

Texas Marital Property Rights

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Texas Marital Property Rights

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J. Thomas Oldham

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

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for her terrific help in connection with the creation of this sixth edition.*

This sixth edition is dedicated to my beloved Rosemary.

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	17
<i>Lazzarevich v. Lazzarevich</i>	17
<i>Estate of Vargas</i>	20
<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
<i>Smith v. Deneve</i>	52
4. Cohabitants’ Disputes and General Contract Doctrine	57
5. Conflicts of Law	57
6. Relevance of Partnership Doctrine	57

<i>Harrington v. Harrington</i>	57
7. Less Conventional Relationships	60
<i>Jones v. Daly</i>	60
<i>Small v. Harper</i>	62
C. Disputes at Divorce Regarding Premarital Expenditures	65
<i>Nelson v. Nelson</i>	65
D. Disputes between People Who Date but Do Not Cohabit	67
<i>Cochran v. Cochran</i>	67
<i>Adams v. Jensen-Thomas</i>	71
E. Tort Claims	73
<i>Stephen K. v. Roni L.</i>	73
<i>Kathleen K. v. Robert B.</i>	76
<i>Perry v. Atkinson</i>	79
Chapter Four · Pensions and Other Fringe Benefits of Employment	83
A. Pensions	83
1. In General	83
<i>Johnson v. Johnson</i>	83
<i>Cearley v. Cearley</i>	87
<i>Taggart v. Taggart</i>	91
<i>In re Marriage of Poppe</i>	94
<i>In re Marriage of Henkle</i>	96
<i>In re Marriage of Cox</i>	98
<i>Berry v. Berry</i>	99
<i>Spiars v. Watson</i>	103
<i>Hicks v. Hicks</i>	106
<i>Hudson v. Hudson</i>	107
<i>Harvey v. Harvey</i>	110
<i>Grier v. Grier</i>	113
<i>Gillmore v. Gillmore</i>	115
<i>Whorrall v. Whorrall</i>	119
2. Pension Rights and the Death of a Spouse	121
<i>In re Estate of Allen</i>	121
<i>Valdez v. Ramirez</i>	123
<i>Allard v. Frech</i>	126
B. The Community Interest in Other Fringe Benefits	129
1. Severance Pay	129
<i>Wright v. Wright</i>	129
<i>In re Marriage of DeShurley</i>	132
2. Disability Benefits	134
<i>Andrle v. Andrle</i>	134
3. Stock Options	136
<i>In re Marriage of Nelson</i>	136
4. Other Benefits	140
<i>Lorenz v. Lorenz</i>	140
Chapter Five · Goodwill and Professional Degrees	143
A. Goodwill	143
<i>Nail v. Nail</i>	143
<i>Geesbreght v. Geesbreght</i>	146

<i>Simpson v. Simpson</i>	147
<i>Finn v. Finn</i>	148
<i>Von Hohn v. Von Hohn</i>	152
<i>Rathmell v. Morrison</i>	157
<i>Golub v. Golub</i>	159
B. Professional Education	163
<i>Frausto v. Frausto</i>	163
Chapter Six · Presumptions, Tracing and Commingling	169
A. Presumptions	169
1. The General Community Presumption	169
2. Rebutting the Community Presumption by Tracing	170
<i>Andrews v. Andrews</i>	170
<i>Estate of Clark</i>	171
<i>Hamilton v. Hamilton</i>	172
<i>Holby v. Holby</i>	173
3. Spousal Gift Presumption	174
<i>Johnson v. Johnson</i>	174
4. Presumptions That Cannot Be Rebutted	176
B. Commingling	176
1. In General	176
<i>See v. See</i>	177
<i>McKinley v. McKinley</i>	179
<i>Snider v. Snider</i>	181
2. Equitable Limits to Commingling	183
<i>Horlock v. Horlock</i>	183
<i>Duncan v. United States</i>	185
3. Tracing Livestock and Inventory	189
Chapter Seven · Torts and Damage to Property	191
A. Damage to Property	191
<i>Trahan v. Trahan</i>	191
B. Personal Injury	192
<i>Jurek v. Jurek</i>	192
<i>Russell v. Russell</i>	195
<i>Twyman v. Twyman</i>	199
<i>Schlueter v. Schlueter</i>	204
<i>Vickery v. Vickery</i>	210
Chapter Eight · Reimbursement and Acquisitions Over Time	215
A. Comparing the Pro Rata Approach to the Inception of Title Approach	215
1. In General	215
<i>McCurdy v. McCurdy</i>	215
<i>In re Estate of Logan</i>	217
2. Designating a Life Insurance Beneficiary	220
<i>Jackson v. Smith</i>	220
B. Inception of Title and Credit Purchases	223
1. In General	223
<i>Bell v. Bell</i>	223
<i>Wierzchula v. Wierzchula</i>	225

