

Texas Marital Property Rights

*Carolina Academic Press
Law Casebook Series
Advisory Board*



Gary J. Simson, Chairman
Case Western Reserve University School of Law

John C. Coffee, Jr.
Columbia University Law School

Randall Coyne
University of Oklahoma College of Law

Paul Finkelman
Albany Law School

Robert M. Jarvis
*Shepard Broad Law Center
Nova Southeastern University*

Vincent R. Johnson
St. Mary's University School of Law

Michael A. Olivas
University of Houston Law Center

Kenneth L. Port
William Mitchell College of Law

H. Jefferson Powell
George Washington University Law School

Michael P. Scharf
Case Western Reserve University School of Law

Peter M. Shane
*Michael E. Moritz College of Law
The Ohio State University*

Emily L. Sherwin
Cornell Law School

John F. Sutton, Jr.
Emeritus, University of Texas School of Law

David B. Wexler
*James E. Rogers College of Law, University of Arizona
University of Puerto Rico School of Law*

Texas Marital Property Rights

Fifth Edition

J. Thomas Oldham

JOHN H. FREEMAN

PROFESSOR OF LAW

UNIVERSITY OF HOUSTON LAW CENTER

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2011
J. Thomas Oldham
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Oldham, J. Thomas, 1948-
Texas marital property rights / J. Thomas Oldham. -- 5th ed.
p. cm.
Includes index.
ISBN 978-1-59460-831-5 (alk. paper)
1. Marital property--Texas--Cases. I. Title.

KFT1297.O42 2010
346.76401'664--dc22

2010027688

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*This book was inspired by Vern L. Oldham, Esq. (1912–1988)
and Pauline D. Oldham (1920–1996)*

This book is dedicated to the many law students at University of Houston, University of Colorado, Cambridge University, and George Washington University who have helped me gain whatever insight I have into this subject. I would also like to thank Jennifer Hopgood and Danielle Raffield for their “terrific” editing help.

Contents

Table of Cases	xv
Preface for the Student	xix
Texas Constitution Article XVI, Section 15	xxi
Chapter One • An Overview of the Community Property System	3
A. Marriage as a Partnership	3
<i>Zaruba v. Zaruba</i>	4
<i>Shea v. Shea</i>	7
B. Alimony	9
C. Dissolution of the Partnership	9
Chapter Two • Common-law Marriage and Putative Marriage	11
A. Ceremonial Marriage	11
B. Common-law Marriage	11
<i>Claveria v. Claveria</i>	11
<i>Consolidated Underwriters v. Kelly</i>	14
C. The Putative Spouse	16
<i>Lazzarevich v. Lazzarevich</i>	17
<i>Estate of Vargas</i>	19
<i>Vryonis v. Vryonis</i>	21
Chapter Three • Disputes Between Unmarried People	27
A. Engagement Disputes	27
1. Breach of Promise of Marriage	27
<i>Stanard v. Bolin</i>	27
<i>Scanlon v. Crim</i>	32
2. Engagement Gifts	34
<i>Curtis v. Anderson</i>	34
B. Disputes between Cohabitants	37
1. In General	37
<i>Marvin v. Marvin</i> (1976)	38
<i>Marvin v. Marvin</i> (1981)	43
2. The Implied Contract to Share	45
<i>Alderson v. Alderson</i>	45
3. Other Views	48
<i>O’Farrill Avila v. González</i>	48
4. Cohabitants’ Disputes and General Contract Doctrine	52
5. Conflicts of Law	53
6. Relevance of Partnership Doctrine	53
<i>Harrington v. Harrington</i>	53

