COMMUNITY PROPERTY

**January 1, 1975**: Married Woman’s Special Presumptionの廃止 Equal Management and control for spouses

**January 1, 1984**: Family Code §2640:Anti-Lucas legislation (reimbursement scheme)

and Reimbursement to the community who contributes to SP education

**January 1, 1985**: need express written declaration as to transmutation

**January 1, 1986**: Premarital Agreement Act🡪premarital agreement must be in writing signed by both parties

**January 1, 2002**: Premarital agreement is involuntary unless the party was represented by independent counsel

**before 1999 =1999より前，1999は含まない　＝prior to ~, pre ~**

**After 1999 　=1999は含まない（しかし，含む使われ方もあり，避けるべき）＝post ~**

**As of 1999 　 =1999以降，1999を含む 　　　 = on and after~**

**非正式婚姻の取扱**

1. Registered Domestic Partners

As of 2004, CP system applies to registered domestic partners, retroactive to 2000.

Available to: 1) Same sex couples 2) Elderly opposite-sex couples receiving Social Security benefits.

2. Quasi-marital property　婚姻状態にないことを認識するまで

One who reasonably believed the marriage is valid have the status of a putative spouse.

 Quasi-marital property acquired during the union (putative marriage) is treated as CP.

= Quasi-marital property is property acquired during the union that would have been community property or

quasi-community property if the union had not been void or voidable.

However, H who falsely tells W that marriage is valid has no putative spouse rights.

(この点，district court of appealは分かれており悪意でも主張可能とする裁判例あり)

 ・The good faith belief is judged by a subjective standard. (最高裁)

§2251：Ｉf a determination is made that a marriage is void or voidable and the court finds that either

party or both parties believed in good faith that the marriage was valid, the court shall:

(1) Declare the party or parties to have the status of a putative spouse…

(2) If the division of property is in issue, divide, in accordance with Division 7… that

property acquired during the union that would have been community property or quasi-

community property if the union had not been void or

voidable, only upon request of a party who is declared a putative spouse under paragraph

(1). …This property is known as “quasi-marital property.”

　　　　　※　A legal spouse and a putative spouse間の分配

→2分の1は法律上の妻が取得，残りをa putative spouseとその相手間で分配 case law

3. Cohabitants

Common Law Marriages are Not recognized in CA, thus Cohabitants do not qualify as putative spouses but may have a contractual claim, an implied contract or can use quantum meruit to recover.

 **Marvin Rule** - Marvin v. Marvin (1976)

1) Courts should enforce **express** contracts between non-marital partners, unless the contract is founded

onthe consideration of **meretricious (illegal) sexual relationship**.

2) If there is no express agreement, the court will examine the course of conduct of the parties to see if

the parties’ **conduct** demonstrates a **tacit understanding** of an **implied** contract.

※ The court imposes a high threshold for implied contract. This is in contrast to the pre-1985

transmutation standard, with a low threshold.

※ Implied in fact relationships will probably happen more often in a long-term relationships where

the people hold themselves out to be H and W.

3) Quantum meruit: restitution for services rendered may be available for non-marital partners.

Result – All property acquired during a Marvin Action will be treated as CP.

Examples – Cohabitation with no marriage, Same Sex Relationships.

Marvin v. Marvin (1976)

映画俳優が「財産を分け，一生経済的面倒をみるよ」と言うのを信じて，仕事を辞め同人と同居を続けた.

6年後ケンカして俳優に家を追い出される。その後，1年金銭給付をしたがそこでストップ。(破棄差戻し)

Bergen v. Wood (App.1993)

LAに男がアパートを借り, 出張時はいつもそこに泊まり，男女で旅行やsocial eventに多数参加

→1) cohabitantとはいえない。

2) 合意があってもmeretriciousにあたる。

3) implied in fact relationshipを認めるような長期関係はない

4) Quantum meruitも無理 ∵与えた分の利益あげている

Aldereson v. Alderson (App.1986)

12年同居。3人の子。妻は夫の姓を名乗り夫婦として生活，夫婦というタイトルで家を購入→2)で救済

　 ※ support after relationshipはimplyされないし，よほど明確な合意ないと認める余地はない。

**General California Community Property Rules**

**a.** California is a community property state.

All property acquired during the marriage is presumed to be **CP**, 　**§760**

**b.** while the property acquired　　　　　　　　　　　　　　　　　 **§770**

1) a) **before** marriage, or b) **after permanent separation or**

2) during marriage a) by **gift, will, or inheritance**, or b) with **the expenditure of SP funds**,

 and the rents, issues, and profits **of SP**.

is presumed to be SP.

※ permanent separation＝the end of the economic community, which occurs with

1) permanent physical separation and

2) an intent not to resume the marriage (only need intent of 1 spouse) .

 ×separation under one roof ∵subject intent is not enough, must be objectively evidenced.

**c.** Property acquired in another state that would be CP if it was acquired in CA = **quasi-CP.**

Upon death or divorce quasi-CP is treated as CP.　詳細は後述

**The characterization** of an property as either CP or SP depends on

(1) the **source** of the property

(2) statutory **presumptions** that apply to the property.

and (3) any **actions** by the parties that may have altered the character of the property,

 FIT=funds, intent, titleにより決定。原則はsource of funds. titleは原則無関係.

intentは原則“express declaration in writing”が必要

 **ロングバージョン**

The characterization of an property as either CP or SP is determined by 1) joint form presumption, 2)

community property presumption, and 3) transmutation.