2. Reimbursement	227
<i>Hawkins v. Hawkins</i>	227
3. Equitable Limits to Inception of Title	230
<i>Andrews v. Andrews</i>	230
4. Family Living Expenses	232
<i>Trevino v. Trevino</i>	232
<i>Hilton v. Hilton</i>	233
C. Other Acquisitions Over Time	234
<i>In re Marriage of Garrett</i>	234
<i>Garfein v. Garfein</i>	237
Chapter Nine · Rents and Profits	239
<i>Stringfellow v. Sorrells</i>	240
<i>Dixon v. Sanderson</i>	241
<i>Scofield v. Weiss</i>	243
<i>Commissioner of Internal Revenue v. Wilson</i>	244
<i>Alsenz v. Alsenz</i>	246
<i>Long v. Long</i>	249
Chapter Ten · Business Interests	253
A. Corporations	253
1. Characterizing the Ownership Interest	253
<i>Allen v. Allen</i>	253
2. The Separate Property Corporation That Increases in Value during Marriage	255
a. Cases from Other States	255
<i>Cockrill v. Cockrill</i>	255
<i>Speer v. Quinlan</i>	257
<i>Simplot v. Simplot</i>	261
b. Texas Cases	262
<i>Vallone v. Vallone</i>	262
<i>Jensen v. Jensen</i>	265
<i>Thomas v. Thomas</i>	268
c. Alter Ego	269
<i>Young v. Young</i>	269
<i>Lifshutz v. Lifshutz</i>	271
B. Partnerships and Proprietorships	274
<i>Marshall v. Marshall</i>	274
C. A Note Regarding Business Valuation	278
Chapter Eleven · Management Powers	279
A. In General	279
1. Sole Management Property	279
2. Joint Management Property	279
<i>Vallone v. Miller</i>	280
B. Reliance upon Title	281
<i>Cumming v. Johnson</i>	281
C. Duties of the Manager	284
<i>Andrews v. Andrews</i>	284
<i>Arrington v. Arrington</i>	286

<i>Mazique v. Mazique</i>	287
<i>Devine v. Devine</i>	289
<i>Fields v. Michael</i>	293
D. Expenditure of Community Funds for Separate Debts	296
E. Gifts of Community Property	296
Chapter Twelve · Creditors' Rights	299
<i>LeBlanc v. Waller</i>	299
<i>Cockerham v. Cockerham</i>	303
<i>Patel v. Kuciemba</i>	313
<i>Inwood National Bank of Dallas v. Hoppe</i>	316
<i>Pope Photo Records v. Malone</i>	317
<i>Mock v. Mock</i>	320
<i>Brodoy v. United States</i>	321
<i>State Board of Equalization v. H.Y. Woo</i>	324
Chapter Thirteen · Constitutional Limits	327
A. State Constitution	327
1. The Scope of Separate Property	327
<i>Arnold v. Leonard</i>	327
<i>Graham v. Franco</i>	330
2. Property Divisible at Divorce	332
<i>Eggemeyer v. Eggemeyer</i>	332
<i>Cameron v. Cameron</i>	338
<i>Duke v. Duke</i>	348
<i>Cohen v. Cohen</i>	349
3. Discrimination Based upon Sex	350
<i>Glud v. Glud</i>	350
4. Retroactivity of Changes in the Law	351
<i>Addison v. Addison</i>	351
<i>In re Marriage of Bouquet</i>	352
B. Federal Constitution	355
1. Jurisdiction	355
<i>Hoffman v. Hoffman</i>	355
<i>Dawson-Austin v. Austin</i>	357
2. Property Located Outside the State	359
3. Federal Preemption	360
a. Military Retirement	360
<i>McCarty v. McCarty</i>	360
<i>Segrest v. Segrest</i>	364
<i>Voronin v. Voronin</i>	366
<i>Allison v. Allison</i>	369
<i>Eddy v. Eddy</i>	370
b. Other Federal Benefits	372
<i>Ryan v. Ryan</i>	372
<i>Kamel v. Kamel</i>	373
<i>Richard v. Richard</i>	374
c. ERISA Preemption	378
<i>Barnett v. Barnett</i>	378
<i>Flesner v. Flesner</i>	386