7. Less Conventional Relationships	55
<i>Jones v. Daly</i>	56
<i>Small v. Harper</i>	58
C. Disputes at Divorce Regarding Premarital Expenditures	61
<i>Nelson v. Nelson</i>	61
D. Disputes between People Who Date but Do Not Cohabit	63
<i>Cochran v. Cochran</i>	63
<i>Adams v. Jensen-Thomas</i>	67
E. Tort Claims	69
<i>Stephen K. v. Roni L.</i>	69
<i>Kathleen K. v. Robert B.</i>	71
<i>Perry v. Atkinson</i>	75
Chapter Four • Pensions and Other Fringe Benefits of Employment	81
A. Pensions	81
1. In General	81
<i>Johnson v. Johnson</i>	81
<i>Cearley v. Cearley</i>	85
<i>Taggart v. Taggart</i>	89
<i>In re Marriage of Poppe</i>	92
<i>In re Marriage of Henkle</i>	94
<i>In re Marriage of Cox</i>	96
<i>Berry v. Berry</i>	97
<i>May v. May</i>	101
<i>Hudson v. Hudson</i>	108
<i>Harvey v. Harvey</i>	110
<i>Grier v. Grier</i>	114
<i>Gillmore v. Gillmore</i>	116
<i>Whorrall v. Whorrall</i>	120
2. Pension Rights and the Death of a Spouse	122
<i>In re Estate of Allen</i>	122
<i>Valdez v. Ramirez</i>	124
<i>Allard v. Frech</i>	127
B. The Community Interest in Other Fringe Benefits	130
1. Severance Pay	130
<i>Wright v. Wright</i>	130
<i>In re Marriage of DeShurley</i>	133
2. Disability Benefits	135
<i>Andrle v. Andrle</i>	135
3. Stock Options	137
<i>In re Marriage of Nelson</i>	137
4. Other Benefits	141
<i>Lorenz v. Lorenz</i>	141
Chapter Five • Goodwill and Professional Degrees	145
A. Goodwill	145
<i>Nail v. Nail</i>	145
<i>Geesbreght v. Geesbreght</i>	148
<i>Simpson v. Simpson</i>	149
<i>Finn v. Finn</i>	150

<i>Rathmell v. Morrison</i>	154
<i>Golub v. Golub</i>	157
B. Professional Education	160
<i>Frausto v. Frausto</i>	160
Chapter Six • Presumptions, Tracing and Commingling	165
A. Presumptions	165
1. The General Community Presumption	165
2. Rebutting the Community Presumption by Tracing	166
<i>Andrews v. Andrews</i>	166
<i>Estate of Clark</i>	167
<i>Hamilton v. Hamilton</i>	168
<i>Holby v. Holby</i>	169
3. Spousal Gift Presumption	170
<i>Johnson v. Johnson</i>	170
4. Presumptions That Cannot Be Rebutted	172
B. Commingling	172
1. In General	172
<i>See v. See</i>	173
<i>McKinley v. McKinley</i>	175
<i>Snider v. Snider</i>	177
2. Equitable Limits to Commingling	179
<i>Horlock v. Horlock</i>	180
<i>Duncan v. United States</i>	181
3. Tracing Livestock and Inventory	185
Chapter Seven • Torts and Damage to Property	187
A. Damage to Property	187
<i>Trahan v. Trahan</i>	187
B. Personal Injury	188
<i>Jurek v. Jurek</i>	188
<i>Russell v. Russell</i>	191
<i>Twyman v. Twyman</i>	195
<i>Schlueter v. Schlueter</i>	200
<i>Vickery v. Vickery</i>	207
Chapter Eight • Reimbursement and Acquisitions Over Time	211
A. Comparing the Pro Rata Approach to the Inception of Title Approach	211
1. In General	211
<i>McCurdy v. McCurdy</i>	211
<i>In re Estate of Logan</i>	213
2. Designating a Life Insurance Beneficiary	216
<i>Jackson v. Smith</i>	217
B. Inception of Title and Credit Purchases	219
1. In General	219
<i>Bell v. Bell</i>	219
<i>Wierzchula v. Wierzchula</i>	221
2. Reimbursement	223
<i>Hawkins v. Hawkins</i>	223

