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COMMUNITY PROPERTIES



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COMMUNITY PROPERTY

CHARLOTTE K. GOLDBERG

Professor of Law
Loyola Law School, Los Angeles



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Law & Business

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Dedicated to
My mother, Rose Shusterman, Of Blessed Memory,
and
My mother-in-law, Sissy Goldberg, Of Blessed Memory.
They always had faith in me.

Preface

This book grew out of a love for community property law. For many years, I have taught a Marital Property lecture course focused on California law and a Community Property Seminar focused on law in the all the states that have adopted the community property system. The sharing concept of community property law is appealing to me and hopefully to others because it reflects the goals of an ideal marriage. Yet, there are only eight traditional community property states in the United States: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. Most of those states adopted community property law as a result of the Spanish or French legal background of those who originally settled there. More recently, Wisconsin and Alaska have adopted community property law through legislation.

Since the original adoption of community property law over one hundred years ago, each state has developed its own system. Although many of the basic concepts are the same, over the years there has been a divergence of views on many topics. Hence this book is both necessary and important for understanding the differences that have developed. It is especially relevant because two of the most populous states in the United States, California and Texas, have very different views on many issues. For instance, California prohibits the consideration of fault at divorce, while Texas allows fault to be a factor in the division of community property at divorce. Another example is that California considers the profits of separate property to be separate property, while Texas considers the profits of separate property to be community property. Finally, California and Texas have strikingly different views regarding the shared property rights of unmarried cohabitants, with California allowing oral and implied agreements regarding their property rights and Texas requiring written agreements only.

This book presents the similarities and differences among the traditional community property states regarding the property rights of couples, both married and unmarried. The chapters are structured around decisions that couples face before, during, and at the end of a marriage. Cases are chosen as representative of the differing views on each topic and issue. The book includes a substantial number of cases from every state. A table at the end of each chapter gives a snapshot of all states' view on that chapter topic. Discussion questions provide guidance to understanding the cases, and problems assist in application of the differing approaches. A separate chapter focusing on Wisconsin is included to highlight a state that has more recently adopted community property law. The reason is to delve more deeply into what is the essence of community property law and also to examine which view of the issues has been followed in Wisconsin.

This book can be used in various ways. It can be used as strictly a comparative law course to compare and contrast the views of all community property states. Alternatively, it can be used as a course on one state's law and, where relevant, with some notation of how other states treat the same issue. It can be taught in a seminar format, with students becoming experts in their own state and perhaps one or two other states. Seminar papers could include research on topics not covered in the book, such as the property rights regarding frozen embryos or copyrights and patents. It can also be taught in a lecture format with focus on one state only but highlighting, where relevant, other states' views.

Charlotte K. Goldberg

September 2013

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COMMUNITY PROPERTY

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