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**TEXAS COMMUNITY PROPERTY AND  
MATRIMONIAL LAW**

**Cases, Statutes, and Commentary**

**Second Edition**



**Wolters Kluwer**

ASPEN SELECT SERIES

# TEXAS COMMUNITY PROPERTY AND MATRIMONIAL LAW: CASES, STATUTES, AND COMMENTARY

Second Edition

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*To Mag. Lee Anne Reams,  
with love and affection, BR*

*To Frank A. Hunold, Jr.  
Your unconditional support and love make me possible.  
With my love, RA*

Harry Burns: Right now everything is great, everyone is happy, everyone is in love and that is wonderful. But you gotta know that sooner or later you're gonna be screaming at each other about who's gonna get this dish. This eight dollar dish will cost you a thousand dollars in phone calls to the legal firm of That's Mine, This Is Yours.

Marie: Harry.

Harry Burns: Please, Jess, Marie. Do me a favor, for your own good, put your name in your books right now before they get mixed up and you won't know whose is whose. 'Cause someday, believe it or not, you'll go 15 rounds over who's gonna get this coffee table. This stupid, wagon wheel, ROY ROGERS, GARAGE SALE COFFEE TABLE!

From *When Harry Met Sally...* (Metro-Goldwyn-Mayer Studios Inc., 1989),  
clip available at <http://www.youtube.com/watch?v=ZW8zvaTRuGo>

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# Table of Contents

The Texas Bar Exam .....	1
Forward: A Brief History of Community Property .....	3
Chapter 1: Introduction: What Is Community Property? What Is Separate Property .....	7
Chapter 2: Getting to Community: Who Can Marry .....	29
A. The Formal, Ceremonial Marriage.....	30
B. The Informal, Common Law Marriage .....	49
C. The Putative Marriage .....	56
D. Cohabitants.....	64
E. The Meretricious Couple.....	67
F. Void and Voidable .....	84
Chapter 3: Time & Title: The Character of Property .....	109
A. Inception of Title.....	109
1. Generally .....	109
2. Property Acquired Outside Texas .....	129
B. Reimbursement .....	132
1. Reimbursement Generally .....	136
2. Reimbursement for Time & Toil.....	149
3. Reimbursement and Child Support Distinctions.....	155
Chapter 4: Tracing: Proving Who Gets What, Who Owns What .....	163
A. Separate Ownership Through Tracing.....	163
B. The Problem of Commingling .....	173
C. Tracing Inventory .....	197
D. Tracing Livestock .....	210
E. Tracing Royalties .....	215



Chapter 5: Business Intangibles: Professional Goodwill & Professional Degrees .....	223
A. Goodwill: Professional & Commercial .....	223
1. Goodwill Generally .....	224
2. Other Jurisdictions: Community Property .....	242
3. Other Jurisdictions: Non-Community Property .....	247
B. Degrees .....	250
1. Other Jurisdictions: Community Property .....	252
2. Other Jurisdictions: Non-Community Property .....	256
Chapter 6: Lucrative & Onerous Acquisitions: Gifts, Partitions, & Exchanges ..	265
A. Interspousal Gift .....	267
B. Gifts from Third Parties .....	291
C. Partition & Exchange .....	308
Chapter 7: Acquisitions from the Sovereign .....	321
A. Civilian Retirement Benefits .....	326
B. Military Retirement Benefits .....	365
C. Termination Benefits .....	392
Chapter 8: Torts: Within & Without .....	397
A. The Community Property Presumption .....	399
B. Characterization Issues .....	410
C. Loss of Consortium .....	413
D. Torts Against Third Parties .....	420
E. Interspousal Torts .....	429
1. Intentional Infliction of Emotional Distress .....	439
2. Fraud .....	444
3. Invasion of Privacy .....	452
Chapter 9: Income Rents, Revenues, & Profits .....	457
A. Property Real & Personal .....	458