3. Equitable Limits to Inception of Title	225
<i>Andrews v. Andrews</i>	225
4. Family Living Expenses	227
<i>Trevino v. Trevino</i>	227
<i>Hilton v. Hilton</i>	228
C. Other Acquisitions Over Time	230
<i>In re Marriage of Garrett</i>	230
<i>Garfein v. Garfein</i>	232
Chapter Nine • Rents and Profits	235
<i>Stringfellow v. Sorrells</i>	236
<i>Dixon v. Sanderson</i>	237
<i>Scofield v. Weiss</i>	239
<i>Commissioner of Internal Revenue v. Wilson</i>	240
<i>Long v. Long</i>	242
Chapter Ten • Business Interests	245
A. Corporations	245
1. In General	245
<i>Allen v. Allen</i>	245
2. The Separate Property Corporation That Increases in Value During Marriage	247
a. Cases From Other States	247
<i>Cockrill v. Cockrill</i>	247
<i>Speer v. Quinlan</i>	249
<i>Simplot v. Simplot</i>	253
b. Texas Cases	254
<i>Vallone v. Vallone</i>	254
<i>Jensen v. Jensen</i>	257
<i>Thomas v. Thomas</i>	261
<i>Young v. Young</i>	262
<i>Lifshutz v. Lifshutz</i>	265
B. Partnerships and Proprietorships	267
<i>Marshall v. Marshall</i>	268
C. A Note Regarding Business Valuation	271
Chapter Eleven • Management Powers	273
A. In General	273
1. Sole Management Property	273
2. Joint Management Property	273
<i>Vallone v. Miller</i>	274
B. Reliance Upon Title	275
<i>Cumming v. Johnson</i>	275
C. Duties of the Manager	278
<i>Andrews v. Andrews</i>	278
<i>Arrington v. Arrington</i>	280
<i>Mazique v. Mazique</i>	281
<i>Devine v. Devine</i>	283
<i>Fields v. Michael</i>	287
D. Expenditure of Community Funds for Separate Debts	290
E. Gifts of Community Property	290

Chapter Twelve • Creditors' Rights	293
<i>LeBlanc v. Waller</i>	293
<i>Cockerham v. Cockerham</i>	297
<i>Patel v. Kuciemba</i>	307
<i>Inwood National Bank of Dallas v. Hoppe</i>	310
<i>Pope Photo Records v. Malone</i>	311
<i>Mock v. Mock</i>	314
<i>Brodoy v. United States</i>	315
<i>State Board of Equalization v. H.Y. Woo</i>	318
Chapter Thirteen • Constitutional Limits	321
A. State Constitution	321
1. The Scope of Separate Property	321
<i>Arnold v. Leonard</i>	321
<i>Graham v. Franco</i>	324
2. Property Divisible at Divorce	326
<i>Eggemeyer v. Eggemeyer</i>	326
<i>Cameron v. Cameron</i>	332
<i>Duke v. Duke</i>	342
<i>Cohen v. Cohen</i>	343
3. Discrimination Based upon Sex	344
<i>Glud v. Glud</i>	344
4. Retroactivity of Changes in the Law	345
<i>Addison v. Addison</i>	345
<i>In re Marriage of Bouquet</i>	346
B. Federal Constitution	349
1. Jurisdiction	349
<i>Hoffman v. Hoffman</i>	349
<i>Dawson-Austin v. Austin</i>	351
2. Property Located Outside the State	354
3. Federal Preemption	354
a. Military Retirement	354
<i>McCarty v. McCarty</i>	354
<i>Segrest v. Segrest</i>	358
<i>Voronin v. Voronin</i>	360
<i>Allison v. Allison</i>	363
<i>Eddy v. Eddy</i>	363
b. Other Federal Benefits	366
<i>Ryan v. Ryan</i>	366
<i>Kamel v. Kamel</i>	367
<i>Richard v. Richard</i>	368
c. ERISA Preemption	371
<i>Barnett v. Barnett</i>	371
<i>Manning v. Hayes</i>	379
<i>Branco v. UFCW-Northern California Employers Joint Pension Plan</i>	387
Chapter Fourteen • Representing the Divorce Client	393
A. The First Interview	393
B. Handling the Case	394
C. Counseling the Client	395

