter p. 15

n Community Property

n General / Roman-Dutch

n Ganancial / Spanish-Mexican

n California

Hypo 1

H and W marry. H works and takes title to assets in his own name. W stays at home.

What are the rights of the parties concerning these assets?

Mgt & Control

Disso

Death

c/l

Cal

Hypo 2

H retires and then marries. He acquires assets in his name from his retirement income.

What are the rights of the parties concerning these assets?

Mgt & Control

Disso

Death

c/l

Cal

Characterization -- California

- n Separate Property
- n Community Property
- n Quasi-marital property
- n Quasi-community property
- n Community Estate Personal Injury Damages

Development of the California System of Community Property

- n Community Property from Statehood
 - n Visigothic conditions
 - n Treaty of Guadalupe Hidalgo
 - n Status of Married women generally
- n Common Law Rule of Decision

FOR MORE INFO...

See: *George v Ransom* – text p. 78

What do you think?

- n Why do women marry? Why do they divorce?
 - n [2/3 of divorces are sought by women]
- n Why do men marry? Why do they divorce?
- n What is the value of marriage from a societal point of view?
- n Which marital property system best protects the values of society and the expectations of the parties?

How might we think about Interspousal Wealth Allocation?

- n Should marital property law promote efficiency or fairness?
- n Should marital property laws be used to adjust sex-related economic inequality?

--see notes: pp. 46-49..

Divorce Related Wealth Distribution

- n Child support
- n Spousal support
- n Property division

Child support

- n Modernly based on a formula
 - n Time share
 - n Earnings
 - n Actual
 - n Ability to earn
- n Intended to support the children

FOR MORE INFO...

Family Code §§ 4050-4073

Spousal Support

- n Need v. Ability to pay
- n Length of marriage
- n Standard of living
- n Other 4320 factors

--Distinguish *pendente lite* and permanent support

FOR MORE INFO...

Family Code §§ 4300-4360

Rethinking Marriage— *efficiency or equality?*

n Traditionalist view:

Becker and Cohen

n Feminist view:

Kay and O'Connell

Krauskopf and Ellman

Singer

Fineman

The Cutting Edge . . .

n *Marriage of Graham* p. 43

n *Mahoney v. Mahoney* p. 52

n *O'Brien v. O'Brien* p. 59

Which is the better view? *Think about it . . .*