

ASPEN CASEBOOK SERIES

*BLUMBERG*

**COMMUNITY PROPERTY  
IN CALIFORNIA**

*Seventh  
Edition*



Wolters Kluwer

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**COMMUNITY PROPERTY  
IN CALIFORNIA**

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*Seventh Edition*

**GRACE GANZ BLUMBERG**

**Distinguished Professor of Law Emerita  
University of California, Los Angeles**



**Wolters Kluwer**

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## COMMUNITY PROPERTY IN CALIFORNIA

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*For Donald, Rachel, Sarah, and Sean*

## PREFACE

Now in its seventh edition, this book is intended to work on several levels. Most basically, it provides comprehensive coverage of California community property law, with a view toward preparation for the California bar examination and California practice, particularly in the areas of divorce, decedents' estates, and creditors' rights. Additionally, the scope and usefulness of the book extend beyond the borders of California. Every state now has some form of marital property system. California community property law, once viewed as an exotic and obscure area of local law, is currently considered one of the leading systems of marital property law. The book uses California law to examine the issues that face every marital property system. Because California community property law is more extensively developed than the marital property law of many other jurisdictions, it is a valuable aid for attorneys and legislators in sister states and other countries. Moreover, choice-of-law principles often require that sister-state probate and divorce practitioners have some familiarity with California community property law in order to serve clients formerly domiciled in California. Finally, because a law school course should focus on skills development as well as substantive law, the notes, questions and problems that accompany the cases and text are intended to enable students to fully engage the material and to foster their professional development as attorneys, judges and lawmakers.

The introductory chapter locates California community property law in the international and national landscape of marital property law. Throughout the book, the notes make comparative reference to the law of other jurisdictions, the Uniform Marital Property Act, and the American Law Institute's Principles of the Law of Family Dissolution. The introductory chapter also locates marital property law within the larger domain of family law. It explores the relationship between marital property law and support law, and surveys different approaches to family wealth allocation at the dissolution of a marriage, whether by divorce or death.



The development of California community property law provides abundant illustration of the interplay of social and legal change. Although the 1849 California Constitutional Convention adopted Spanish community property law principles in order to protect the interests of married women, the California legislature and courts initially constructed a marital property system as oppressive as the common law regime explicitly rejected by the constitutional convention. Women's progress toward formal, or *de jure*, sexual equality is reflected in a series of amendments from 1872 to 1975. Later, attention shifted from *de jure* equality to *de facto* equality, and the legislature sought to remedy *de facto* spousal inequality in a series of community property enactments that define the fiduciary responsibilities of a managing spouse and allow a non-managing spouse access to the community property.

Some of the most difficult marital property issues concern the classification of human capital and career assets. When community property law initially developed, personal wealth consisted largely of physical capital, usually agricultural land, which was made productive by relatively unskilled labor. Under such circumstances, a system that differentiated between earnings during marriage (community property) and earnings after dissolution (an earner's separate property) was conceptually sound and easy to administer. In more recent times, however, we tend increasingly to invest in ourselves and to rely on our human capital, usually in the form of education and vocational experience, to produce an ever-growing stream of income. To the extent that earnings after dissolution represent, in part, a return on human capital acquired during marriage (as contrasted with a return on postdissolution labor), the traditional classification rubric may seem inadequate. The issue is presented when, for example, a person acquires a professional education or business goodwill during marriage, but reaps the rewards of that acquisition after divorce. Closely related are the deferred compensation issues raised by pensions, disability benefits, severance pay, employee stock options, bonuses, and merit-based salary increases. The book closely and comprehensively examines the classification of career-related assets because they are the primary source of wealth for many persons and they pose a significant conceptual challenge for marital property law.

The study of community property law affords us an extended view of the most intimate relationship in American culture, the conjugal relationship. It is a subject to which we all bring personal experience, whether our own or that of our relatives and friends. Community property may cause us to reflect on how we might structure or restructure our present or future relationships. It also invites us to consider how we can best serve clients when their intimate relationships are terminated by separation, divorce, or death.

The interval between the publication of the sixth and seventh editions has been marked by unusual activity in the California Supreme Court and relative inactivity in the legislature. Readers familiar with the sixth edition will find that, in addition to updating all topics and adding an introductory note on the California judiciary, the seventh edition resolves important issues that were still pending before the California Supreme Court when the sixth edition went to press.

- In *Marriage of Valli*, the California Supreme Court expands the definition of *transmutation* for purposes of the transmutation statutes, while Justice Chin's concurring opinion explores the relationship between the community property

presumption arising from acquisition of property during marriage and the Evidence Code section 662 common law presumption that the owner of legal title to property is the owner of full beneficial title.

- In Chapter VIII, Inception and Termination of the Economic Community, the California Supreme Court and the Legislature have resolved several issues. In *Ceja v. Rudolph & Sletten*, the California Supreme Court examines the good-faith requirement of the putative spouse doctrine: Must the belief that a void marriage is valid be reasonable, as well as honestly held? Marriage of Davis clarifies the definition of *living separate and apart*. May the spouses live separate and apart, and thus terminate the economic community, while both continue to live in the marital home? Resolving a dispute between two Courts of Appeal, the legislature amended Family Code section 2251 to regulate the distribution of quasi-marital property when one spouse is a putative spouse, but the other is not.
- Chapter IX, Property Distribution at Divorce, adds a concluding section on judicial enforcement of California statutory disclosure rules.
- An introductory note describes the structure of the California judiciary, the relationship among the three tiers of the judiciary, the reporting of cases, and the standards of appellate review exercised by California courts. The note is intended to enhance the reader's understanding of the cases and the constraints that courts, particularly the California Courts of Appeal, experience when deciding a case.