D. Maintaining Good Client Relations	396
E. Collaborative Law	397
Chapter Fifteen • Dividing the Community Estate at Divorce	399
A. Fault	399
<i>Young v. Young</i>	399
<i>Brown v. Brown</i>	401
B. Other Equitable Concerns	403
<i>Murff v. Murff</i>	403
<i>Putegnat v. Putegnat</i>	406
<i>Cluck v. Cluck</i>	407
<i>Patt v. Patt</i>	409
<i>LeBlanc v. LeBlanc</i>	410
C. Characterization Errors	412
<i>McElwee v. McElwee</i>	412
<i>Jacobs v. Jacobs</i>	414
D. Miscellaneous Property Division Issues	416
<i>Hourigan v. Hourigan</i>	416
<i>Gordon v. Blackmon</i>	418
<i>Leal v. Leal</i>	420
<i>Archambault v. Archambault</i>	421
<i>Abrams v. Abrams</i>	422
<i>DeGroot v. DeGroot</i>	423
E. Independent Claims in a Divorce Action	427
F. Death Abates a Divorce Action	428
<i>In re Marriage of Joyner</i>	428
G. Alimony	434
<i>In re Green</i>	435
<i>Price v. Price</i>	439
H. Tax Consequences of Divorce	440
1. Alimony and Child Support	440
2. Dividing the Property	441
3. Income Tax Planning at Divorce	442
I. Collection Concerns	443
J. Other Matters to Remember	443
Chapter Sixteen • Drafting the Settlement Agreement and Divorce Decree	445
A. Settlement Agreement	445
<i>Garza v. Garza</i>	445
<i>Stewart v. Stewart</i>	446
<i>Herbert v. Herbert</i>	448
<i>Cayan v. Cayan</i>	451
B. Drafting the Decree	454
<i>Ex parte Slavin</i>	455
<i>Ex parte Bible</i>	457
<i>Ex parte Choate</i>	458
<i>Ex parte Gorena</i>	461
<i>Ex parte Harris</i>	463
<i>Ex parte Barnes</i>	465
<i>Ex parte Shelton</i>	466

<i>In re Small</i>	467
<i>Jenkins v. Jenkins</i>	471
<i>Williamson v. Williamson</i>	473
<i>Phillips v. Phillips</i>	474
Chapter Seventeen • Dividing the Community Estate at Death	479
A. Intestacy	479
B. Testate Succession	480
<i>Estate of Patton</i>	481
<i>Wright v. Wright</i>	483
C. Reimbursement and Debts	488
D. Life Insurance	488
E. Joint Tenancy Designation	488
F. Homestead Rights	489
Chapter Eighteen • Conflicts of Law	491
A. Ownership of Property Outside the Marital Domicile	491
<i>Tirado v. Tirado</i>	491
<i>Ossorio v. Leon</i>	495
<i>G. W. Equipment Leasing, Inc. v. Mt. McKinley Fence Co., Inc.</i>	497
B. Migrant Spouses	501
1. Change of Domicile From Community Property to Common Law State	501
<i>Quintana v. Ordone</i>	501
2. Change of Domicile from a Common Law to a Community Property State	503
<i>Pacific States Cut Stone Co. v. Goble</i>	503
<i>In re Estate of Hanau</i>	506
<i>Ismail v. Ismail</i>	509
3. People Moving to Texas from Another Country	515
<i>Seth v. Seth</i>	515
C. Foreign Realty	519
<i>In re Marriage of Glaze</i>	519
Chapter Nineteen • Marital Agreements	521
A. The Traditional Approach	521
1. Restatement	521
2. Pre-1980 Texas Cases	524
<i>Williams v. Williams</i>	524
B. The Modern Approach	527
1. Cases from Other States	527
<i>Ranney v. Ranney</i>	527
<i>Lutgert v. Lutgert</i>	532
<i>DeLorean v. DeLorean</i>	537
<i>Burtoff v. Burtoff</i>	541
2. The Current Texas Rules	544
<i>Williams v. Williams</i>	545
<i>Bradley v. Bradley</i>	546
<i>McClary v. Thompson</i>	549
<i>Fanning v. Fanning</i>	554
<i>Marsh v. Marsh</i>	564
<i>Deanda Osorno v. Osorno</i>	570

