

Community Property

Richard M. Cartier
San Joaquin College of Law
Class 2 [49-90]

Community Property

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

Marital Property Systems

- n *Title – no longer used*

- n Common Law

 - “Marital Property” / Elective Share / Equitable Division

- n Community Property

 - n **General / Roman-Dutch**

 - n **Ganancial / Spanish-Mexican**

 - n California

Thoughts on marriage . . .

n Religious roots

- n Canon Law: marriage becomes a sacrament in the 12th century
- n 1753 England: marriages celebrated in accordance with the rules of the Church of England

More thoughts on marriage . . .

n Civil Marriages

n Is marriage a status or a contract?

n Is the legal concern: economic? OR moral?

Statistics and trends

- n 50% of marriage end in divorce
- n 75% of divorcees remarry
- n 70% of 1st time marriages end in death
- n 20+ million children live in single parent homes
- n 60% of kids born today will live in single parent homes
- n 90% of single parent homes are headed by women
- n 1970-80 the divorce rate in California doubled
- n Some states are considering return to fault-based divorce

Key questions

- n **Why do women marry?**
- n **Why do they seek divorces?**

- n **Why do men marry?**
- n **Why do they seek divorces?**

- n **What's love got to do with it?**

- n **How have societal changes affected the way we look at marriage?**

The moral debate

How can the rules pertaining to marriage be made more rational and less harsh considering the reasonable expectations of contemporary society while preserving traditional family values?

What are *traditional family values* that we are trying to preserve?

The legal debate

n Efficiency?

or

n Fairness?

The Cutting Edge . . .

n *Marriage of Graham* p. 49

n *Mahoney v. Mahoney* p. 59

n *O'Brien v. O'Brien* p. 67

Divorce Related Wealth Distribution

n **Property Division**

n **Child Support**

n **Spousal Support**

Characterization

- n Separate Property
- n Community Property
- n *Mixed (hybrid) assets; QCP; QMP; CEPI damages*

FOR MORE INFO...

Separate Property is defined in Family Code Sections 770-772

Community Property is residually defined in Section 760.

Overview of Course

- n Characterizing Assets
- n Management and Control
- n Distribution of Assets
 - n On dissolution of marriage
 - n On death

Major Themes re California's Community Property System

- n Tracing
- n Equality
- n Contractual Modification
 - n Premarital Agreements
 - n Transmutation Agreements
 - n *Marital Settlement Agreements*

FOR MORE INFO...

Recent California Supreme Court holdings affecting premarital agreements include *IRMO Bonds* and *Pendleton v. Fireman*.