Joint form presumption

First, the property acquired in joint title during marriage presumed to be CP. This presumption may be

rebutted only by a **written** agreement. It cannot be rebutted by tracing the assets to a SP source.

 　Community Property Presumption

Second, all property acquired during the marriage is presumed to be **CP.**

**This presumption may be rebutted** by tracing the assets to a SP source.

 　Transmutation

Finally, partners can transmute property, then the transmutation may determine the character of property.

 **Apportionment**

 **When both CP and SP are used to acquire property, the property will be apportioned**

**according to the funds used.**

 **=** Pro Rata Rule: The community estate **takes a pro rata portion** of the property.

Applies :1) Installment purchase made before marriage, and subsequent payments made with CP

2) Land inherited during marriage, mortgage paid off with CP

 CP = principal debt reduction / purchase price

**Quasi-Community Property**

= Property acquired by either spouse that would have been CP had the spouse been domiciled in California

at the time of acquisition. (Includes all property exchanged for the property above)

※片方がCAに引っ越して，片方が引っ越さなかった場合にQuasi CPの適用は違憲とするcase law有り

**During marriage**

During marriage, QCP is treated as SP of the acquiring spouse, so long as the acquiring

spouse treats it as SP.

Exception: creditor allowed to reach QCP to satisfy the other spouse's debt.

**At divorce**

**Quasi-CP is treated exactly like CP.**

If the property is out-of-state, the court will divide all CP and quasi-CP in such a way that it

is not necessary to alter the nature of the interests held in the out-of-state realty.

**Family code§125**

“Quasi-community property” means all real or personal property, wherever situated, acquired …in any of the following ways:

(a) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(b) In exchange for real or personal property, wherever situated, which would have been

community property if the spouse who acquired the property so exchanged had been

domiciled in this state at the time of its acquisition.

**At death**

 On death, QCP means 1) all personal property and 2) real property situated in CA.

例：結婚後NYでマンション購入しCAに引越⇒死後はNYマンションに適用ない (他州不動産は離婚時のみ)

Division of QCP depends on which spouse dies first:

Death of acquiring spouse:

If the acquiring spouse dies first, then QCP is treated just like CP (e.g 50/50).

If the decedent dies intestate, one-half of the decedent's QCP belongs to the surviving spouse

and the other half belongs to the decedent.

The decedent also has the right to device one half of decedent’s quasi-CP.

Death of non-acquiring spouse:

If the non-acquiring spouse dies first then he or she has no power over the property. There is no testamentary power to convey or sell it to another party.

例: 妻名義の不動産がQCPのとき夫が先に死亡すれば，夫の他の相続人は何の権利もなし。

(decedent = non-acquiring spouse cannot bequeath his spouse’s quasi-CP in his will).

妻が先に死亡すれば, 夫はQCPの2分の1を取得し, 他の2分の1は通常の相続となる

(遺言が無く, 子が一人なら, 夫は50％＋50％ / 2 = 75％を相続)

**Probate code §101**

 (a) Upon the death of a person who is married…, and is domiciled in this state, one-half of

the decedent s quasi-community property belongs to the surviving spouse and the other

one-half belongs to the decedent.

(b) Notwithstanding subdivision (a), spouses may agree in writing to divide their quasi-

community property on the basis of a non pro rata division…. Nothing in this subdivision

shall be construed to require this written agreement

**Probate code §66**

“Quasi-community property” means the following property,…

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired by a decedent while domiciled elsewhere that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state,

heretofore or hereafter acquired in exchange for real or personal property, wherever

situated, that would have been the community property of the decedent and the

surviving spouse if the decedent had been domiciled in this state at the time the property

so exchanged was acquired.

**例外１　Pre-Marital and Intra-Marital Agreements**

**1. Premarital agreements (prenuptial agreement, Prenup =プレナップ)**

 (1) must be in **writing**, (2) **singed** by both parties.

例外 subject to most Statute of Frauds exception

a) If there is full performance in reliance of an oral promise.

b) Promissory Estoppel

- if she performed her part of the bargain, and in so doing irretrievably changed her position.

Hall v. Hall(1990)

: “If you married me, you could live in my house until you die”という約束を信じて妻は仕事を辞

める。家のbeneficiaryを妻に変更している途中で夫が死亡。

 ⇒ Partial performance of the oral agreementをもとに書面不要と認定

 (高齢の妻で仕事を辞めた後に年金生活になった特殊事情があった例外事例とも評価されている)

 ※事前にSPにつき相続権放棄など婚前合意は幅広く以下の規制に服する. Waiver of death rights is enforceable.

Surviving Spouse’s Waiver of Rights

1. SOF: Fully disclose of the financial status, Independent legal counsel, Not unconscionable必要。

2. Consideration不要。Minorは結婚するまで放棄不可。

3. Waiverの変更,修正,取消はwritten agreement signed by each spouseが必要。

**§1615：**A premarital agreement is not enforceable if

① It was **not signed voluntarily.**

*As of 2002*. : agreement is involuntary unless the party was

1) a) Represented by **independent counsel** when signed or

b) after being advised, waived representation in a separate writing

and 2) Given at least **7 days** to sign between being presented with agreement and the signing

and 3) if unrepresented by legal counsel, **fully informed** in writing of terms and basic effect.

