

UNIVERSITY OF LA VERNE COLLEGE OF LAW

COMMUNITY PROPERTY  
Syllabus

Spring, 2019

Michael J. Gassner

[mgassner@sb-court.org](mailto:mgassner@sb-court.org)

909-521-3290

909-708-8757: Alvina, Administrative Assistant

**Evening Section: Tuesdays: 6:30pm to 8:30pm**

- I. **Required Text:** *Community Property in California* by Blumberg, Seventh Edition, Aspen
- II. **Supplemental Materials:** There are a number of family law treatises that address community property issues. However, the assigned text along with the cases that will be posted on TWEN, are sufficient.
- III. **Course Content:** California and seven other states (not including Wisconsin, which has adopted the Uniform Marital Property Act), have adopted a system of classifying marital property acquired during marriage ("community property") based on the Spanish civil law property system. California's community property system, however, is unique even among those jurisdictions with similar classification systems. Therefore, the focus will be on California's community property system as set forth in the California Family Code and California appellate and Supreme Court cases. With the focus being on current statutes and case law, this Course is particularly relevant for those students intending to practice law in California. Community property issues arise in a variety of contexts, from estate planning to debtor/creditor rights to general questions of liability in both civil and criminal matters, and are frequently tested on the California bar exam.

This is NOT a family law course. We will neither explore issues of spousal or child support nor child custody. You will not learn the process and procedures required to handle a Dissolution of Marriage.

- IV. **Learning Outcomes:** at the conclusion of this course, students will be able to:
  1. Characterize personal and real property acquired before, during and after a marriage or other qualifying relationship as either community, separate or mixed;
  2. Articulate and apply major provisions of the California Family Law Code to a real or hypothetical fact situation;
  3. Articulate and apply leading California community property cases to a real or hypothetical fact situation;
  4. Competently identify and resolve the major issues in a California community property bar exam question.
- V. **Classroom Expectations: Preparation and Participation.** We will be covering a lot of material that includes briefing relevant cases. In order for the class to move along at an appropriate pace, it is imperative that each student read and brief the assigned cases before coming to class and read all relevant Family Code sections. It is also imperative that students read all cases posted on TWEN and turn in all assignments in a timely manner. While briefing techniques may differ, your brief should, at the very least, include relevant (key) facts, an issue, a holding and a section on

reasoning which should include authority for Court's decision. **BOOK-BRIEFING OR CANNED BRIEFS ARE NOT ALLOWED.** When reciting a case, students should limit the factual recitation to KEY facts only. The professor will no doubt wish to expand upon the factual context in the Socratic dialogue, but do not assume this. Many cases are historical in nature and little time will be spent on them. Therefore, utilize your finally honed briefing skills and limit the lengths of your briefs. The cases cited On TWEN, which you need not brief unless specifically asked to do so, represent the latest Court opinions on cutting edge community property issues and is fodder for classroom discussion and testing.

**Respect of Others:** there will be no talking or sidebars with fellow students unless instructed to do so. You will respect the opinions of other students. If you disagree with anything that is said or wish to respond to a question, simply raise your hand and the professor will call on you. If you have to leave the classroom during class, please do so as quietly as possible.

**Summary:** Show up to class on time. Be fully prepared to having read all assigned material including cases in the casebook and on TWEN, as well as applicable Family Code sections. Come to class with your own written case briefs and completed assignments.

- VI. Formative Assessment:** because we will be covering several major legal concepts, there will be multiple assignments designed to assess your mastery of those concepts as we progress through the class. Each such assignment must be answered or performed to the best of your ability and turned in on time. In addition, we will work through hypothetical fact situations in class calling upon that week's reading assignment as the basis for resolution. In addition, quizzes or other graded assignments may be periodically administered to gauge your mastery of the concepts as we move through the course.

Graded assignments will be posted on TWEN by the end of the week for the following Wednesday and announced at the end of each class section. Students are responsible for determining what the assignment is and when it is due. No assignment will be accepted after its due date and time. (See grading below).

- VII. TWEN required:** The professor utilizes **TWEN** to post supplemental cases and to provide questions to ponder. Every student is charged with having read TWEN prior to attending class. If you have any problem accessing TWEN, please see your student Westlaw Rep immediately. Dialogue via TWEN is necessary for continual assessment as we go through the material and every student will participate.

