

# Community Property

Richard M. Cartier  
San Joaquin College of Law  
Class 3 [91-154]

# California Community Property

- n Arises by operation of law
- n Assets are characterized as
  - n Community or Separate Property based on the time and manner of acquisition
- n Parties may “opt out” of the system
  - n Premarital agreements
  - n Transmutations
  - n *Marital Settlement Agreements*

# Premarital Agreements

- n Historical uses
- n General acceptance—*unless* terms violate public policy
  - n Agreement promotes divorce
    - n Compare *Dawley* and *Noghrey*
  - n Agreement concerns impermissible subject matter-- obligations imposed by law
    - n *Pendleton & Fireman*
  - n Agreement is not voluntarily entered
    - n *Bonds*

# California Premarital Agreement Act

- n Definition
- n Formalities; consideration
- n Subject matter of premarital agreements
- n Enforcement

FOR MORE INFO...

Family Code §§ 1601-1617

# Spousal Support Waivers

- n Traditionally, waivers violate public policy
  - n Williams v. Williams (Ariz.)
- n *Pendleton & Fireman*
  - n Waivers not per se unenforceable
  - n May become inequitable or unjust
  - n Unconscionability
    - n When contract entered
    - n When contract enforced

# Voluntariness

- n Force, fraud, and the unrepresented party
- n *Marriage of Bonds*—rejects strict scrutiny when one party unrepresented
- n The legislature responds—
  - n Family Code § 1612 (c)
  - n Family Code § 1615 (c)

*Marriage of Rosendale* – see text pp. 122-123 on retroactivity of amendments to California’s Uniform Premarital Agreement Act

# Formalities

- n Traditionally, a writing required, except
  - n Executed oral agreements – *Freitas*
  - n Estoppel to assert the Statue of Frauds – *Estate of Shelton*
- n Formalities under the PMAA
  - n *Hall v. Hall* – p. 128
  - n Revisit *Borelli v. Brusseau* – p.103
  - n IRMO Benson – page 136

# Transmutation During Marriage

## n Pre-1985

- n Oral transmutations valid

- n Do the subsequent words, acts and conduct of the parties evidence the agreement?

- n In death cases – *Estate of Raphael*

- n In divorce cases – *Marriage of Jafeman*

# Transmutation During Marriage

## n Post 1/1/1985

n Transmutations require a writing (“an express declaration”) signed by the party whose interest is adversely affected UNLESS

n Item of a personal nature

n Intended for use of recipient spouse

n Not consequential in value taking into account the circumstances of the marriage

# An express declaration . . .

- Estate of MacDonald – “a writing is not an “express declaration” unless it contains language which expressly states that a change in the characterization or ownership of the property is being made.”

See also:

**Marriage of Benson -- p. 136**

Marriage of Barneson

Estate of Bibb

Starkman

**In re Summers – p.148**

# Transmutation & the fiduciary duty

- n IRMO Besnon
  - n IRMO Haines
  - n IRMO Lange
  - n IRMO Delaney
  - n IRMO Mathews
  - n IRMO Burkle
  - n IRMO Kieturakis

/See text pp. 151-154