

First things to check!

- Watch for crossover with WILLS or TRUSTS
- *Recite basic presumptions before anything else:*

California is a community property (CP) state. Property acquired during the marriage is presumptively CP. Property acquired before the marriage, by gift, will, or inheritance, or after termination of marriage, or income acquired from such property is presumptively separate property (SP). [*If the facts mention another state outside CA: Quasi-CP (QCP) is property acquired by either spouse that would have been CP had the spouse been domiciled in California at the time of acquisition.*] With these principles in mind, each item of property will be examined.

- Prerequisite to apply CP law: Determine whether parties were in a valid marriage or an alternative to marriage
 - Quasi-marital property (QMP) is property that would have been CP/QCP under a valid marriage
- Note any dates given (e.g., a timeline of events). Determine if any new rules apply...
 - From 1975: Married woman's special presumption no longer applies
 - From 1985: Transmutation and premarital agreement must be in writing to be enforceable
 - 1986–2002: Premarital agreements must be voluntary
 - From 1987: At divorce, SP is entitled to reimbursement for *joint property* purchased by spouses in/after 1987 (anti-Lucas)
 - From 2002: Presumption of involuntary premarital agreements unless 3 requirements met
- For each call (typically a particular asset or liability), consider the below topics based on what is asked for...

Characterization of asset: How much of the asset is CP, SP, QCP or QMP?

- Source of property? Characterize based on basic presumptions or special situations (see summary sheet)
 - Commingled property acquired with commingled funds (CP + SP)?
 - Determine CP and SP interests by apportioning
 - Proponent of SP wanting to claim SP can identify SP with tracing (two tracing methods)
- Presumptions? Check if any basic CP presumptions apply (can rebut by showing SP source or agreement)
- Actions taken to change the character of the property or to rebut CP presumptions?
 - Premarital agreement (agreement before marriage)
 - Transmutation (agreement during marriage)
 - Situational – assets characterized depending on various situations. Major ones include:
 - Personal injury award: Who is the tortfeasor?
 - SP business → Pereria vs. Van Camp
 - CP business → business goodwill is CP (two valuation methods)
 - Credit acquisition (property purchased with credit or loans) → lender's intent test
- Disposition? See below

Characterization of liability: What is the spouse's liability in the debt or liability?

- For debt incurred before/during marriage (while not separated): CP is liable for such debts
- For debt incurred after dissolution of marriage: Did debtor spouse act for the **benefit of the community**?
- Tort liability: Did the tortious spouse act for the **benefit of the community**?
- Remember if joint title to property and **not** seeking distribution, each spouse still has ½ interest in SP

Any entitlement to reimbursement for prior contribution to CP or SP?

- A spouse who contributed SP may be entitled to reimbursement
 - A spouse who contributed large SP would want SP reimbursement, while a spouse who contributed small SP would want CP reimbursement for bigger split later
- Major situations for reimbursement: acquisition of property, improvement by community or a spouse, education or training (rebuttable presumption), payment of debts

Disposition: What happens to the property at divorce or death?

- Distribution at divorce: CP divided “in kind” (entitled to one-half interest), with EXCEPTIONS to equal division rule
 - If joint asset, SP may be entitled to reimbursement for contribution to purchase (anti-Lucas)
- Distribution at death: CP of dying spouse distributed depending on whether he dies with will or without will