※ Faso (2011): “seven-day” rule applied only to unrepresented parties (双方弁護士がつけて長期間

協議を続け，最後の提案後7日待たずに成立した合意も有効)

*Before 2002*. : surprise in presentation of the agreement, inequality of bargaining power等の諸要

素から判断。弁護士がついていることは絶対要素ではない (Marriage of bonds, 2000)

② It was **unconscionable** when it was executed if (decided by the court as a matter of law.)

1) That party was not provided a fair, reasonable, and **full disclosure of the property or**

**financial obligations** of the other party. ※ 重要事項の開示があれば内容不平等でも許容され得る

2) That party did not voluntarily and expressly **waive, in writing**, any right to disclosure…

※ when it was executedで判断。事後的事情の変化は考慮せず（配偶者扶養条項と異なる）

**§1612**(c)**; Spousal Support Provision**: 2002年修正

Any provision in a premarital agreement regarding (a waiver of) spousal support, is not enforceable

if the party against whom enforcement of the spousal support provision is sought was

1) not represented by **independent counsel** at the time the agreement… was signed,

or 2) if the provision …is unconscionable **at the time of enforcement**.

  An otherwise unenforceable provision in a premarital agreement regarding spousal support may not

become enforceable solely because the party was represented by independent counsel.

*Before 2002*. ・Right to spousal support can be waived or modified in premarital agreement. if it was

signed voluntarily and not unconscionable. not per se unenforceable (2000最高裁)

　　　　　　　　 ・2)のunconscionable-at-time-of-enforcement requirement would apply to agreements

prior to 2002 (Marriage of Rosendale, 2005)

 ※: waiver of child supportはpublic policy違反として常に無効

**2. Transmutations (marital agreements**):

Before 1985 Oral transmutations were permitted, whether express or implied.

 ※1985年は財産取得ではなくtransmutationがなされた時期

 Marriage of Bonds(1949) “ Everything I had is yours, everything you had is mine, we are partners,

and everything is fifty-fifty” と夫が発言したとしてtransmutation認定

Marriage of Jafeman(1972) always referred to the residence “our home”ではtransmutation否定。

Giftの意思表示が必要

As of 1985

**§852(a)** A transmutation of real or personal property is not valid

unless made **in writing** by an **express declaration**

that is made…or accepted by the spouse whose interest is adversely affected.

※　　writingはwillでもＯＫ

**Express declaration?**

The grant deed is usually sufficient because it states the change of the ownership clearly.

Estate of Macdonald (1990 最高裁)

 ×「上記規定に同意します」とだけ記載して妻に信託

　　　 　〇“I give to the account holder any interest I have in the funds deposited in this account”

We conclude that a writing signed by the adversely affected spouse is not an "express

declaration" for the purposes of section 5110.730 (a) unless **it contains language which**

**expressly states that the characterization or ownership of the property is being changed.**

For example, the paragraph signed by decedent here would have been sufficient if it had

included an additional sentence reading: "I give to the account holder any interest I have in

the funds deposited in this account."

Marriage of Barneson (1999高裁)

 A letter instructing his stockbroker to “transfer” certain stocks to Wifeでは不十分

Estate of Bibb (2001 高裁)

1. **A grant deed** signed by a husband transferring his separate property interest in real property to

himself and his wife as joint tenants satisfies the "express declaration" requirement of section 852,

2. "Vehicle Registration Information," reflecting that an automobile, which was previously registered

in the H's name alone, was reregistered in the names of the husband or the wife, does not satisfy the

requirements for a valid transmutation. 単に自動車を夫婦名義登録に代えたのでは不十分

Marriage of Lafkas (2015高裁) 単に共有名義に変更→Not express declaration

 The express declaration must unambiguously indicate a change in character or ownership of property.

Though no particular terminology is required, the writing must reflect a transmutation on its face, and

must eliminate the need to consider other evidence.

The new agreement simply added Jean’s name to the list of partners; it did not state that John

intended to make a transmutation or to change the characterization of his partnership interest.

**Extrinsic evidence?**

・解釈する際に外部証拠の利用は禁止 ⇒ 意思が明らかでも書面上読み取れなければtransmutationしない

例:「誕生日プレゼントにこの指輪をあげる！」と言ってもCP，ただしバースデーカードあれば可能.

 Marriage of Benson (2005)

妻が家をくれるという約束に基づき，自己のSPを妻に贈与。後者だけ履行，前者は口約束。

　　HOLD: transmutation must be in writing ⇒ 前者の約束は無効

Statute of Frauds exceptionは, transmutationの書面例外として適用されない。

⇒ 家は妻のＳＰ。ただし,“neither spouse shall take any unfair advantage of the other” の

breach of fiducial dutyとして責任追及は可能とした。

**§852(c): 特殊動産例外**

簡易版: Gifts of tangible property of a personal nature which are 1) not substantial in value and 2) mainly

used by the spouse to whom the gift is made → do not have to be in writing.

条文  : This section does not apply to 1) a gift between the spouses of clothing, wearing apparel, jewelry,

or **other tangible articles of a personal nature 2)** that is used solely or principally by the spouse

to whom the gift is made and 3) that is **not substantial in value** taking into account the

circumstances of the marriage.

