

ISSUE CHECKLIST – COMMUNITY PROPERTY

GENERAL PRINCIPLES/INTRODUCTION

- CA: Community property state
 - Marital economic community
 - Beginning
 - End
 - Community property
 - Separate property
 - Characterization of an asset
 - Source of item
 - Statutory presumptions
 - Actions to alter the character of an item
 - Tracing
 - QCP

STATUS OF PARTIES

- Married couples
 - End of economic community
 - Death of spouse
 - Permanent separation
 - Requirements to establish: intent and conduct consistent
 - Physical separation requirement
- Unmarried cohabitants – Marvin actions
 - Contracts setting forth distribution of property
 - Implied contract/understanding
 - Adulterers – married to third party
- Putative spouses
 - Requirements to establish
 - QMP
 - When rights stop accruing

PREMARITAL AGREEMENTS

- Requirements
- Defenses
 - Limitation of child support
 - Limitation of spousal support
 - Unconscionability

EACH ITEM OF PROPERTY

- **Presumptions and rebutting them/tracing**
 - Community property presumption
 - Rebutting community property presumption
 - Tracing
 - Comingled funds
 - Exhaustion
 - Direct tracing method
 - Separate property presumption
 - Married woman's presumption (before 1975)
 - Property held in joint form
 - Rebuttal of presumption
 - Express statement
 - Written agreement declaring SP
 - SP used to obtain CP
 - Divorce before 1984 or death
 - Lucas
 - Divorce after 1984
 - Anti-Lucas

• Actions to change character of property

- Transmutations
 - Requirements
 - Exception: gift between spouses
- Taking title in one spouse's name using CP
- Gifts to third parties
 - Options for non-consenting party
 - Ratify
 - Revoke and sue to recover
- Management/control of SP
 - General rule: equal management
 - Exceptions
 - Personal property
 - Sale of community real property
 - Lease of community real property
- Fiduciary duties
- Transferring/encumbering CP
- Testamentary disposition
 - Widow's election

• Rules for specific types of property

- Property acquired with CP and SP funds
- Separate property businesses and labor contributed
 - Pereira approach
 - Van Camp approach
- Improvements
 - Spouse uses CP to improve their own SP
 - Spouse uses SP to improve other spouse's SP
 - Spouse uses SP to improve CP
 - Anti-Lucas
 - Lucas
 - Spouse uses CP to improve other spouse's SP
- Credit/loans
- Comingled bank accounts
 - Direct tracing method
 - Exhaustion method
- Educational degrees
 - Expenses covered
 - Defenses to reimbursement
 - 10 years passed, community benefited
 - Both spouses received education with CP
 - Education reduces need for spousal support
- Personal injury recovery
- Stock options
 - Awarded for past services
 - Awarded to encourage spouse to remain at company
 - To replace earnings after divorce/separation
- Business goodwill
 - Valuation techniques
 - Market sales valuation
 - Capitalization of past excess earnings

- Retirement pensions
 - Time rule
 - Methods of awarding CP
 - Pay spouse when retirement reached
 - Cash out
 - Court retains jurisdiction
- Disability pay/workers compensation
- Severance pay
 - Right earned by marital labor approach
 - Replacement of future wages approach
- Whole life insurance
 - Paid with CP
 - Paid with CP and SP: apportionment
- Term life insurance
- Property insurance proceeds
- Division of property at death
 - If will
 - Intestacy

- **Distribution**

- Distribution of community property at divorce
 - General rule: equal division
 - Exceptions
 - Economic circumstances
 - Statutory exceptions

DEBTS

- Liability of CP
- SP liability
- Reimbursement
- Debts upon divorce
- Special rules
 - Debts: Necessaries for life
 - During marriage
 - At divorce
 - Child and spousal support from previous relationship
 - Tort obligations