Chapter Fourteen · Representing the Divorce Client	393
A. The First Interview	393
B. Handling the Case	395
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>Pearson v. Fillingim</i>	407
<i>Cluck v. Cluck</i>	410
<i>Patt v. Patt</i>	411
<i>LeBlanc v. LeBlanc</i>	412
C. Characterization Errors	414
<i>McElwee v. McElwee</i>	414
<i>Jacobs v. Jacobs</i>	416
D. Miscellaneous Property Division Issues	418
<i>Hourigan v. Hourigan</i>	418
<i>Pollard v. Pollard</i>	420
<i>Leal v. Leal</i>	424
<i>Archambault v. Archambault</i>	425
<i>Abrams v. Abrams</i>	426
<i>DeGroot v. DeGroot</i>	427
<i>Richards v. Richards</i>	431
E. Independent Claims in a Divorce Action	434
F. When Is a Divorce Final?	435
<i>In re Marriage of Joyner</i>	435
G. Alimony	440
<i>In re Green</i>	441
<i>Price v. Price</i>	445
H. Tax Consequences of Divorce	446
1. Alimony and Child Support	446
2. Dividing the Property	447
3. Income Tax Planning at Divorce	448
I. Collection Concerns	448
J. Other Matters to Remember	448
Chapter Sixteen · Drafting the Settlement Agreement and Divorce Decree	449
A. Settlement Agreement	449
<i>Garza v. Garza</i>	449
<i>Stewart v. Stewart</i>	451
<i>Castro v. Castro</i>	452
<i>Cayan v. Cayan</i>	459
B. Drafting the Decree	462
<i>Ex parte Slavin</i>	462

<i>Ex parte Bible</i>	464
<i>Ex parte Choate</i>	465
<i>Ex parte Gorena</i>	468
<i>Ex parte Harris</i>	470
<i>Ex parte Barnes</i>	472
<i>Ex parte Shelton</i>	473
<i>In re Small</i>	474
<i>Jenkins v. Jenkins</i>	479
<i>Williamson v. Williamson</i>	480
<i>Phillips v. Phillips</i>	481
Chapter Seventeen · Dividing the Community Estate at Death	487
A. Intestacy	487
B. Testate Succession	488
<i>Estate of Patton</i>	489
<i>Wright v. Wright</i>	491
C. Reimbursement and Debts	496
D. Life Insurance	496
E. Joint Tenancy Designation	496
F. Homestead Rights	497
Chapter Eighteen · Conflicts of Law	499
A. Ownership of Property Outside the Marital Domicile	499
<i>Tirado v. Tirado</i>	499
<i>Ossorio v. Leon</i>	503
<i>G. W. Equipment Leasing, Inc. v. Mt. McKinley Fence Co., Inc.</i>	505
B. Migrant Spouses	509
1. Change of Domicile From Community Property to Common Law State	509
<i>Quintana v. Ordonez</i>	509
2. Change of Domicile from a Common Law to a Community Property State	511
<i>Pacific States Cut Stone Co. v. Goble</i>	511
<i>In re Estate of Hanau</i>	514
<i>Tener v. Short Carter Morris</i>	517
3. People Moving to Texas from Another Country	525
<i>Ismail v. Ismail</i>	525
<i>Seth v. Seth</i>	531
C. Foreign Realty	535
<i>In re Marriage of Glaze</i>	535
Chapter Nineteen · Marital Agreements	537
A. The Traditional Approach	537
1. Restatement	537
2. Pre-1980 Texas Cases	540
<i>Williams v. Williams</i>	540
B. The Modern Approach	543
1. Cases from Other States	543
<i>Ranney v. Ranney</i>	543
<i>Lutgert v. Lutgert</i>	548