 ※ Personal natureが何かは定義無く, 洋服や宝石がそれにあたること以外は不明。

 Marriage of Steinberger (2001) : expensive diamondは3)の要件により，書面が必要

Marriage of Neighbors (2001) : 高級ポルシェが争点に ⇒ 自動車はtangible articles of a personal

natureではないと判断 (定義無く法制定史から「車は違う」とだけ判断)

 　例：夫がＳＰで購入した絵画を妻に「あげた」⇒①書面があるか②特殊動産例外に当たるか，の順で論じる(②を常に忘れない)

**Undue Influence?**

Where there is a transmutation that results in one spouse obtaining an advantage at the expense

of the economic interests of the other spouse, a presumption arises that the transaction is invalid

due to undue influence.と言われているが, 最高裁判例なく, 適用要件については通説無し。

**例外2: Effect of how Title is taken**

大前提：General Community property presumption

= All property acquired during the marriage is presumed to be **CP**

 ⇒ Property possessed during the marriage is presumed so, too.

死亡後夫のカバンから1億円がみつかればcommunity propertyと推定,

**原則:タイトルは無関係**

Presumed to be community property, the title is irrelevant. The source of funds controls.

夫単独名義の預金も，妻単独名義で登記した家も夫婦共有と推定される

※ If rebutted by tracing the assets to a SP source.

→ apply source rule. (apportionment)

: Can argue that taking title in one spouse’s own name (even where CP used to make the purchase)

indicates a gift to that spouse, so that the property is her own SP.

Must argue there was an oral transmutation prior to 1985. Post 85, need a writing.

**例外①**Married Woman’s Special Presumption (prior to 1975)

・If Property was acquired in wife’s name alone in an instrument in writing prior to 1975/1/1

⇒ It is presumed to be her SP cf :“H & W” → ½ W’s SP, ½ CP

unless 1) H shows other reason (not gift) or 2) without H’s knowledge or consent.

※ cannot rebut by tracing, only by intention.

**例外②** Taking Assets in Joint Title: Lucas and Anti-Lucas Rules

1. The property acquired in joint title during marriage presumed to be CP.

As of 1984 (厳密には適用開始時は難しい問題, 少し後述)

**§2581 anti-Lucas statute**

property **acquired** by the parties during marriage **in joint form**, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property.

Marriage of Lafkas (2015)

夫がＳＰを妻との共有名義に変更 (不動産なら通常transmutation)

‟when a spouse places separate property in joint title form, the transmutation requirement must be satisfied, before the joint title presumption applies” 獲得時に共有でなく，追って共有にした場合には, まずはtransmutationの要件を満たす必要がある ⇒ 書面上意思が明確でないとしてtransmutationを否定

**Facts**: H formed a real property investment partnership with 2 friends in 1972. H was listed as

an unmarried man on the statement of partnership. H married W in 1990.

In 1995, the partnership bought a property. The partners applied for a loan to finance the

balance of the purchase price. H believed W was required to participate in the

transaction. She was added to the partnership as a joint holder of a one-third interest with

H. The agreement was then recorded with the state.

H believed he owned the one-third interest. He never intended to change its character.

**Hold**:The appellate court found the requirements for a valid transmutation must be satisfied

before the title presumption. Transmutation agreements are interpreted without resort to

extrinsic evidence. “The express declaration must unambiguously indicated a change in

character or ownership of property.” “A valid transmutation requires more than simply

naming one or both spouses as the owner in a title document.”  →SPと認定

 ※: essayではCP推定を先に論じる

 1) CPと推定

2) Transmutation? Typically, a deed satisfies the writing requirement for the transmutation.

3) Joint Form Presumption? → a valid transmutation must be satisfied before the title presumption.

4) Transmutationするとすれば → reimbursement

 The funds would not control. It can only be rebutted by another agreement **in writing.**

例外**：**a bank account that is jointly titled**→**CPと推定。but, can be rebutted by tracing to SP

※ 1984年前取得共有名義不動産もCPと推定 (retroactive)。

※ Marriage of Bowl:1985

Writing requirement is not applied to acquisitions prior to 1984

- (条文上retroactiveであり憲法論だけが問題)

Retroactive Application of § 2581 is unconstitutional only when a vested interest would be impaired

⇒ 妻が口頭合意で権利を得たにもかかわらず，書面を要求し権利を奪うことはできない

2. Separate property contribution to community property receives only reimbursement

**At divorce**: **Anti-Lucas Rule**

The party is entitled to the reimbursement without interest for the party’s contribution to the

acquisition to CP, which includes Down payment, Improvements, Principal reduction (DIP).

**§2640** The party shall be **reimbursed** for the party's **contributions to the acquisition** of property of the

community property estate to the extent the party traces the contributions to a separate property source.

The amount reimbursed shall be without interest or adjustment for change in monetary values and

may not exceed **the net value** of the property at the time of the division.

　 例：ＳＰから1万＄を出し夫婦共有名義で購入。現在3万＄。

⇒ 前段で1万＄返還請求ＯＫ．後段で価値増加分はＣＰに

“Contributions to the acquisition of property,” … include 1) **down payments**, 2) **payments for improvements**, and 3) **payments that reduce the principal of a loan** used to finance the purchase or improvement of the property

but do not include **payments of interest** on the loan or **payments made for maintenance, insurance, or taxation** of the property.

 Marriage of Heikes:1995

The right of reimbursement is not applied to acquisitions prior to 1984 without an agreement.

