**Community property**

**General Presumptions** – California is a community property state. All property acquired during the course of a marriage is presumed to be community property (CP). All property acquired before marriage or after permanent separation is presumed to be separate property (SP). In addition, any property acquired by gift, devise, or bequest is presumed to be SP. Quasi-community property (QCP) is property acquired by either spouse that would have been CP if the spouse had been domiciled in California at the time of acquisition. To determine the character of an asset, a court will trace back to the source of funds used to acquire the asset. A mere change in form of an asset does not change its characterization.

**Distribution at Divorce** – At divorce, the community assets are equally divided in kind, unless some special rule requires deviation from the equal division requirement or the spouses agree otherwise in writing or by oral stipulation in open court. QCP is treated as though it were CP at divorce.

**Distribution at Death** – At death, the decedent can devise all of his SP and ½ of the CP. If the decedent ties intestate, the surviving spouse is automatically entitled to the decedent’s share of the CP and from 1/3 to all of the decedent’s SP, depending on whether the decedent left issue or parents surviving.

**Cohabitation** – California does not apply CP law to persons who never evidenced any intention to enter into lawful marriage. Instead, property acquired during cohabitation is treated according to general contract principles. The courts will enforce express contracts between nonmarital partners except to the extent that such contracts are explicitly founded on consideration of sexual services. If there is no express contract, a party may prove a contract implied by the behavior of the parties or an agreement of partnership or joint venture.

**Termination of Marital Economic Community** – The marital economic community begins at marriage and ends at one spouse’s death or when the spouses effect a permanent physical separation. To terminate the marital economic community by permanent physical separation, there must be both an actual separation and an intent not to resume the marital relationship. One spouse’s unilateral intent not to resume the relationship is sufficient as long as it has been communicated to the other spouse.

**Transmutation** – During marriage, spouses may by transfer or agreement change the status of any or all of their property. These changes are transmutations. To be valid, a transmutation must be made in writing and must expressly declare that a change in ownership is being made. It must be consented to or accepted by the spouse whose interest is adversely affected.

**Fiduciary Duties and undue influence** – In transactions between themselves, a husband and wife are subject to the fiduciary rules that govern confidential relationships. The confidential relationship of spouses imposes a duty of the highest good faith and fair dealing on each spouse. A rebuttable presumption of undue influence arises when one spouse gains an advantage over the other in a property transaction. The spouse who obtained the advantage bears the burden of proving that the disadvantaged party freely and voluntarily consummated the transaction, with full knowledge of all the facts and complete understanding of the effect of the transition.

**Education expenses** – Education is not treated as divisible property. Instead, at divorce, unless the parties sign an agreement to the contrary, there is an equitable right of reimbursement with interest to the community when community funds are (1) used either to pay for education or to repay a loan incurred for education or training, and (2) the education substantially enhances the earning capacity of the educated party. Reimbursement may be reduced or modified by any of the following circumstances: the education or training is offset by community-funded education received by the other spouse; the education or training enables its recipient to engage in gainful employment that substantially reduces the need the recipient would otherwise have for spousal support; or the community has already substantially benefited from the education or training. There is a rebuttable presumption affecting the burden of proof that if fewer than 10 years have elapsed between the contributions and the initiation of the divorce, the community has not substantially benefited. If more than 10 years have passed, a presumption arises that the community has substantially benefited.

**Business goodwill** – Professional goodwill is CP if earned during marriage. Goodwill may be measured either by what a willing buyer would pay for it (market valuation) or by capitalization of excess earnings. Also, make sure there is no community labor issue under Pereira or Van Camp.

**Personal injury awards** – Personal injury awards are CP if the cause of action giving rise to the award arose during the marriage. If not, then the award is SP. At divorce, any CP personal injury awards will be awarded entirely to the injured spouse unless the interests of justice require otherwise. Awards against the other spouse are always the SP of the injured spouse.

**Retirement benefits** – Retirement benefits are CP if they were earned during the course of the marriage. Courts will use the time rule to determine how much of the pension is attributable to CP labor and how much is attributable to SP labor.

**Disability pay and worker’s compensation benefits** – Disability pay and worker’s compensation benefits can be treated as either CP or SP depending on the wages they are designed to replace. To the extent the benefits are taken in lieu of retirement benefits, they are treated as CP if earned during the course of marriage, subject to the time rule.

**Severance pay** – Some courts treat severance pay as CP while others treat it as SP. It is treated as SP if severance pay replaces future wages that would have been received after the marriage.