<i>DeLorean v. DeLorean</i>	553
<i>Burtoff v. Burtoff</i>	557
2. The Current Texas Rules	560
<i>Williams v. Williams</i>	561
<i>Deanda Osorno v. Osorno</i>	562
<i>Moore v. Moore</i>	563
<i>Bradley v. Bradley</i>	567
<i>McClary v. Thompson</i>	569
<i>Fanning v. Fanning</i>	575
<i>Marsh v. Marsh</i>	585
C. The Distinction between Postnuptial and Prenuptial Agreements	591
<i>Borelli v. Brusseau</i>	591
<i>In re Marriage of Mehren & Dargan</i>	597
D. Changing Separate Property into Community Property	600
Chapter Twenty · Spousal Gifts and Partitions	601
A. Interspousal Gifts	601
<i>Grimsley v. Grimsley</i>	601
<i>O'Neill v. O'Neill</i>	606
B. Joint Tenancy and Community Property with Right of Survivorship	608
<i>Jameson v. Bain</i>	608
<i>Holmes v. Beatty</i>	610
C. Partitions	617
<i>Patino v. Patino</i>	617
<i>Matthews v. Matthews</i>	619
<i>Marriage of Smith</i>	623
<i>Byrnes v. Byrnes</i>	628
Index	633

Table of Cases

- Abrams v. Abrams, 426
Adams v. Jensen-Thomas, 71
Addison v. Addison, 351, 353–355, 527
Alderson v. Alderson, 45–47
Allard v. Frech, 126–129, 385, 612
Allen v. Allen, 16, 123, 128, 220, 253, 444, 618
Allison v. Allison, 369, 371
Alsenz v. Alsenz, 246
Andrews v. Andrews, 170
Andrews v. Andrews, 230, 284
Andrle v. Andrle, 134, 136
Archambault v. Archambault, 425
Arnold v. Leonard, 245, 248, 275, 276, 294, 327, 330, 334, 339, 542, 577
Arrington v. Arrington, 286, 287
Barnett v. Barnett, 217, 223, 247, 378–385, 444
Bell v. Bell, 223, 272, 273, 404, 424, 425, 606
Berry v. Berry, 99–103, 105, 107, 108, 110, 114, 236, 319, 372, 571
Borelli v. Brusseau, 591
Bradley v. Bradley, 415, 567
Broday v. United States, 321–324
Brown v. Brown, 7, 21, 37, 88, 90–92, 185, 213, 318, 319, 401, 452, 563, 571, 614
Burtoff v. Burtoff, 557, 559
Byrnes v. Byrnes, 572, 628
Cameron v. Cameron, 101, 108, 109, 206, 332, 338, 347, 348, 368, 369, 371, 413, 514–516, 522, 528
Castro v. Castro, 452
Cayan v. Cayan, 438, 459
Cearley v. Cearley, 87, 91, 92, 103, 108, 109, 120, 124, 128, 338, 367, 375, 571
Claveria v. Claveria, 11, 14
Cluck v. Cluck, 37, 59, 65, 410
Cluck v. Sheets, 37, 59, 65
Cochran v. Cochran, 67, 68
Cockerham v. Cockerham, 279, 299, 300, 303, 306, 307, 310, 314, 316, 320, 321
Cockrill v. Cockrill, 255
Cohen v. Cohen, 348, 349, 618
Comm. of Internal Revenue v. Wilson, 244
Consolidated Underwriters v. Kelly, 14
Cumming v. Johnson, 281
Curtis v. Anderson, 34
Dawson-Austin v. Austin, 522, 523
Deanda Osorno v. Osorno, 562
Degroot v. Degroot, 427, 431
DeLorean v. DeLorean, 553
Devine v. Devine, 289
Dixon v. Sanderson, 241
Duke v. Duke, 226, 348
Duncan v. United States, 185
Eddy v. Eddy, 370
Eggemeyer v. Eggemeyer, 165, 224, 332, 335, 339, 343, 347, 348, 407, 408, 413, 418, 528, 583
Estate of Clark, 171, 172
Estate of Patton, 489
Estate of Vargas, 20
Ex parte Barnes, 472
Ex parte Bible, 464
Ex parte Choate, 465