1983年に取得し, その後に改良がなされた場合は, 合意がないと償還不能

※ Prior to 1984, reimbursement is available only if there is an agreement. (85年以降は合意不要)

※ The cottage is an improvement to the lot ⇒ 土地に附合し, reimbursementのみOK

※ 自己名義の不動産を共有名義にすれば通常CPになるが離婚時は償還OK

 問: 妻が遺贈を受けた土地に夫婦名義でローンを組んで建物を建設し賃借。rental propertyの権利関係は？

　　 答: 注意点: 土地と建物を別の不動産と見ない。rental propertyという一つの不動産の権利関係が問題。

Character of property acquired on credit → 建物部分は通常はCP，

そこで, SPがCPによりimprovementされたという問題 → reimbursementを論じる

**At death**: **Lucas Rule**

Any contribution of SP is presumed as a gift → no reimbursement

**Characterize each asset**

**SP used to improve CP**

See rules above as of 1985, shall be reimbursed at divorce.

In re Marriage of Lucas (1980): CP不動産の分割払を自己のSPから行ったが，合意がなければgiftと推認さ

れるとしてreimbursementを受けられなかった → anti-Lucas statute制定`

**CP used to improve SP**

→原則）improvements become part of the **SP** (by doctrine of fixture)

However, the community may seek **reimbursement**

for greater 1) of the cost of improvement or 2) the increased value attributable to CP.

例外）one spouse uses CP to improve other souses SP

→ was traditionally presumed a gift in the absence of an agreement to the contrary.

 In recent cases, other spouse is entitled to reimbursement.

※ one spouse uses CP to improve his own SP ⇒ breach of dutyの問題。償還はOK

※ improvementだけのルール, reduction of principalは上記のapportion ruleが適用

**SP used to improve SP**: (e.g. down payment, payment on cost of swimming pool, purchase of equipment)

At death →Presumed gift → no reimbursement unless contra agreement (Lucas rule:判例法理)

At divorce →A party shall be reimbursed for the party's separate property contributions to the acquisition

of property of the other spouse's separate property,

unless there has been a transmutation in writing. §2640 Effective January 1, 2005.

※ Until January 1, 2005, that contribution would be presumed to be a gift

**Commingled Bank Accounts ※** essayではdirect tracingからまず論じる.例外論じる前に原則.

1) The mere fact that SP fund are commingled with CP does not transmute SP into CP.

 Spouse may overcome presumption that all property is CP by tracing or exhaustion method.

 2) Family expenses are presumed to be paid with CP funds, SP funds are deemed to be used only when community funds are exhausted. (By SP, it is presumed a gift ⇒No reimbursement)

 例：夫のSPの5000ドルの口座，そこに結婚後給与1000＄を振り込めばcommingled bank accountになる。

そこから生活費1000＄を使用した場合，ＣＰ利用と推定されるので残額5000＄はSPになる。

**Exhaustion Method:** If the proponent of SP can show that CP was exhausted when the asset

was purchased, then the asset must be SP and CP presumption is rebutted.

**Direct tracing Method:**  keeping adequate records等明確な証拠がなければCPになる

**Acquisitions on Credit during Marriage**.

**Determined by whether the lender’s intent was to rely on the purchaser’s SP or CP.**

前提：if a loan is incurred during the marriage, that loan, and any proceeds acquired with said

 loan, will presumed to be a community obligation/property.

In the absence of evidence proving a lender “primarily” or “solely” relied on one spouse’s SP in

 extending credit, courts presume the property acquired during marriage is CP.

 Credit is not apportioned, and is either CP or SP.

Personal credit of either spouse during marriage is CP insofar as it is based on earning capacity.

 ※SPをrelyしていたかの問題であり，稼働能力を信用していたならばCP. 借金も購入物品もSPになり得る.

**Business Owned before Marriage**

 ※ SP business that starts a) prior to marriage or b) during marriage using SP fundsだけに生じる論点

結婚中に始まったビジネスはCP businessと推定される。その場合は, goodwillの分配が争点に。

 Community labor used to enhance value of a SP business

 → the community is entitled to a share of **the increased value.**

Two ways to calculate the community’s share

|  |  |
| --- | --- |
| **Pereira accounting**① **Value of business at beginning** +② **Fair rate of return**(usually 10% simple interest)= SP, the rest is CP | **Van Camp accounting**① **Fair salary** for community labor –　② Salary already received – ③ Amounts **already paid** to community expenses = CP, the rest is SP. |

例：結婚中に妻がSPの１万＄で事業開始. 年４万＄の利益. 2万5000＄の給与. 5000＄を家計の支払にまわしていた。5年後離婚。事業価値は15万＄

　　 Pereira　　　1万＄＋5000＄(10％×5年)　　　　 ＝1万5000＄がSP　　　　　 CP有利

 Van Camp 　(4万＄－2万5000＄－5000＄)×5年＝5万＄がCP（10万がSP）　SP有利

　　Which approach to use

Pereira : used when the increase in value is primarily **a result of community labor.**

Van Camp: used when the increase in value is primarily the result of **the unique nature of the SP.**

例：突然のペットブームでペット事業が高額で売却できることに

**Good Will** **＝のれん**  “the expectation of continued public patronage”

 **CP** to the extent it is earned during marriage.

Valuation : Two methods→Market sales valuation or

Capitalization of past excess earnings（総収入－通常の同一経験者の収入）で計算

**Education and Training**]

 Not property. But, **reimbursement** for educational expenses.

**§2641(b)(1)** The community shall be reimbursed for community contributions to education or training of a

party that **substantially enhances the earning capacity** of the party.

But no reimbursement if

a) the community substantially benefited from the education

(more than 10 yearsで実質利益有りと10年以下は無しと推定)

or b) both spouses received community funded education.

 ※ Professional degrees earned by one spouse is not CP. not property.