- VIII. Attendance:** Attendance is mandatory. The College of Law policy regarding absences will be strictly adhered to. Should a student be unprepared when called upon in class, that student will receive a full or half absence for that class. If you have a valid reason for not being fully prepared for a class, please inform the professor prior to the start of class and you will not be called upon. You may exercise the option of a "pass" once during the semester without penalty so long as you notify the professor in advance of class. Please be on time. Late students will receive either a full or half absence depending on the degree of tardiness. The evening section will start promptly at 6:30pm. **DO NOT BE LATE TO CLASS.**

**Note:** The semester is 14 weeks, so you cannot miss more than 2.5 classes before exceeding the 20% maximum and will be administratively dropped from the course [See the current MAPP for consequences of an administrative withdrawal. Better yet, do not miss more than 2.5 classes.]

- IX. Review sessions:** Periodic review sessions if the professor determines that student are having difficulty grasping a particular concept. Review sessions are optional.
- X. Electronic Devices:** Laptops, smart phones, tablets or other similar devices are not allowed in class as such devices disrupt the learning process. The professor may revisit the policy during the semester. Laptops are permitted during the optional review periods.
- XI. Students with disabilities:** Students whose disabilities necessitate accommodation must comply with the notice and documentation requirements of the College of Law. Students who wish to receive an accommodation should, within the first month following initial registration, make an appointment with the Assistant Dean of Students in order to become informed of these requirements. If you wish to receive accommodation for a disability, you are responsible for reviewing The Handbook for Students with Disabilities, available from the College of Law Registrar's Office. You have certain obligations and responsibilities surrounding the accommodations and services provided by the University of La Verne and the College of Law, and must pay particular attention to the requirements for timely documentation outlined in that document.
- XII. Academic Integrity Policy:** all work, including classroom brief, must be the individual work of each student unless specifically instructed to work in groups. Students will strictly adhere to the January 2016 MAPP provision, Section IV, B. 1., which prohibits academic dishonesty.
- XIII. Examination/Grading:** there will be a two-hour final exam with two essay questions of equal weight. The professor reserves the right to make 50% of the final exam objective in nature upon due notice to the students. 10% of your grade will consist of participation based on the timely submission of "ungraded" assessments. A student receives credit when an assignment is turned in by its due date and time and evinces a good faith effort to complete. A student will lose credit if unprepared when called upon in class. **Note:** take-home assignments may be submitted via email posted no later than the due date and time if a student is not able to attend class that day. It is your responsibility as a future attorney to meet all deadlines when and as due.

Quizzes or other graded assignments, if given, will constitute an additional 10% of your grade. Therefore, the final exam will constitute either 80% or 90% of your final course grade.

- XIV. Office Hours:** The professor is a judicial officer and is not usually on campus Monday through Friday. If you need to meet with the professor it is best to email him directly for an appointment or to contact Alvina. While students are encouraged to meet with the professor to discuss issues relative to the course, most problems or questions can be resolved via email.

**Reading Schedule:** the weekly reading assignments associated with each unit are subject to change depending on our ability to cover the material. The burden is on each student to determine the reading assignment for a particular week. Changes or additions to the reading schedule will be posted on TWEN and/or announced in class.

**COMMUNITY PROPERTY**  
**Fall 2018**

**Week 1: Introduction to California's system of classifying marital property.**

**Read:** pp. 1-8; 53-56; 59-66: Historical development of the CP system in California.

**Read:** pp. 67-83 **Presumptions & Tracing as a means of classifying marital property.**

**Family Code Sections:** 720, 721, 760 and 771

**Brief:** Estate of Clark; Downer v Bramet

**Week 2: Evidentiary presumptions (cont.)**

**Read:** pp. 85-101

**Brief:** Fidelity & Casualty v Mahoney

**Assignment:** Answer hypo on page 85 using *Lynam & Mahoney*

**Read:** pp. 101-122: **Married Woman's Presumption**

FC Section: 803

**Read:** pp. 112-122: **Joint Tenancy**

**Note:** CA Civ. Code 682.1 and concept of "stepped up basis at death."

**Note:** Be prepared to discuss and recognize the difference between the various types of joint title, including tenancy in common, joint tenancy, community property, and community property with right of survivorship.