**Wages and wage replacement** – Labor performed by a married person is presumed to be community labor, and a spouse’s salary earned during marriage is presumed to be CP. Salary earned following permanent separation is SP. However, funds acquired after marriage that were intended to replace wages that would have been earned during marriage are CP.

**Stock options** – Stock options are a form of employee compensation. Therefore, they are treated as CP or SP depending on when they were earned. Courts will use the time rule to determine the respective CP and SP shares.

**Property acquired with both community and separate funds** – When property is acquired with CP and SP funds and no title presumption applies, the community and separate property interests are determined by apportioning their respective contributions (Marriage of Moore).

**Mortgages** – When community and separate funds are used to purchase an asset, the CP and SP acquire a pro rata ownership interest in the asset. To determine the respective shares of ownership, start by figuring out the percentage that each contributed to the purchase price.

**Improvements** – When CP is used to improve the SP of a spouse, the CP does not obtain a pro rata ownership interest in the asset but may be entitled to reimbursement. When a spouse uses CP to benefit the SP of the other spouse, a gift is presumed. When a spouse uses CP to benefit the spouse’s own SP, the CP is entitled to reimbursement. The CP is entitled to the cost of the improvement or the increase in value of the SP, whichever is greater.

**Agreements before marriage** – Spouses may alter the character of property or an asset before marriage, but the pre-marriage agreement must be in writing to satisfy the statute of frauds.

**Title presumption** – The effect of taking assets in joint title depends on whether the characterization takes place at death or at divorce. At death, Lucas applies. Under Lucas, when a married couple takes title in joint and equal form, it is inconsistent with the preservation of a SP interest in the asset. Any SP used to acquire the asset is presumed to be a gift of the SP unless there is an oral or written agreement to the contrary. At divorce, all property taken by a married couple in any joint form is presumed to be CP. Any SP used to acquire the jointly titled asset does not give the SP a pro rata ownership interest in the asset, but the spouse who contributed the SP is entitled to reimbursement without interest or appreciation.

**Community labor enhancing the value of SP business** – A spouse may devote her community labor to the management of an SP business. If at divorce or death the business has appreciated in value or substantial assets have been purchased with business profits, the character of the business and assets must be determined. To apportion between the SP component of the business and the CP value added by the managing spouse’s labor during the marriage, courts have developed two different apportionment methods: Van Camp accounting and Pereira accounting.

**Van Camp Accounting** – In Van Camp accounting, the managing spouse’s services are valued at the going market salary for such services. Then family expenses that were paid from the business earnings are subtracted from the value of the manager’s services. The remainder if any represents the CP portion of the business. The rest of the business is the SP of the managing spouse. Van Camp accounting should generally be used when the character of the separate business is largely responsible for its growth or productivity.

**Pereira Accounting** – Pereira accounting begins with the separate capital and imputes a fair rate of return, say 10% per year, the current legal interest rate. The total SP interest is the principal plus the fair rate of return times the number of years the SP business was in operation and managed by the spouse during the marriage. The remainder is CP. In Pereira accounting, family expenses paid by business earnings are not subtracted because Pereira accounting starts by calculating the value of the SP, and the residue (already reduced by money withdrawn to pay family expenses) is CP. Pereira accounting should generally be used when management by the spouse was the primary cause of the growth or productivity of the initially separate business.

**Fiduciary Duty** – The general rule is that during marriage the spouses have equal management and control of all the community assets. This imposes a duty of the highest good faith and fair dealing on each spouse and neither may take any unfair advantage of the other.

**Liability for debts incurred during marriage** – All of the CP and the debtor’s SP are liable for a debt incurred during the marriage. The SP of the other spouse is not liable. However, at divorce, the court will assign any outstanding debt without offset to the spouse who incurred the debt if the debt was not incurred for the benefit of the community. Thus, the other spouse’s share of the community property will be unreachable for the debt.

**Putative Spouse** – A California putative spouse is not lawfully married but has a good faith belief that she is lawfully married. Her belief that she is married must have be objectively reasonable. The putative spouse has almost the same property rights as a lawful spouse. All property that would be CP or QCP if the marriage were lawful is labeled quasi-marital property (QMP). She has the same rights in QMP that she would have in CP or QCP. However, when one partner is a good faith putative spouse but the other knows of the defect causing the marriage to be void or voidable, it is not clear whether the partner lacking good faith may make any claim to the QMP accumulated by the good faith spouse.