

# Community Property

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**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

# Chaos simplified . . .

- n All jointly held property is presumed community property upon disso, absent a writing, UNLESS
  - n pre-84 acquisition in joint tenancy UNLESS A/U\* OR
  - n pre-87 acquisition in other joint form UNLESS valid A/U\*
- n Reimbursement of separate property contributed toward cost of acquisition of jointly held asset, UNLESS
  - n Pre-84 contribution + no A/U for reimbursement\*
- Lucas lives

# 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*

# CLASSIFICATION OF PROPERTY

- n Tracing Property from a Commingled Account
  - n Direct Tracing
    - n Availability of sp
    - n Intent to use sp
  - n Exhaustion of funds
    - n At time of acquisition, all cp exhausted
    - n Family expenses presumed paid with cp funds

# Hicks, Mix & See

- n *Hicks*: Sp funds commingled with cp funds do not lose their character so long as they can be identified and traced.
- n *Mix*: direct tracing – p.252
- n *See*: exhaustion of funds – p. 249

Notes and Problems – p. 256-258

# Commingled accts – make tracing relevant

- n Establish character of funds in account
  - n Cp
  - n Sp
- n Establish acquisition from account
- n GCP if acquisition during marriage
  - n Rebutted by tracing
  - n Apply: Hicks, Mix & See
  - n Contemporaneous records required UNLESS unavailable owing to no fault of tracer

See: *Estate of Murphy* – p. 258

# Making sense of tracing

n *Mix* – p. 252

n *Frick* – p. 265

# Apportionment of Business Profits

## n *Pereira*

n *Sp value + reasonable rate of return = sp;*

n *the residue = cp*

## n *Van Camp*

n *value of cp labor – amount received = cp;*

n *the residue = sp*

# Cases

n *Beam v Bank of America* – p. 268

n *Gilmore v Gilmore* – p. 273

n *Tassi v Tassi* – p. 274

n. 4 p. 277;

Contrast: *Cord v Neuhoff* – p. 278

# Credit Acquisitions

- n **All property acquired during M is presumed community property**
- n **Credit acquisitions presumed cp**
  - n **Rebutted by showing intent of lender**
    - n To rely primarily on Sp as security (*Gudelj*)
    - n To rely solely on sp as security (*Grinius*)
  - n **What is the intent of a reasonable lender?**
  - n **General credit is a cp asset (*Ford*)**