

Community Property

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Premarital Agreements [1986]

writing required, unless

fully executed OR

estoppel to assert the statute of frauds

PMA Agreement NDG if

violative of public policy

involuntary

unconscionable + lack of disclosure

Violative of Public Policy

promote divorce

adversely affect child support

& traditionally a waiver of spousal support

–but *Pendleton & Fireman*–
and Family Code § 1612(c)–

waiver is not enforceable if

unrepresented by counsel OR

unconscionable (even if represented)

Involuntary or Unconscionability +

Family Code § 1615 creates a presumption of involuntariness if

1. unrepresented party, unless waiver of counsel in separate document
2. Less than 7 days to review doc from presentation and/or from date advised to seek counsel
3. if unrepresented—document explaining basic effect of agreement in writing in native language is required
4. duress, fraud, undue influence and/or lack of capacity to contract
5. any other matter the court deems relevant

Transmutations

Pre-1985

oral transmutation o.k.

Do subsequent words, acts and conduct evidence the agreement?

Post-1985

writing required (“an express declaration”) UNLESS

1. item of a personal nature +
2. intended for use of recipient +
3. not consequential in value taking into account the circumstances of the marriage

/property acquired in j/t from 3rd party is not a transmutation.

Definitional & Tracing Issues

Community v. Separate

- n Lucrative – *Estate of Clark* p.158
- n Onerous – *Downer v. Bramet* p. 165
- n Mixed / “hybrid” – *Andrews v. Andrews* p. 161

/tracing issues—foreshadowing things to come

Evidentiary Presumptions

- n Presumptions play an important role in California marital property law
- n Presumptions are generally treated as “true evidentiary presumptions” requiring a finding in conformity therewith unless rebutted by “clear and satisfactory” evidence

GCP ~ the general community property presumption

All property acquired during marriage is presumed community property.

GCP may be rebutted by

an agreement in the form required by law OR
tracing to a separate property source

Lynam v. Vorwerk p. 180

Fidelity Casualty v. Mahoney p. 182

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Hypos

/The GCP is a non-title presumption.

Title Presumptions--overview

- n Married woman by a writing (pre-1975)
- n Husband and Wife presumption
- n *Jointly held title*
 - n *Pre 1984*
 - n *1984-1987*
 - n *Post 1987*

Married Woman Presumption

- n Family Code § 803 – property acquired by a married woman is presumed
 - n a) her separate property
 - n b) her share is taken as tenancy in common unless a different intention is expressed in the instrument
 - n c) IF TITLE TAKEN BY H & W (and they are described as such) property is presumed to be community property

Rebutting this presumption . . .

- n If H knew title was in W's name— *Holmes* p. 191
 - n H must show no gift was intended AND
 - n H must trace the property to a community source
- n If H did not know title was in W's name – *Louknitsky* p. 192
 - n H must trace to a community source
- n Special problem if H directs title in W's name OR in W's name “as her separate property”
- n *Dunn v. Mullan* – p.193

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