

Community Property

Richard M. Cartier
San Joaquin College of Law
Class 7 [294-322]

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
 - n Availability of SP + Intent to use SP
- n *See*: exhaustion of funds
 - n All CP exhausted at time of acquisition

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

Apportionment of Business Profits

n *Pereira*

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

n *the residue = cp*

n *Van Camp*

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

n *the residue = sp*

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*)**

Apportionment of Ownership v. Reimbursement by the Titled Estate

n SP to CP

n Principal pay down

n Improvements

n Maintenance

n CP to SP

n Principal pay down

n Improvements

n Maintenance

Moore / Marsden [Aufmuth]

n CP \$ to pay on SP

n Pro rata ownership

n **FORMULAE**

(CP\$ / total contributions X appreciation during M)
+ CP \$ = community interest

(SP\$ / total contributions X Appreciation during M)
+ SP \$ = separate property interest

Tort Recoveries

- n Community Estate Personal Injury Damages
 - n Cause of Action arises during marriage
 - n Family Code § 781
 - n Family Code § 2603
- n “Assigned” to the injured spouse on disso, UNLESS commingled or interest of justice requires otherwise

/Marriage of Devlin (1982) 138 Cal.App.3d 804

Insurance

n Life Insurance

- n Whole life

- n Term life

- n Justice King's musings . . . If uninsurabilty arises during marriage + guaranteed right to renew

n Casualty Insurance