- Ex parte Gorena, 468, 469
Ex parte Harris, 470
Ex parte Shelton, 473
Ex parte Slavin, 462, 467, 469, 471, 473
Fanning v. Fanning, 575, 582, 584, 590, 623
Fields v. Michael, 293
Finn v. Finn, 148, 153, 158
Flesner v. Flesner, 386
Frausto v. Frausto, 163, 166
Garfein v. Garfein, 237, 238
Garza v. Garza, 112, 155, 229, 230, 433, 449, 464
Geesbreght v. Geesbreght, 146, 148, 158
Gillmore v. Gillmore, 115
Glud v. Glud, 350
Golub v. Golub, 159
Graham v. Franco, 194, 198, 202, 330, 334
Grier v. Grier, 113
Grimsley v. Grimsley, 601
G.W. Equipment Leasing, Inc. v. Mt. McKinley Fence Co., Inc., 505, 506, 508
Hamilton v. Hamilton, 27, 172
Harrington v. Harrington, 57
Harvey v. Harvey, 110, 119
Hawkins v. Hawkins, 227, 269, 447, 596
Hicks v. Hicks, 106
Hilton v. Hilton, 233
Hoffman v. Hoffman, 355
Holby v. Holby, 173
Holmes v. Beatty, 610
Horlock v. Horlock, 183, 185, 222, 288, 291
Hourigan v. Hourigan, 418
Hudson v. Hudson, 103, 107
In re Estate of Allen, 121
In re Estate of Hanau, 514
In re Estate of Logan, 217
In re Green, 441
In re Marriage of Bouquet, 352
In re Marriage of Cox, 98
In re Marriage of DeShurley, 132
In re Marriage of Garrett, 234
In re Marriage of Glaze, 535
In re Marriage of Henkle, 96
In re Marriage of Joyner, 435
In re Marriage of Mehren & Dargan, 597
In re Marriage of Nelson, 136
In re Marriage of Poppe, 94, 96
In re Small, 474
Inwood National Bank of Dallas v. Hoppe, 316
Ismail v. Ismail, 521, 525, 530
Jackson v. Smith, 220, 288
Jacobs v. Jacobs, 155, 414–416, 571, 574, 626
Jameson v. Bain, 608
Jenkins v. Jenkins, 454, 479, 480
Jensen v. Jensen, 72, 265, 268
Johnson v. Johnson, 83
Johnson v. Johnson, 174
Jones v. Daly, 47, 60
Jurek v. Jurek, 192, 194
Kamel v. Kamel, 373
Kathleen K. v. Robert B., 76, 81, 82
Lazzarevich v. Lazzarevich, 17
Leal v. Leal, 424, 436
LeBlanc v. LeBlanc, 412
LeBlanc v. Waller, 299
Lifshutz v. Lifshutz, 270, 271, 277
Long v. Long, 249
Lorenz v. Lorenz, 140
Lutgert v. Lutgert, 548
Manning v. Hayes, 382, 388
Marriage of Smith, 623
Marsh v. Marsh, 512, 563, 585, 627
Marshall v. Marshall, 51, 208, 274, 277
Marvin v. Marvin, 38, 43–45, 47, 61, 70
Matthews v. Matthews, 295, 582, 619, 623
Mazique v. Mazique, 207, 210, 287
McCarty v. McCarty, 338, 339, 360, 364–370, 372, 373, 375, 377
McClary v. Thompson, 569
McCurdy v. McCurdy, 215, 424
McElwee v. McElwee, 246, 248, 414, 574
McKinley v. McKinley, 179, 182, 408, 505
Mock v. Mock, 317, 320
Moore v. Moore, 563
Murff v. Murff, 150, 151, 202, 207, 403, 414, 419

