

Community Property

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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

/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 *Dunn v. Mullan* –
 - 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—
 - 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 –
 - 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”

Property held in joint title

- n Form of title is probative, but not dispositive on issue of characterization
 - n Presumed that title is accurately set forth on a deed.
 - n “form of title” presumption is rebutted by an agreement or understanding of the parties
 - n *Schindler* – p. 199
 - n *Bowman* – p. 202
- / *Lovetro v Steers* hypo.

Historical Perspective

- n Pre- 1965 – see p.206, n. 6
- n 1965-1983 – single family residence in joint tenancy
- n 1984-1986 – all joint tenancy property
- n 1987– all jointly held property is presumed community property for purposes of a dissolution of marriage, absent a writing.
/Family Code § 682.1 (see p. 207, n. 7)

Separate Property Contributions to Purchase Price of Jointly Held Property

- n Pre- Lucas –
 - n Gift
 - n Reimbursement
 - n Pro-rata ownership
- n Lucas – Absent an A/U, title controls;
absent A/U Separate Property contribution = gift
- n The legislative response . . . [see Fam. C. § 2640]

2580 & 2640 – let the games begin

n *Buol* – p. 219

n *Fabian* – p. 226, n. 3

n The legislative response . . .

Finding resolution . . .

n *Hilke* – p. 238, n. 1

n *Heikes* – p. 227

/See p. 238-241

“Putting it all together: summary and problems”

/Dorn v. Solomon

/Abbett Electric Corp. V. Storek

/IRMO Walrath

Chaos simplified . . .

- n All jointly held property is presumed community property upon disso, absent a writing, UNLESS
 - n pre-84 acquisition in joint tenancy + oral A/U* OR
 - n pre-87 acquisition in other joint form + valid A/U*

- n Reimbursement of separate property contributed toward cost of acquisition of jointly held asset, UNLESS
 - n Pre-84 contribution + A/U for reimbursement*

- Lucas lives
 - / hypos – pp. 240
 - /Neal hypo

Community Property to Separate

Marriage of Warren – p. 242

Marriage of Jafeman – p. 243

- n Traditional view

- n Gift OR Breach of Trust?

- n Remedy—Amount expended or value added
principal reduction / improvements / maintenance

- n See: *Bono v Clark*

Apportionment Formulae

Aufmuth – sp to cp (Lucas)

Moore – cp to sp

Two Methods of Tracing

n Direct Tracing

- n Availability of sp funds +
- n Intent to use sp funds

n Indirect Tracing [exhaustion of funds]

- n If all cp funds exhausted at time of acquisition, source funds necessarily sp.