

California Bar Exam Outlines

COMMUNITY PROPERTY

Community Property

- a. California is a community property state. There is a presumption that all property acquired during marriage is community property. This means property acquired by either spouse during a marriage is presumed to be equally owned by both spouses. Separate property is property acquired before marriage or after permanent separation, or acquired by gift, bequest, devise or descent with rents issues and profits thereon.
- b. Analyze the character of each item by asking:
 - i. Source of the property – when and how was the property acquired?
 - ii. Actions – did the spouses take any action that would change the character of the property?
 - iii. Presumptions – are there any legal presumptions that may affect the character of the asset?, and
 - iv. Disposition – what will be done with the property?
- c. Date of Marriage (4 Ways)
 - i. Married – Capacity, license, witnessed ceremony, registered with the county recorder.
 1. CA recognizes a marriage from another jurisdiction (Except for same sex marriages)
 2. Marriage can't be void (no incest / pre-existing marriage)
 3. Common Law marriages do not exist in CA
 - a. Exception – CA recognizes valid common law marriages from another state.
 4. Same-sex marriages are valid in CA
 - a. Thus, same sex married couples may claim CP rights as Spouses, not Domestic Partnerships
 - ii. Domestic Partnership – All laws pertaining to married persons apply to DP's
 1. Filing – Declaration of domestic partnership with the Secretary of State
 2. Includes – (1) unmarried same sex couples, or (2) Elderly who receive social security benefits.
 - iii. Quasi-Marital Property
 1. Quasi-marital property – property acquired during a putative marriage which would have been community property if the marriage was not void (Treat as CP)
 2. Putative Spouse – When a spouse has an objectively reasonable and good faith belief that they are married but through no fault of their own they are not.
 - a. Rationale – created to deal with equitable situations.
 - iv. Marvin Actions – Contracts that allow you to get into Family Law Court
 1. Rule – Courts should enforce express contracts between non-marital partners, unless the contract is founded on illegal sexual services. If no contract exists, courts look to see if the parties' conduct demonstrates a tacit understanding of an implied contract.
 2. Result – All property acquired during a Marvin Action will be treated as CP.
 3. Examples – Cohabitation with no marriage, same sex relationships.
- d. Date of Separation (DOS) – date when marriage is irretrievably broken.
 - i. Irretrievably Broken – The economic community ends when:

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