- Nail v. Nail, 90, 143, 146, 148, 158, 159,
165, 254
- Nelson v. Nelson, 65, 312, 314
- O’Farrill Avila v. Gonzalez, 48
- O’Neill v. O’Neill, 563, 606
- Ossorio v. Leon, 503
- Pacific States Cut Stone Co. v. Goble,
511
- Patel v. Kuciemba, 313
- Patino v. Patino, 617, 629
- Patt v. Patt, 411, 413
- Pearson v. Fillingim, 407
- Perry v. Atkinson, 79, 81
- Phillips v. Phillips, 114, 187, 195, 201,
481, 484, 485
- Pollard v. Pollard, 420
- Pope Photo Records v. Malone, 314, 317
- Price v. Price, 195, 201, 205, 209, 445
- Putegnât v. Putegnât, 406, 407
- Quintana v. Ordone, 509
- Ranney v. Ranney, 543
- Rathmell v. Morrison, 156, 157
- Richard v. Richard, 374
- Richards v. Richards, 431
- Russell v. Russell, 14, 195, 197, 421
- Ryan v. Ryan, 279, 372, 627
- Scanlon v. Crim, 32
- Schlueter v. Schlueter, 204, 211, 213,
289, 434
- Scofield v. Weiss, 243
- See v. See, 177, 593
- Segrest v. Segrest, 364, 366, 369
- Seth v. Seth, 531
- Shea v. Shea, 7
- Simplot v. Simplot, 261, 262, 344
- Simpson v. Simpson, 96, 147, 148, 609
- Small v. Harper, 59, 62
- Smith v. Deneve, 52
- Snider v. Snider, 181
- Speer v. Quinlan, 257, 264
- Spiars v. Watson, 103
- Stanard v. Bolin, 27
- Stephen K. v. Roni L., 73, 76–78, 80, 82
- State Board of Equalization v. H.Y. Woo,
324
- Stewart v. Stewart, 8, 155, 274, 451
- Stringfellow v. Sorrells, 240
- Taggart v. Taggart, 91, 92, 94, 100–104,
106–109, 120, 124, 128, 338, 367,
571
- Tener v. Short Carter Morris, 517
- Thomas v. Thomas, 7, 37, 268, 278, 372,
438, 565, 614, 616
- Tirado v. Tirado, 499
- Trahan v. Trahan, 191, 192, 338, 365,
367, 368, 370, 372, 373
- Trevino v. Trevino, 232, 233
- Twyman v. Twyman, 195, 199, 203, 205,
206, 209
- Valdez v. Ramirez, 123, 127, 625
- Vallone v. Miller, 280
- Vallone v. Vallone, 66, 254, 262, 267,
272
- Vautrain v. Vautrain, 423
- Vickery v. Vickery, 210
- Von Hohn v. Von Hohn, 152
- Von Hutchins v. Pope, 175
- Voronin v. Voronin, 366
- Vryonis v. Vryonis, 21
- Whorrall v. Whorrall, 119, 121
- Wierzchula v. Wierzchula, 225, 226, 247
- Williams v. Williams, 540, 562, 576
- Williams v. Williams, 561, 589, 627
- Williamson v. Williamson, 480, 481
- Wright v. Wright, 129
- Wright v. Wright, 491
- Young v. Young, 269, 274
- Young v. Young, 202, 399, 404
- Zaruba v. Zaruba, 4, 7
- Zisblatt v. Zisblatt, 270, 273

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 in Texas 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.