C. The Distinction Between Postnuptial and Prenuptial Agreements	571
<i>Borelli v. Brusseau</i>	571
<i>In re Marriage of Mehren & Dargan</i>	577
D. Changing Separate Property Into Community Property	580
Chapter Twenty • Spousal Gifts and Partitions	581
A. Interspousal Gifts	581
<i>Grimsley v. Grimsley</i>	581
<i>O'Neill v. O'Neill</i>	586
B. Joint Tenancy and Community Property with Right of Survivorship	588
<i>Jameson v. Bain</i>	588
<i>Holmes v. Beatty</i>	590
C. Partitions	597
<i>Patino v. Patino</i>	597
<i>Matthews v. Matthews</i>	598
<i>Byrnes v. Byrnes</i>	603
Index	607

Table of Cases

- Abrams v. Abrams, 399, 422
Adams v. Jensen-Thomas, 27, 67
Addison v. Addison, 321, 345, 347, 511
Alderson v. Alderson, 27, 45
Allard v. Frech, 81, 127, 379
Allen v. Allen, 16, 81, 245, 438, 598
Allison v. Allison, 321, 363–365
Andrews v. Andrews, 166
Andrews v. Andrews, 225, 278
Andrle v. Andrle, 81, 135
Archambault v. Archambault, 399, 421
Arnold v. Leonard, 240, 268, 270, 288, 321, 324, 328, 333, 526, 556
Arrington v. Arrington, 273, 280
Barnett v. Barnett, 213, 321, 371, 375, 379
Bell v. Bell, 211, 219, 266, 404, 420, 421, 586
Berry v. Berry, 81, 97, 99, 101–104, 109, 111, 114, 115, 313, 366, 551
Borelli v. Brusseau, 521, 571
Bradley v. Bradley, 413, 521, 546
Branco v. U.F.C.W.-Northern California Employees Joint Pension Plan, 387
Brodav v. United States, 293, 315
Brown v. Brown, 20, 37, 86, 88–90, 312, 313, 381, 399, 401, 473, 571, 594
Burtoff v. Burtoff, 521, 541
Byrnes v. Byrnes, 552, 581, 603
Cameron v. Cameron, 99, 107–109, 203, 321, 326, 332, 362–364, 411, 506–508, 512
Cayan v. Cayan, 431, 445, 451
Cearley v. Cearley, 81, 85, 89, 90, 102, 108, 109, 121, 125, 129, 332, 361, 369, 551
Claveria v. Claveria, 11
Cluck v. Cluck, 37, 54, 60, 399, 407
Cluck v. Sheets, 37, 54, 60
Cochran v. Cochran, 27, 63
Cockerham v. Cockerham, 273, 293, 294, 297, 300, 301, 308, 310, 314, 315
Cockrill v. Cockrill, 245, 247
Cohen v. Cohen, 321, 343, 598
Comm. of Internal Revenue v. Wilson, 240
Consolidated Underwriters v. Kelley, 14
Cumming v. Johnson, 273, 275
Curtis v. Anderson, 27, 34
Dawson-Austin v. Austin, 351, 515
Deanda Osorno v. Osorno, 521, 570
Degroot v. Degroot, 399, 423, 427
DeLorean v. DeLorean, 521, 537
Devine v. Devine, 273, 283
Dixon v. Sanderson, 235, 237
Duke v. Duke, 222, 321, 342
Duncan v. United States, 165, 181
Eddy v. Eddy, 321, 363
Eggemeyer v. Eggemeyer, 162, 220, 321, 326, 329, 333, 337, 342, 407, 410, 416, 512, 562
Estate of Clark, 165, 167, 168
Estate of Patton, 479, 481
Estate of Vargas, 11, 19
Ex parte Barnes, 445, 465
Ex parte Bible, 445, 457
Ex parte Choate, 445, 458
Ex parte Gorena, 445, 449, 461, 462
Ex parte Harris, 445, 463
Ex parte Shelton, 445, 466
Ex parte Slavin, 445, 455, 459–461, 464, 466
Fanning v. Fanning, 521, 554, 570
Fields v. Michael, 273, 287
Finn v. Finn, 145, 150, 155
Frausto v. Frausto, 145, 160
Garfein v. Garfein, 211, 232, 233
Garza v. Garza, 112, 445, 456
Geesbreght v. Geesbreght, 148