**Personal Injury Awards**

**CP** if the cause of action arose during marriage.

Post Marriage: §2603(b) assigned **to injured spouse**, unless court views this to be inappropriate.

 ※ Commingledされればダメ, essayではcommingleされてないことを論じる

※ The community is entitled to reimbursement for any expenses it paid for injury.

Family Code §2603(b) の例外

UNLESS (1) non-injured spouse is entitled by interests of justice

(2) personal injury damages are commingled with other CP.

**Life Insurance Policies**

1. Whole life insurance purchased before marriage, premiums paid with CP

Proration Rule Applies – Amount of payments made by CP / Total amount of payments made.＝CP

2. Term life insurance policy

Final Payment Rule – Last premium payment determines the character.

→ 理論的には妥当だがunfair windfallの恐れがある

例: 長期継続で保険料低額化, 病気で継続保険以外加入不可能

 ※ essay tip: 問題文でwhole life insuranceかはっきりしなければ両方論じる。年払いは通常はterm。

In Re Marriage of Valli, (2014)

The husband used CP funds from a joint bank account to buy a life insurance policy,

identifying his wife as the sole owner and beneficiary.

Hold: 1) The transmutation statutes applied to cases where purchases were made from 3rd parties

 　2) NO written declaration, specifically changing the character of the property→CP

 ※　婚姻中に加入した保険は原則CP。契約者を妻にしても夫死亡時に妻のSPにならない。

**Pension Benefits 退職金**

**Rule:** Employee **retirement benefits** earned during marriage are **CP**.

(whether or not vested at time of divorce)

 \*unvested = the employee must work for some period time before gaining pension rights.

→apply **the time rule** to apportion between CP and SP.

 Marriage of Gillmore (1981)

 When a spouse is eligible for retirement at divorce, but elects not to retire, the retirement

 benefit is distributed to the other spouse.

**Disability retirement payments** (≒労災補償金) **& workman’s compensation benefits** (≒障害年金)

Disability Benefits (Disability retirement payments and workman’s compensation benefits) can be

considered as SP of the disabled person because it is to compensate for the loss of future earnings.

 (被害者保護の観点からの要求もある)

 In general, pensions characterized as "disability" pensions are SP, and those characterized as

"retirement" pensions are CP.

The conceptual distinction between disability and retirement benefits is grounded in the differing

**purposes** and natures of the pensions. (名前ではなく実態で判断)

Retirement benefits, even if received after divorce, are considered CP to the extent that they are earned

as compensation for services rendered during coverture.

In contrast, disability pay does not constitute deferred compensation for past services, but rather serves

to compensate the disabled employee for his diminished capacity to earn in the future and for the

personal anguish he suffers as a result of his injuries.

 **Marriage of Elfmont (1995)**

 Husband's disability insurance benefits were his SP, even though the policies were initially

acquired during marriage, because he became entitled to draw benefits only after he had

renewed the policies following the parties' separation with premiums paid out of his SP, and

at that time he did not intent to provide the community with retirement income.

↑Purpose Approach

 (1) if purchased with CP funds during the marriage AND

(2) purchased by the spouses with the intent of providing for a retirement fund,

then post dissolution will be CP. (Marriage of Saslow, 1985)

 Electing disability retirement over retirement pension

The employee cannot elect pension benefit to defeat his spouse’s community interest. Therefore,

even if he chooses disability retirement benefit, which is generally SP after divorce, his spouse

has CP interest in his benefit.

**Severance pay**

1: H’s severance pay is **SP** if it replaced **lost earnings**.

2: Severance pay is **CP** if it arose from a collective bargaining agreement and thus was earned

by employment during marriage.

**Enhanced Retirement Package**

If it is in lieu of future earnings after separation 　　　　　　　　　　　　　　　　　　　→ SP.

 　　 　If it is derived years of hard work then a portion of community property → CP

**Stock Options**

**CP** because they are form of employ compensation not yet vested.

Intentにより２種の計算方法あり

**1.** to encourage him to remain with the company 　付与から考える∵それ以前は無関係

 Years from date option awarded to the date MEC ended

 Years from date option awarded to the date option becomes exercisable

＝ **オプション付与後の婚姻中雇用期間／オプション付与から同行使可能時までの全期間 →CP**

**2.** Reward for his past service　　　　　　　　　勤務開始から考える∵それ以前の労働の対価性

 Years from date he started work to the date MEC ended

 Years from date he started work to the date option awarded

＝ **婚姻中の雇用期間／オプション権行使可能に必要な雇用期間**

**Preemption**

Under the Supremacy Clause, federal law preempts inconsistent state laws.

Certain federal benefits preempts CP law and deemed to be SP.

Applies to: (1) military **life insurance benefits** (2) US government bonds = 国債

(3) social security benefits

Not:　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　　(1) Railroad **retirement benefits**, (2) military **retirement benefits**, (3) copyrights.

i.e. Spouses of military personnel do have CP rights in a military retirement plan.

**Management & CONVEYANCE OF CP**

**During the marriage, each spouse has equal management and control of all community assets.**

**Thus, each spouse has full power to buy or sell CP and contract debts without the other spouse’s joinder or consent.**  ※ does not apply to quasi-CP.

Exceptions:

1) Spouse managing **CP business** has primary management and control of the business,

but must give other spouse prior written notice of any sale, lease, or encumbrance.

 ⇒No notice → transaction is valid (but spouse has remedy)

2) One spouse cannot sell or encumber **personal property used in the family dwelling** (furniture)

 or clothing without written consent from the other spouse.