Grace Ganz Blumberg

January 2016

The following introductory note describes the structure of the California judiciary, the relationship among the three tiers of the judiciary, the reporting of cases, and the standards of appellate review exercised by California courts. The note is intended to enhance the casebook reader's understanding of the cases and the constraints that courts, particularly the California Courts of Appeal, experience when deciding a case.

## NOTE ON THE CALIFORNIA JUDICIARY AND CALIFORNIA APPELLATE STANDARDS OF REVIEW

The California judicial system is comprised of three tiers. Family law cases originate in Superior Court, a trial court. After the Superior Court issues a final judgment, an aggrieved party has an absolute right of appeal to the Court of Appeal, the intermediate appellate court. After the Court of Appeal issues its decision, an aggrieved party may petition the California Supreme Court for review. Whether to grant review is a matter of Supreme Court discretion, and the court rarely grants review in family law cases. When it does grant review, the decision of the Court of Appeal is said to be *superseded*.<sup>1</sup> Thus, the case comes to the Supreme Court directly from the trial court. The question before the Supreme Court is whether the trial court correctly decided the case.

In California, trial court decisions are not reported. Court of Appeal decisions are reported only in limited circumstances.<sup>2</sup> Thus, most Court of Appeal decisions are *unpublished*, although they may be read on Westlaw or Lexis. Even when a portion of a Court of Appeal opinion is published, the rest of the opinion may

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1. California Rules of Court, Rule 8.1105(e)(1).  
2. California Rules of Court, Rule 8.1105(b), (c).

remain unpublished. The Supreme Court may subsequently *depublish* a published Court of Appeal opinion.<sup>3</sup> Unpublished, superseded, and depublished decisions of the Court of Appeal may not be cited as authority.<sup>4</sup> A published decision of the Court of Appeal appears in two reporters: California Appellate Reports, the official reporter, and California Reporter. The following citation indicates that the case was decided in the Court of Appeal: 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972). When the Supreme Court grants review of a published decision or depublishes a published decision, the opinion of the Court of Appeal is removed from the official California Appellate Reports; it remains only in California Reporter. Supreme Court decisions are reported in California Reports, the official reporter, Pacific Reports, and California Reporter. The following citation indicates that the case was decided by the California Supreme Court: 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980).

All lower courts are bound by decisions of the California Supreme Court. Decisions in one Court of Appeal do not bind other Courts of Appeal. When the Supreme Court does grant review, it is often to resolve conflicting decisions in the Courts of Appeal.

On appeal from the trial court, the California appellate courts exercise limited review of the trial court's findings of fact. If the findings are supported by *sufficient*, or *substantial*, evidence, they will be sustained on appeal. An appellate court will not reweigh the facts. It need only conclude that a reasonable trial court could have found as it did on the facts before it.<sup>5</sup> By contrast, if the issue presented is a matter of law, whether case law or statutory interpretation, the appellate court reviews the issue *de novo*. The distinction between deference to the trial court on findings of fact and *de novo* review on matters of law arises frequently in the casebook.

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3. California Rules of Court, Rule 8.1105(e)(2).

4. California Rules of Court, Rule 8.1115.

5. Other states permit their intermediate appellate courts to exercise *de novo* review of the facts as well as the law. See, for example, New York CPLR § 5501 and West's Oregon Revised Statutes Ann. § 19.415.

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# SUMMARY OF CONTENTS

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxiii</i>
<i>Note on the California Judiciary</i>	<i>xxvii</i>
<i>Acknowledgments</i>	<i>xxix</i>
I. Introduction	1
II. The History of California Community Property	53
III. Definitional and Tracing Issues	67
IV. Evidentiary Presumptions in California Community Property Law	85
V. Variation of the Statutory Scheme: Premarital Contracts and Transmutation of Property During Marriage	151
VI. Classification of Property	237
VII. Management and Creditors' Rights	385
VIII. Inception and Termination of the Economic Community	447
IX. Property Distribution at Divorce	531
X. Property Distribution at Death	609
XI. Choice of Law at Divorce and Death	635
XII. Federal Pre-emption of State Marital Property Law	687
California Statutory Appendix	703
Selected Provisions from the California Family Code	705
Selected Provisions from the California Civil Code	783
Selected Provisions from the California Corporations Code	784
Selected Provisions from the California Evidence Code	786
California Financial Code, Section 1401	786
Selected Provisions from the California Probate Code	786
<i>Table of Cases</i>	<i>801</i>
<i>Index</i>	<i>809</i>



# CONTENTS

<i>Preface</i>	xxiii
<i>Note on the California Judiciary</i>	xxvii
<i>Acknowledgments</i>	xxix

## I

### INTRODUCTION 1

A. The Relationship Between the Family and Property Ownership: A Comparative Overview	1
B. Marital Property in the United States	3
1. The Modern American Common Law Marital Property System: The Elective Share and Equitable Distribution	3
2. Community Property	6
3. Contrast Between Modern Common Law and Community Property Systems	7
C. Marital Property as a Form of Divorce-Related Wealth Distribution: The Relationship Between Property Distribution and Child and Spousal Support	8
1. Child Support	9
2. Spousal Support (also known as alimony or maintenance)	9
D. The Common Law Title System	13
<i>Wirth v. Wirth</i>	13
Notes and Questions	15
E. Common Law Equitable Distribution at Divorce	15
<i>Painter v. Painter</i>	16
Notes and Questions	23
F. Why Do We Have a Marital Property System? Or, More Broadly, How Might We Think About Interspousal Wealth Allocation?	27
June Carbone and Margaret F. Brinig, Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform	31
Notes	49