**Week 3: Title Presumptions: Lucas & Anti-Lucas Legislation**

**Read:** pp. 122-150

**Brief:** *IRMO Lucas*

**Assignment:** Answer questions on pages 146-147 and be ready to discuss

**FC:** Sections 2581 and 2640 (formerly 4800.1 and 4800.2)

**Week 4: Premarital Agreements**

**Read:** pp. 151-186

**Brief:** *IRMO Dawley*; *IRMO Noghrey*;

**FC:** Sections 1610 through 1615 [as amended in 2001: page 180-181]

**Read:** pp. 186-191: avoiding the statute of frauds defense in premarital agreement cases

**Assignment:** Pass out and review Bar Question 6

**Week 5: Transmutations of Property During Marriage**

**Read:** pp. 192-197: "Easy Transmutation Rule" pre-1985

**FC:** 850-853

**Note:** Read section 852 closely and be prepared to answer a hypothetical with a transmutation-based issue.

**Read:** pp. 198-236

**Read closely:** *IRMO Benson; IRMO Valli; IRMO Lafkas*

**Expressed declaration of intent to transmute**

**Transmutative purchase**

**721: Presumption of breach of fiduciary duty where one spouse unilaterally benefited by the transmutation**

**Assignment:** Turn in written answer to Call #1 of Bar Question #6 applying your understanding of the transmutation rules embodied in this weeks' reading assignment.

### **Week 6: Tracing to Commingled Account**

**Read:** pp. 237-255

**Brief:** *IRMO Frick*

**Read:** pp. 255-267: Determining the CP portion of growth in value of SP business: **Pereira or Van Camp.**

**Brief:** *Gilmore and Tassi*

**Assignment:** review answer to Call #1. Prepare answer to Call #2 for Week 7

### **Week 7: Credit Acquisitions**

**Read:** pp 267-275: **Intent-of-the-lender rule**

**Note:** Articulate the rule as articulated under Gudelj and under Grinius

**Assignment:** Turn in written answer to Call #2, Question 6. Be prepared to discuss questions on pages 267-268

**Read:** pp. 276-287: **Moore/Marsden:** CP interest in growth in value of SP during M

**Brief:** *IRMO Moore*

**Assignment:** Review questions on page 286

**Read:** pp. 287-289: **CP Improvements to SP**

### **Week 8: Tort Recovery/Life Insurance/Employee Benefits**

**Read:** 289-307

**Brief:** *IRMO Devlin*

**FC: 780, 2603**

**Read:** pp. 307-332: **Employee benefits**

**Brief:** *IRMO Gilmore*

**Final payment rule**

**Term life insurance vs whole life insurance**

**Vested, unvested, mature, immature pensions**

**Defined benefit vs. defined contribution retirement plans**

**Time rule**

### **Week 9: Employee Benefits (cont.)**

**Read:** pp. 332-340: **disability**

**Brief:** *IRMO Jones; IRMO Stenquist*

**Read:** pp. 340-344; **severance pay**

**Brief:** *IRMO Wright*

**Read:** pp. 344-356: **early retirement, stock options**

**Brief:** *IRMO Hug*

**Read:** pp. 357-372: **business and professional goodwill**

## **Week 10: Education & Licenses/Management**

**Read:** pp. 372-383: **The legislative scheme**

**FC:** 2641, 4320

**Read:** pp. 390-423

**Brief:** *Lezine v Security Pacific, Fields v Michael, Estate of Bray*

**FC:** 1102, 1100

## **Week 11: Management (Fiduciary Duty)/Creditors' Rights**

**Read:** pp. 423-435: **“valuable consideration: vs “fair and reasonable value”**

**Brief:** *IRMO Moore, IRMO Beltran*

**FC:** 721, 1101, 2602

**Read & Brief:** pp. 562-570 *IRMO Rossi*

**Read:** pp. 439-446

**FC:** 910-916, 920, 1000

## **Week 12: Inception and Termination of Economic Community**

**Read:** 447-467: **Lawful marriages and domestic partnerships**

**FC:** 300, 301, 302, 306, 308, 310, 420, 297, 297.5

**Read:** pp. 467-484: **putative marriage**

**Brief:** *Ceja v. Rudolph & Sletten, Inc.*

**Read:** pp. 489-513: **non-marital cohabitation**

**Read:** pp. 516-529: **separation**

**FC:** 771, 70 (**FC 70 is the anti-davis legislation**)

**Brief:** *IRMO Baragry, IRMO Davis*

**Note:** read anti-Davis legislation posted on TWEN effective 01-01-17

## **Week 13: Division of Assets & Liabilities/Quasi-CP/Federal Preemption**

**FC:** 2550, 2601, 2551, 2620-2626, 2552

**Read:** pp. 635-675: **quasi-community property**

**FC:** 125, 63, 2550

**PC:** 101, 66, 102, 28

**Brief:** *IRMO Roesch, IRMO Fransen*

**Read:** pp. 687-702

## **Week 14: Completely Material/Review**

**You may bring your laptops to class for this review.**