B. Trusts .....	468
C. Livestock .....	492
D. Crops.....	496
E. Oil & Gas.....	501
F. Winnings.....	506
G. Copyrights.....	512
H. Patents.....	528
I. Investments, Stocks, & Bonds: Dividends & Increases .....	536
J. Multi-Level Marketing Schemes .....	544
K. Future Earnings .....	549
L. Employment Contracts.....	556
Chapter 10: Business Interests .....	563
A. Corporate Entities & Relationships Formed Before Marriage.....	563
B. Corporate Entities & Relationships Formed After Marriage .....	586
C. Partnerships.....	588
Chapter 11: Who's in Charge? Managing the Property.....	607
A. Sole Management Community Property.....	610
B. Joint Management Community Property .....	628
Chapter 12: 'Til Debt Do Us Part.....	647
A. The Doctrine of Necessities .....	652
B. Joint Debts .....	666
C. Separate Debts.....	675
D. Credit Cards .....	693
E. Insurance Proceeds as Separate Property .....	698
F. Loans Obtained During Marriage .....	702
G. Fraudulent Transfers .....	710
H. Protecting Third Parties.....	725
I. Student Loans .....	729

J. The United States as Creditor .....	733
K. Bankruptcy .....	745
Chapter 13: The Homestead .....	759
A. The Tax Man Cometh.....	773
B. On & In Marriage .....	785
C. On Divorce .....	793
D. Liens.....	801
E. The Business Homestead .....	808
F. On Death of a Spouse.....	812
Endnotes .....	821
Table of Cases .....	823
Index .....	829

# The Texas Bar Exam

The Texas Bar Exam is a two and a half day exam. The final day consists of 12 essay exams that cover a variety of Texas law topics. Community property is often tested in conjunction with family law or wills/probate law. The exam is presented by the Texas Board of Law Examiners, commonly called the BLE. The BLE publishes past exams and some sample answers on their website at [http://www.ble.state.tx.us/exam\\_info/main\\_exam\\_info.htm](http://www.ble.state.tx.us/exam_info/main_exam_info.htm).

The authors have read all of the essay exams on the BLE's website. The questions covering community property topics are provided below. Work through the issues for yourself. Sample answers are available on the BLE website for exams February 2009 and later. *Note that the answers online are actual answers written by an examinee, so they may not be 100% correct and they may have missed issues!*

Community property issues were tested on the following exams:

Exam Date	Questions
February 2016	1, 5
July 2015	2, 6
February 2015	4, 10
July 2014	2, 10
February 2014	8
February 2013	5, 6, 9
July 2012	7, 8
February 2012	11
February 2011	7, 8
July 2010	3
February 2010	2
July 2009	12
February 2009	5
July 2008	8

Exam Date	Questions
February 2008	12
July 2007	7
February 2007	11, 12
July 2006	10
February 2006	12
February 2005	8
July 2004	12
July 2003	12
July 2002	11
July 2001	6
February 2001	9
February 2000	6
July 1999	10

“Lord,  
Grant that I may be able in argument,  
accurate in analysis, strict in study,  
candid with clients, and honest with adversaries.  
Sit with me at my desk and listen with me  
to my client’s complaints.  
Read with me in my library and  
stand beside me in court.  
So that today I shall not,  
in order to win a point,  
lose my soul,”  
—Sir Thomas More

# Forward:

## A Brief History of Community Property

Texas is one of only nine community property states, including Louisiana, Idaho, Arizona, California, Nevada, New Mexico, Washington, and Wisconsin. Clearly in the minority nationwide, Texas has a long history of defining and establishing marital property rights. In fact, the Spanish law that preceded the Texas Constitution contemplated protecting a married woman's separate property and inheritance. Traditionally, this meant her personal possessions, land, and slaves.

... 1st, That what the husband or wife bring into marriage as their own peculiar property, or acquire during it by lucrative cause or title, does not come into partition. 2d, But that the property acquired during marriage by purchase, sale, or other onerous cause or title, does. 3d, That immediately upon a division being made of this *ganancial* property, each acquires an absolute dominion as to their respective moieties or proportions. 4th, That as the gains (*ganancias*) are common, so also are the injuries or damage which shall happen to them, unless they arise by the fault of only one of the partners.<sup>1</sup>

When Texas became an independent republic, it co-opted the Spanish concepts into its own developing legal system, drafting the definition below in the first Constitution of 1845, and in all versions since. The right to manage, sell, or encumber a wife's separate property was still largely left to her husband, but that's another story.