⇒Voidable at any time. no need to return purchase price.

3) Both spouses must join in conveying community **real property**.

⇒If sold to BFP, non-consenting spouse has 1-year to void, otherwise voidable at any time.

must return transferee's purchase price.

Marriage of Brooks and Robinson (App.2008)

　　　　　妻が夫の承諾の元，“ROBINSON, a Single Woman.” without reference to the marital relation

というタイトルで不動産取得。同不動産を夫に無断売却。

⇒1. 1975年以前であれば妻のSPになるが現在であればタイトルは無関係のためCPが原則。

　 2. transmutationは“a Single Woman.”だけでは, “express declaration in writing”に当たらない→CP

3.上記原則から1年以内であれば購入費用を返却して取消可能。しかし，同裁判所は第三者との関

係ではタイトルが優先されるとして購入者を保護（先例価値は疑問by E＆E）

4) Neither spouse can make an **inter vivos gift** of CP without the other spouse’s **written consent**.

⇒Voidable until death. then non-consenting spouse may only recover ½ CP.

**Fiduciary duty** after separation後もfinal distributionまで存続

Each spouse has a duty of **the highest good faith and fair dealing** with each other.

・If one spouse gains an advantage from a transaction, **a presumption of undue influence** arises and

the benefiting spouse has the burden to prove she did not breach her fiduciary duty.

・Grossly negligent and reckless investment of CP funds is a breach of a spouse’s duty.

・The duty includes full disclosure **without demand** and full access to information.

・上記1)～4)につきbreach of fiduciary dutyの追及も可能

**Creditors and Reimbursement**

※ Rather than characterizing debts as CP or SP, CA allocates “liability” for debts between the CP and SP.

結婚中の取扱

1) **All CP are liable for the debt incurred by either spouse before or during marriage**

(even for the premarital debt, ‟I marry you and your debts”となる。債権者に幅広い保護)

**Exception:** **Earnings** of non debtor spouse cannot be reached for premarital debts if held in a separate

account (in which other spouse had not right of withdrawal) and not commingled with

other CP funds. ※ premarital agreementを締結すれば相手がwithdrawできても保護される

   911 (a) The earnings of a married person during marriage are not liable for a debt incurred by the person’s spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person’s spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.

問：夫が結婚前に生じた養育費を未払。妻は自分の稼ぎを自分の口座に入れて管理しており，それを用いて土

地を購入した。養育費の請求権者はcan attach the land?

答：CP is liable for all debts →but commingleされていないearningは他方配偶者がright to withdrawなけれ

 ば保護される。commingleなければ形態変わっても同じか？

2) **SP is liable for debts he incurred before or during marriage but not the other spouse’s debt**

913: The SP of a married person is liable for a debt incurred by the person before or during marriage.

The SP of a married person is not liable for a debt incurred by the person’s spouse before or during

marriage.

 **Exception:** Each spouse is **personally liable** for a debt incurred

914: a married person is personally liable for the following debts incurred by the person’s

spouse during marriage,

1) for the “**necessaries of life**” while they are living together, and

(1) A debt incurred for necessaries of life of the person's spouse

before the date of separation of the spouses.

2) for the **“common necessaries of life”** after permanent separation.

(2) A debt incurred for common necessaries of life of the person’s spouse

after the date of separation of the spouses.

∵ Each spouse has a duty to support the other spouse and minor children of the marriage.

 例：妻が病院代を支払わなければ，別居していても夫のSPも責任を負う

　　 (旅行代であれば，別居後は通常は負わないが，別居前であれば通常は負う)

　※: essayではreimbursementの可能性の言及を忘れない

 **necessaries of life** = living costs consistent with the spouses’ station in life

 **common necessaries of life** = expenses that are required to sustain life (food, medical, housing)

 ・615: **a child or spousal support obligation** of a married person that does not arise out of the marriage

shall be treated as a debt incurred before marriage.

　 問：夫が妻に隠れてギャンブルで借金

　　　 1) 離婚前は上記1)によりALL CPが責任を負う(妻はfiduciary duty違反を問うことは可能)

2) 上記2)により妻個人のSPが責任を負うことはない。

※ 離婚時はcommunity debtsではないので, 夫に割り当て (通常同借金を考慮してCPを分配)

例: If during the marriage, one spouse purchased all of the children’s clothing using a credit card that was

held in that spouse’s name alone.

→ Both spouses are still equally responsible for the charges made on that card.

Similarly, both spouses are responsible for one spouse’s income tax obligation.

**Tort Liability**: the community is subject to the tort liability of either spouse.

a) When the tort occurred while the spouse was acting for the benefit of the community,

→ Liability is first satisfied from CP, then SP.

例：通勤中の自動車事故，教会行く途中に自動車事故なら微妙

b) Act NOT benefiting Community

→ Liability is first satisfied from the tortfeasor spouse’s SP, then CP.

※ Innocent spouse is NOT personally liable.

 Different from usual debts. The SP of the non-tortfeasor cannot be liable even if the act benefits

community. The issue here is whether the SP of the tortfeasor can be attached.

Division (Distribution) at divorce

Characterization of debts

A debt incurred during marriage must be characterized either **a community debt** or **separate debt.**

 ※ a debt incurred before marriageはseparate debt.

2621: Debts incurred by either spouse before the date of marriage shall be confirmed without offset to

the spouse who incurred the debt.