- Gillmore v. Gillmore, 81, 116
 Glud v. Glud, 321, 344
 Golub v. Golub, 145, 156, 157
 Gordon v. Blackmon, 399, 418
 Graham v. Franco, 190, 193, 198, 321, 324, 328
 Grimsley v. Grimsley, 581
 G.W. Equipment Leasing, Inc. v. Mt. McKinley Fence Co., Inc., 491, 497
 Hamilton v. Hamilton, 165, 168
 Harrington v. Harrington, 27, 53
 Harvey v. Harvey, 81, 110, 120
 Hawkins v. Hawkins, 211, 223, 261, 442, 576
 Herbert v. Herbert, 445, 448
 Hilton v. Hilton, 211, 228
 Hoffman v. Hoffman, 321, 349
 Holby v. Holby, 165, 169
 Holmes v. Beatty, 581, 590
 Horlock v. Horlock, 165, 180, 181, 218, 282, 285
 Hourigan v. Hourigan, 399, 416
 Hudson v. Hudson, 81, 108
 In re Estate of Allen, 81, 122
 In re Green, 399, 435
 In re Estate of Hanau, 491, 506
 In re Estate of Logan, 211, 213
 In re Marriage of Bouquet, 321, 346
 In re Marriage of Cox, 81, 96
 In re Marriage of DeShurley, 81, 133
 In re Marriage of Garrett, 211, 230
 In re Marriage of Glaze, 491, 519
 In re Marriage of Henkle, 81, 94
 In re Marriage of Joyner, 399, 428
 In re Marriage of Mehren & Dargan, 521, 577
 In re Marriage of Nelson, 81, 137
 In re Marriage of Poppe, 81, 92, 95
 In re Small, 445, 467
 Inwood National Bank of Dallas v. Hoppe, 293, 310
 Ismail v. Ismail, 491, 509
 Jackson v. Smith, 211, 217, 282
 Jacobs v. Jacobs, 399, 412–414, 550, 554
 Jameson v. Bain, 581, 588
 Jenkins v. Jenkins, 445, 471, 472
 Jensen v. Jensen, 245, 257
 Johnson v. Johnson, 81
 Johnson v. Johnson, 170
 Jones v. Daly, 27, 47, 56
 Jurek v. Jurek, 187, 188
 Kamel v. Kamel, 321, 367
 Kathleen K. v. Robert B., 27, 71, 78, 79
 Lazzarevich v. Lazzarevich, 11, 17
 Leal v. Leal, 399, 420, 429
 LeBlanc v. LeBlanc, 293
 Le Blanc v. Waller, 293
 Lifshutz v. Lifshutz, 245, 262, 265, 271
 Long v. Long, 86, 235, 242, 273, 542
 Lorenz v. Lorenz, 81, 141
 Lutgert v. Lutgert, 521, 532
 Manning v. Hayes, 321, 376, 379
 Marsh v. Marsh, 382, 504, 521, 564, 571
 Marshall v. Marshall, 51, 204, 245, 264, 268
 Marvin v. Marvin, 27, 38, 43, 44, 47, 57, 63
 Matthews v. Matthews, 289, 561, 581, 598
 May v. May, 101
 Mazique v. Mazique, 203, 206, 273, 281
 McCarty v. McCarty, 321, 332, 354, 358–364, 366, 367, 369, 371
 McClary v. Thompson, 521, 549
 McCurdy v. McCurdy, 211
 McElwee v. McElwee, 242, 399, 412, 554
 McKinley v. McKinley, 165, 175, 178, 491, 497
 Mock v. Mock, 293, 311, 314
 Murff v. Murff, 152, 153, 198, 203, 399, 403, 412, 417
 Nail v. Nail, 88, 145, 148, 150, 151, 155, 156, 162, 246
 Nelson v. Nelson, 27, 61, 81, 141, 306, 308
 O’Farrill Avila v. Gonzalez, 27, 48
 O’Neill v. O’Neill, 581, 586
 Ossorio v. Leon, 491, 495
 Pacific States Cut Stone Co. v. Goble, 491, 503
 Patel v. Kuciemba, 293, 307
 Patino v. Patino, 581, 597, 604
 Patt v. Patt, 399, 409, 411
 Perry v. Atkinson, 27, 75
 Phillips v. Phillips, 115, 183, 401, 445, 474
 Pope Photo Records v. Malone, 293, 308, 311
 Price v. Price, 159, 191, 197, 201, 202, 205, 220, 399, 439, 440, 504
 Putegnat v. Putegnat, 399, 406, 407
 Quintana v. Ordoneo, 491, 501
 Ranney v. Ranney, 521, 527
 Rathmell v. Morrison, 145, 154