All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent shall be her separate property; and laws shall be passed more clearly defining the rights of the wife,

in relation as well to her separate property, as that held in common with her husband.

Not only does this provision make Texas forward-thinking (in this instance, at least!), it also means that any fundamental changes to the basic framework of the community property law require constitutional amendment.

A most comprehensive study on the history of American marital property law was written by Professor Douglas Haddock, Professor of Law at St. Mary's University School of Law. The treatise is available online through Lexis Advance: The citation is 4-37 Thompson on Real Property, Thomas Editions § 37.04. Professor Haddock explains:

... The history of the adoption of "community property" principles in ... [Texas, New Mexico, Arizona, California, Nevada, Idaho, and Washington] is fascinating. ... W. S. McClanahan suggests two general reasons for the survival of this part of the civil law in these states. First is the familiar property problem of status quo and vested rights: under the Spanish and Mexican regimes, property acquired by married persons was held under a community property system. Undoing or changing this scheme presumably would have caused significant problems. A second reason concerns the beginnings of a movement that is still evolving at the end of the 20th century. Even before the middle of the 19th century the common law treatment of married women had come under attack. Justifiable criticism was launched against rules by which women essentially forsook their property rights by marriage. Married Women's Property Acts were adopted by the states, removing some of the disabilities imposed by law upon married women. Meanwhile, the western states were in the formative stages of government and law and some of them presumably saw the civil law system of community property in a favorable light as a result of the furor over common law marital property. The community property system thus survived in areas where it was already familiar to sufficient numbers because of Spanish influence.<sup>2</sup>

Professor Haddock's "fascination" is shared by University of Michigan School of Law Professor Emeritus Lawrence W. Waggoner. Professor Waggoner wrote:

Community property reinforces a married spouse's sense of participation in the marriage and ownership of the marital estate. Separate property tends to place the

nonpropertied spouse in a subordinate position. This split on so fundamental a question came about partly by historical accident. Community property was mostly adopted in the territories first settled by Spanish settlers. It “continues today chiefly in the states carved out of the former Spanish possessions.” This explains why the eight original community-property states are located in the west and southwest. The separate property system, on the other hand, was adopted in the territories first settled by English settlers, the eastern states, and it spread westward from there.

Historical accident may . . . explain why the original community-property states adopted the community of acquests concept of the Spanish legal system. Under that concept, each spouse owns a half interest in the earnings of the other acquired during the marriage, in effect as a tenant in common; property acquired prior to the marriage and property acquired during the marriage by gift, bequest, or inheritance are not counted in the community, and so remain separate property. . . .<sup>3</sup>

Professor Michael Ariens offers a thoughtful overview of the origins and development of the Texas community property system in his recent book, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS*. He also discusses the Married Women’s Property Act of 1913 and the Community Property Code of 1967.<sup>4</sup>

For a detailed background on the history of marital property in Texas, you are encouraged to read Professor Joseph W. McKnight, *TEXAS COMMUNITY PROPERTY LAW—ITS COURSE DEVELOPMENT AND REFORM*, 8 CAL. W.L. REV. 117 (1971-1972). This article is not available on WestlawNext or Lexis Advance. You can access it through HeinOnline.

For those interested in Texas legal history generally, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986* is an excellent source.<sup>5</sup> The book provides an easy-to-read and elegant history of the Texas legal system from its earliest and humblest beginnings. For an examination of current trends in marriage, see Stephen Macedo’s *JUST MARRIED: SAME-SEX COUPLES, MONOGAMY, AND THE FUTURE OF MARRIAGE*.

Although codified, application of community property often requires principles of equity or fairness. Courts often seek equity, using principles like reimbursement to overcome strictly applied statutes. Winning practitioners are prepared with statutes, case law, and evidence to support their arguments whether they want the judge to decide strictly by the statute or want the judge to apply equity to soften a harsh statutory result.



"I didn't do too well until my second year,  
when I realized that there were no right or wrong answers  
and that my professors were interested only in how well  
I could develop an argument."  
—Joe Jamail, the King of Torts