



## CALIFORNIA BAR EXAMINATION CONTENT MAP COMMUNITY PROPERTY

The topics listed below are illustrative of those covered in Community Property, but are not exhaustive.

### I. Community property law

- A. Principles
- B. Definitions
  - 1. Community property
  - 2. Separate property
  - 3. Quasi-community property
  - 4. Marital economic community; community estate

### II. Characterization of property

- A. Presumptions
  - 1. General community property presumption
  - 2. Presumptions based on form of title
    - a. Jointly-titled property
    - b. Joint tenancy
    - c. Bank accounts
    - d. Property in one spouse's name
  - 3. Overcoming presumptions
    - a. Premarital source
    - b. Acquisition by inheritance, devise, or bequest
    - c. Rents, issues, and profits of separate property
    - d. Transmutation
- B. Agreements that alter characterization
  - 1. Premarital agreements
  - 2. Transmutations
    - a. Types of transfers
    - b. Requirements
    - c. Exception for gifts
- C. Commingled assets
  - 1. Definition and effect
  - 2. Family expense presumptions
  - 3. Tracing Methods

- a. Exhaustion method, *See v. See*
    - b. Direct tracing, *Marriage of Mix*
  - 4. Effect of title
- D. Community efforts or funds used for separate property purposes
  - 1. Community payments toward purchase of separate property
    - a. Proportional ownership interest, *Marriage of Moore*
    - b. Use of community property funds or loan
  - 2. Community property payments to improve separate property
  - 3. Apportionment of separate property business value
    - a. *Pereira* method
    - b. *Van Camp* method
    - c. Determining which method, if either, to use
- E. Separate property used to enhance community property
- F. Separate property used to improve other spouse's separate property
- G. Educational and training expenses
- H. Retirement benefits and disability payments
- I. Credit acquisitions
  - 1. Purchases
  - 2. Loans
    - a. Intent of the lender
- J. Rights of reimbursement
  - 1. Contributions to acquisition of property
  - 2. Educational and training expenses

### **III. Management and control of community property**

- A. General rules
  - 1. Equal management rights
  - 2. Fiduciary duties
  - 3. Gifts of community property
- B. Real property
  - 1. Requirement of written consent
  - 2. Encumbrance of community property interest to pay attorney's fees - family law attorney real property liens
  - 3. Transfers to good faith purchasers
  - 4. Voiding a conveyance
- C. Personal property
  - 1. Furnishings and clothing
  - 2. Business exception
- D. Mismanagement of property
  - 1. Remedies for breach

### **IV. Management and control of separate property**

### **V. Separation**

- A. Determining date of separation

- B. Earnings and accumulations while living separate and apart

## **VI. Division of property at dissolution**

- A. General rules
  - 1. Equal division
  - 2. Time of valuation
  - 3. Requirement of disclosure
- B. Deviation from equal distribution
  - 1. Misappropriation
  - 2. Failure to disclose property
  - 3. Personal injury recovery against third party
  - 4. Personal injury recovery against spouse
  - 5. Educational debts
  - 6. Real property out-of-state
  - 7. Stock options
  - 8. Retirement and pension benefits
- C. General rules of liability
  - 1. Liability of married person's earnings for spouse's premarital debt
  - 2. Liability of quasi-community property
  - 3. Liability of separate property
  - 4. Liability for necessities
  - 5. Liability for support obligation
- D. Allocation of debts and liabilities
  - 1. Property liable for debts
    - a. Premarital debts
    - b. Debts during marriage
    - c. Post-separation debts
    - d. Deposit accounts accessible only to one spouse
    - e. Necessaries and common necessities
    - f. Separate debts
- E. Creditor's rights for death or injury caused by married person
  - 1. Liability of married person whose spouse caused death or injury
  - 2. Liability of tortfeasor spouse
    - a. Order of satisfaction
      - (1) Activity for the benefit of the community
      - (2) Activity not for the benefit of the community

## **VII. Division of property at death**

- A. Effect of death of married person on property
  - 1. Community property
  - 2. Quasi-community property
  - 3. Recapture by surviving spouse
  - 4. Effect where unclear which spouse survived the other
- B. Contractual arrangements relating to rights at death
  - 1. Surviving spouse's waiver of rights

## **VIII. Preemption**

- A. Under the Supremacy Clause, federal law preempts inconsistent state laws