Community debts are debts **incurred for the benefit of the community**≒for necessaries of life

   2625: …all separate debts, including those debts incurred by a spouse during marriage and before the

 date of separation that were not incurred for the benefit of the community, shall be confirmed

 without offset to the spouse who incurred the debt.

 結婚中に起こした不法行為に関連して生じた損害賠償請求権や弁護士費用は？

 原則：　the tort liability and attorney’s fee is assigned to the tortfeasor.（§2627から明らか）

　　　　　 If the tort occurred while performing an activity for the benefit of the community?

　　　　　 ⇒ for the benefit of the communityの解釈問題,case lawは事故ならcommunity debtsとする

Division

 Community debts are divided equally.

 Separate debts are confirmed (assigned) without offset to the spouse who incurred the debts.

 Discretion

The court has the discretion to assign the debt to one spouse to offset the award of other property.

**※** When community liabilities exceed assets,

→ relative ability of spouses to pay debt is considered (concern for creditors).

 Creditor’s right

 A creditor cannot reach CP that has been awarded to a spouse

unless that spouse (1) incurred the debt and is personally liable or

(2) was assigned to the spouse by the court.

Rights of Reimbursement

One spouse may seek reimbursement against the other where:

1). i) CP is applied to satisfy **child or spousal support** of prior relationship *and*

ii) Debtor had SP available to pay debt;

2) One spouse's SP is applied to **debts for necessaries** when the other spouse had SP or CP to pay for

 them.

3) When the order of satisfaction of tort debts does **not followed rule:1000** (上の順番に反し支払われた時)

・1) 結婚前発生の養育費も原則ＣＰに責任あり. ただしSPが支払えるのに支払わなかった場合は償還可.

 ・同様に2) CPが支払える生活必要費をSPが負担した場合,

3) 相手方SPが負担できた不法行為債権をCPが払った場合など償還可

§915(b)If property in the community estate is applied to the satisfaction of a child or spousal

support obligation of a married person that does not arise out of the marriage, at a time

when nonexempt separate income of the person is available but is not applied to the

satisfaction of the obligation, the community estate is entitled to reimbursement from the

person in the amount of the separate income.

 その他条文別だが以下などにreimbursement権あり

1) Educational expenses

2) Unauthorized gifts

3) SP contributions to CP purchases or improvements (Anti-Lucas)

4) If CP is used to improve spouse’s own SP (for the cost of the improvement or the increase in value).

 以下，アウトラインにないが気になった問題点

**After separation one spouse uses their SP earnings or property to pay off CP debts.** 　 After separation, H continues to drive the BMW which was purchased with a loan during the marriage.

W continues making the loan payments on the car. Can W claim a reimbursement ?
 → Epstein Case; A spouse who, after separation, uses SP to pay pre-existing CP debts should be reimbursed.

**債務の取扱例**

　 ・A couple buys a home during their marriage and uses only CP for the purchase and mortgage payments.

→ Upon divorce, this couple will be equally responsible for the mortgage.

 　　 A court may order that the home be sold to a third party and the net sale proceeds be divided equally

between the spouses.

**Distribution**

 前提：SEPARATION

**771.** The earnings and accumulations of a spouse …after **the date of separation** of the spouses, are the separate property of the spouse.

**DIVISION At divorce**: 50/50 unless the interest of justice requires otherwise.

Generally, each and every asset and debt must be divided equally.

Family Code §2550: “the court shall …divide the community estate of the parties equally.”

unless economic circumstances warrant awarding certain assets wholly to one spouse and each spouse ends up with 50% of all CP in terms of total economic value.

※ Disparity in earning power can be considered only as to spousal/child support.

　　　・The debts for which the community estate is liable…, shall be confirmed or divided as provided in this part.:§2620

＝ CPが負担すべき債務は平等割付が原則, 例外は後述の不法行為債権, 教育費, CPで支払困難時

Economic Circumstances Exception

– can have a non-pro rata division, giving asset wholly to one spouse and “cash out” other

spouse with other assets (each spouse getting 50% of total value).

Family Residence – may be awarded to the person who is given custody of the minor children.

Closely Held Corp – all shares are CP, but W is the CEO.

Pension – awarding all of H’s pension to H, other assets to W, so they can go

their separate ways.

Statutory Exceptions

(1) Misappropriation by one spouse.

(2) Education debts assigned to the educated spouse.

(3) Tort liabilities assigned to the tortfeasor (not based on for the benefit of community).

(4) Personal injury award is given to injured spouse.

(5) **Negative Community** – community liabilities exceed assets; relative ability of spouses to

pay debt is considered (concern for creditors).

**At death** : May devise all SP and ½ CP by will.

No will, survivor entitled to all CP, 1/3 ~ all of SP.

Quasi-CP treated as CP.

Survivor’s Duty to Elect

The surviving spouse must elect between the will and her CP rights when the decedent’s will

attempts to pass the survivor’s ½ interest in CP.

**DATE OF VALUATION**

Rule 　　– The court shall value assets and liabilities as close to the time of trial at practicable. .

Exception　　　　　– Closely held business is valued at Separation. (i.e. spouse can’t purposely lower value)

例: 別居時に10万＄, 離婚時に5万＄のビジネスは10万ドルと計算される.

<http://www.barexammind.com/wp-content/uploads/CaliforniaOutlines/CAL%20Community%20Property.pdf>

<http://www.legalthree.com/california-bar-exam/community-property-california-bar-exam-short-outline/>