

# Community Property

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# Management & Control

- n **Spouse now have equal rights to management & control of CP except**
  - n **CP business operated by one spouse**
  - n **CP held in a trust**
  - n **CP interest of an incompetent spouse**
  - n **Bank accounts in the name of one spouse**

Neither spouse can make gifts BUT

**n If set aside during donor's life**

**n set aside in total**

**n item(s) returned to community**

**n If set aside after donor's death**

**n set aside as to one-half**

**n item returned to non-consenting spouse OR  
recovery of one-half value of gift from estate**

# Neither spouse can sell CP realty BUT

- n **If purchaser is “super BFP” . . .**
  - n **A good faith purchaser for value who takes without knowledge of the marriage**
  - n **1 year from date of recording to set aside**
  - n **Must make purchaser whole**
  
- n **If the purchaser is not a “super BFP” . . .**
  - n **1 year limit to set aside does not apply**

# The Fiduciary Duty

- n **“confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.”**
- n **“the same rights and duties of nonmarital business partners”**

**The duty: Fam C §§ 721, 1100, 1102**

**Remedy: Fam C §§ 1101; 2602**

# Creditor's Rights

- n **Unless excepted by statute, all community property is liable for all debts of either party whenever incurred.**
- n **Liability for debt is generally coextensive with the right to M & C**

**/recall George v Ransom**

**/Fam C §900 et seq.**

**/Summary Table – Handout**

# The economic community

## n Inception

n A system for the legally married

n Look to see if the marriage is

n Valid

n Void

n Voidable

/No “common law marriage” in CAL but Full Faith & Credit

# Putative Spouse

- n **A defect that prevents a lawful marriage**
- n **One or both spouses have a good faith belief in the existence of a valid marriage**
  - n **Good faith is tested subjectively BUT**
  - n **Good faith must be objectively reasonable**
  - n **Putative status lost when spouse learns of invalidity**

# Three “typical” scenarios

## n **Deficiency**

- n **In the marriage**

- n **In the divorce**

## n **Serial monogamy – *IRMO Hafner***

## n **Blatant bigamy – *Estate of Vargas***

# Unmarried cohabitation

- n **Cary** – “the look alike family”
- n **Marvin** –
  - n **Judgment on the pleadings for Lee**
    - n **Fn. 25**
    - n **Fn. 26**
  - n **On remand**
  - n **On the subsequent appeal**
- n **Meretricious relationships after Marvin**

# Property rights in a putative relationship

- n Decedent's sp – *Estate of Leslie*
- n Quasi-marital property
  - n Treated like community property EXCEPT
  - n Either spouse may seek a division of the QMP (nullity action)
  - n Only “putative spouse” entitled to ss or atty fees
  - n *Possibility of quantum meruit recovery if no QMP?*

# Terminating the economic community

## n Date of Separation

n The parties have come to a parting of the ways with no present intent to carry on a marital relationship

n Objective view

n Undisclosed intent not controlling

n Effect of reconciliation – *IRMO Jaschke*