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UNDERSTANDING CALIFORNIA COMMUNITY PROPERTY LAW

Jo Carrillo

Professor of Law

University of California, Hastings College of the Law

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MATTHEW  BENDER

Dedication

For my beloved parents — . . . —
in celebration of their 60th wedding anniversary
and a lifetime of being each other's true love
and son.

Acknowledgments

My thanks go out to a number of people for their assistance in producing *Understanding California Community Property Law*.

A very special thanks to Rade Vranesh, for his help with proofreading, cite checking, copyediting and nearly every other administrative task that required attention to detail. Special thanks also to: Max Carrillo-Ostrow (for acting as a student assistant and for thoughtfully reading and commenting on the manuscript), Divina Morgan (for help with all things Hastings), and Laury Ostrow (for slow food, fresh juice, and quick humor), Katherine Vranesh, Ana Beare, Amy Friedman, Angela Jamison (for a healing and intelligent perch at A2:AY), Lynne Henderson (for generously reading early drafts of Chapters 11 and 13), Robert Brownstein CPA, Chip Robertson, my family, friends, and neighbors.

My research was conducted at the Marin County Law Library, the University of California, Hastings College of the Law Library, and the University of Michigan Law Library. Thanks to Jenni Parrish, the UC Hastings Library staff, and the staff at the University of Michigan Law Library. Marin County Law Library, where I often worked, has been in existence since 1891; it is a public independent agency set up to provide free public access to legal materials. It also maintains a website, with an electronic collection. I am especially grateful to MCLL Director Jason Voelker.

Several judges, lawyers, and academics were generous with their time and perspective along the way. I wish to thank each one in private and in person, so as not to (unintentionally or inadvertently) suggest that he or she is responsible for any mistakes that I might have made. One can only hope that one's recounting is adequate, perhaps even useful. That certainly is my hope for this work.

Thanks to the UC Hastings students in my 2013 and 2014 California and comparative community property classes. They patiently allowed me to present draft chapters and examples in class. Their questions and comments, individual and collective, were exceedingly helpful. Special thanks to Sara Craig.

Finally, I am grateful for the acknowledgment and support of Dean Frank Wu, Academic Dean Elizabeth L. Hillman, Research Dean Reuel Schiller, and The Chip Robertson Faculty Development Fund. Thank you.

Preface

This *Understanding* text recounts California community property law as it now exists. The reader is asked to understand that the law is dynamic. What the Legislature and courts set down today will change by tomorrow. Change is not a flaw. It is a sign of dynamism.

This *Understanding* text can be read alone or used in conjunction with class materials. Each chapter states the law and sets out examples. The examples are a useful learning tool to help reinforce the basic concepts presented in the text. Each example presents a succinct problem and answer to help the reader gain practice in working through the issues.

Each chapter of this text corresponds to a chapter in the Carrillo community property casebook. Every chapter has a short introduction, issue by issue coverage, and a concise conclusion. Statutory language appears in bold face print, for ease of identification. Court approved formulas are fully laid out and applied. Basic property concepts are explained, where relevant.

I am pleased to report that this text extends the field in several ways. First, bank accounts are given far more extensive coverage than any other text has provided to date. Second, domestic violence and domestic violence prevention, which is fast becoming a core part of community property law practice, is explicitly covered. This text is the first of its kind to date to discuss and link domestic violence issues to the field of community property law. Third, basic topics related to elder abuse prevention and alternative dissolution processes are discussed where relevant.

I relied on traditional legal research tools to write this work. This is good news for students and bar takers who want a doctrinal recounting of California community property law. This *Understanding* text is very much for you.

At the same time, much pondering went into my effort to recount. This in turn gave me a foundation from which to rethink the field. This is good news for readers who are more interested in social and theoretical underpinnings of the law than in the doctrine itself. Community property law is (still) an under-theorized area of law. That said, it is my view — based on thousands of hours of legal and historical research — that theoretical accounts of this technically complex field fall flat if they are not based on an understanding of what the principles and rules are, and how they work in a specific case. In the field of community property law, in other words, principles, rules, facts, and theory go hand in hand.

All California statutes are available online, either through Lexis or <http://legalinfo.legislature.ca.gov>.

There is a 24-hour National Domestic Violence Hotline. The number is 1-800-799-SAFE (7233).

Disclaimer

I am a law professor, who is also trained as a mediator. I teach community property law, and I teach or have taught (among other topics) property law, wills and trusts, consumer lending, and mediation. My main research interest is the intersection of family law, property law, and society. To me, this intersection of property law and family law is an important subject for anyone who hopes to plan a future within the framework of an intimate partnership. As I see it, each person and each relationship is unique, which is why this material is not meant as a substitute for professional advice, legal or financial. For that reason, the information in this volume is intended for educational purposes only, and distributed on an as-is basis, without warranty. I make no legal claims, express or implied, about how the law might be applied in a particular case, by a particular judge, or in a particular judicial district. I assume no responsibility for the loss or damage caused or allegedly caused, directly or indirectly, by the use of the information contained in this book.

If you are reading this book as a student, this volume was written with your needs in mind. Even so, please understand that the law of California is exceedingly dynamic. It changes on a daily basis. This volume is up to date as of 2014, however, given the ever-changing nature of the law and the sometimes Jurassic nature of the legal educational system, please keep in mind that a judge will predictably exercise her discretion (only) on the basis of the California Family Code and the reported cases that interpret its statutes.

If you are reading this book because you are entering into or exiting from a marriage, it is my hope that you will find this volume useful. Information is a powerful tool. It can help us understand the past and present with an eye toward planning a future. It is my belief that this volume can help you ask better questions of the professionals whom you consult or hire to provide you with personalized legal advice, whether they be lawyers, mediators, therapists, clergy, or financial experts. Please understand, however, that in an actual life transition (such as, for example, a change in marital status) there is no substitute for individually delivered professional legal or financial advice.

The names in this book are street names taken from San Francisco. I intend them as an act of inclusion; it is my hope they will contribute, even if only in a small way, to repair of the world.

I look forward to hearing about the success of my readers. Please let me know how this book was helpful to you. You can reach me by sending an email to carrillo@uchastings.edu. Thank you.

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