- Richard v. Richard, 321, 368, 371, 601
Russell v. Russell, 14, 187, 191, 193
Ryan v. Ryan, 273, 321, 366
Scanlon v. Crim, 27, 32
Schlueter v. Schlueter, 187, 200, 207, 209, 427
Scofield v. Weiss, 235, 239
See v. See, 173
Segrest v. Segrest, 321, 358, 363
Seth v. Seth, 491, 515
Shea v. Shea, 1, 7
Simplot v. Simplot, 253
Simpson v. Simpson, 145, 149, 150, 589
Small v. Harper, 27, 54, 58
Snider v. Snider, 165, 177
Speer v. Quinlan, 245, 249, 257
Stanard v. Bolin, 27
Stephen K. v. Roni L., 27, 69, 72–74, 77, 78
State Board of Equalization v. H.Y. Woo, 293, 318
Stewart v. Stewart, 8, 389, 445, 446
Stringfellow v. Sorrells, 235, 236
Taggart v. Taggart, 81, 89, 98, 100, 103, 104, 108, 109, 121, 125, 129, 332, 361, 551
Thomas v. Thomas, 37, 245, 261, 271, 366, 594, 596
Tirado v. Tirado, 491
Trahan v. Trahan, 187, 188, 333, 359–362, 364–367
Trevino v. Trevino, 211, 227
Twyman v. Twyman, 187, 191, 195, 201, 205
Valdez v. Ramirez, 81, 124, 128
Vallone v. Miller, 273, 274
Vallone v. Vallone, 62, 245, 246, 254, 260, 265, 273, 274
Vautrain v. Vautrain, 419
Vickery v. Vickery, 187, 207
Von Hutchins v. Pope, 172
Voronin v. Voronin, 321, 360
Vryonis v. Vryonis, 11, 21
Whorrall v. Whorrall, 81, 120, 122
Wierzchula v. Wierzchula, 211, 221
Williams v. Williams, 524
Williams v. Williams, 545
Williamson v. Williamson, 445, 473
Wright v. Wright, 130
Wright v. Wright, 483
Young v. Young, 262, 267
Young v. Young, 399, 404
Zaruba v. Zaruba, 1, 4, 7
Zisblatt v. Zisblatt, 263

Preface for the Student

These materials constitute a general introduction to Texas marital property rights. More detailed discussions of the matters addressed in these materials can be found in the various Texas family law treatises that are available, such as the Marital Property and Homesteads material included by West as a portion of its Texas Practice series, written by Professor Leopold, and the Texas Practice Guide—Family Law, written by Gagnon, Murphy & Vanden Eykel, also published by West. In addition, there are various course materials that are prepared from time to time by the State Bar of Texas, such as the annual marriage dissolution and advanced family law courses. The University of Houston Law Center also prepares materials in connection with its continuing legal education programs relating to Texas family law. Professor McKnight normally comments upon recent developments in Texas marital property rights in the annual survey of Texas law published by the SMU Law Review. In addition, *Principles of Community Property* by Vaughn & de Funiak is a useful general comparative community property treatise. The author has also published a comparative treatise regarding property division at divorce entitled *Divorce, Separation and the Distribution of Property*.

Marital property rights disputes frequently arise in connection with a divorce. Pleadings commonly used in such cases can be found in the *Texas Family Law Practice Manual*, published by the State Bar of Texas. Professor David Crump's *Biography of a Family Case: Smith v. Smith (1977)* is a good illustration of how marital property rights issues arise in a divorce case.

Please note that the Texas Family Code recently has been reorganized; references to Texas Family Code sections in cases frequently will be to the old section numbers. Your Texas Family Code should have a cross-reference table to show you what the current section number is that correlates to the old number.

Texas Constitution

Article XVI, Section 15

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all or part of the separate property owned by either or both of them shall be the spouses' community property.