Meeting

Memorandum No. 17(1960)

Subject: Study No. 38 - Inter Vivos Rights.

At its September 1959 meeting the Commission last considered this study. Professor Marsh, our consultant on this study, made some general comments objecting to the proposed statute on the grounds (1) that it is in part unconstitutional and (2) that the policy decisions reflected in the proposed statute are bad. The Commission made no final decision as to whether to adopt the proposed recommendation and statute but directed the Executive Secretary to attempt to perfect the recommendation and statute and bring it back again for consideration by the Commission.

At the outset it is suggested that the Commission make a decision as to whether it is going to adopt the approach taken by the consultant or the approach taken in the proposed recommendation and statute. To assist the Commission members in determining the difference between these two approaches Exhibit I (Summary of Conclusions and Recommendation of Consultant) and Exhibit II (Summary of Commission's Recommendation and Statute) have been prepared.

In addition, it would be helpful in the Commission's discussion of the constitutionality of the proposed statute if each Commissioner is able to read these two cases before the meeting: Estate of Thornton, 1 Cal.2d 1, 33 P.2d 1 (1934) and Paley v. Bank of America, 159 Cal. App.2d 500, 324 P.2d 35 (1958). Also, read the portion of the proposed Commission recommendation (Exhibit III) commenting on the constitutionality of the proposed statute.

I believe that the only real question of constitutionality is presented by the recommendation that joinder be required to make an inter vivos transfer of quasi-community property.

Finally, the proposed recommendation (Exhibit III) and statute (Exhibit IV) should be examined. In accordance with the instructions given to the staff, the recommendation has been revised (except that no attempt has been made at this point to incorporate into the recommendation an explanation of the 22 additional sections added to the proposed statute since it was last considered by the Commission). The proposed statute has been considerably revised by the staff and now contains more than twice as many sections as were contained in the proposed statute last considered by the Commission. However, the basic policy decisions have not been changed. Rather, an attempt has been made to deliminate the "bugs" in the proposed statute and to discover and incorporate into the proposed statute some of the existing California statutes that require adjustment if a new class of property -- quasi-community property -- is created. An examination of the revised statute will indicate the difficulty that will be faced in attempting to discover and adjust all the existing statutes that should be adjusted if the Commission determines to create a new class of property. Since we do not have a study which identifies the specific statutes that need adjustment, the revised statute should not be considered to be a final statute -- rather it is one intended to present details of policy for consideration by the Commission at this time. In fact, the Commission may consider it unnecessary or undesirable to amend or enact some of the provisions contained in the revised statute.

It should be kept in mind while studying this material that the

Commission is not treating quasi-community property like community property in all cases. In several important respects (management and control, power of pre-deceased non-acquiring spouse to make testamentary disposition, rights of creditors, for example), quasi-community property is treated differently than community property. Which of the spouses originally acquired the property is the determining fact in determining which spouse has certain rights with respect to quasi-community property. This explains why some of the technical amendments to adjust existing statutory provisions turn out to be somewhat complex.

The following are section by section comments on the revised statute.

Section 1. Amends Section 161 of Civil Code.

Technical amendment.

Section 2. Amends Section 164 of Civil Code.

This section is revised to delete the portion of the section declared unconstitutional in Estate of Thornton and to put the portion relating to presumptions and limitation on actions in a separate section (Sec. 4 of bill).

In addition the section has been revised to indicate specifically what is required as far as domicile is concerned in order that property be community property. As revised, the section provides that property "acquired during marriage by a married person while domiciled in this State" is community property and that "in determining the domicile of a wife under this section, the court shall not apply a rule of law or presumption that the domicile of a wife is that of her husband. The provision abolishing the rule of law or presumption will be applicable where only one of the spouses moves to California.

Under the revised section, if a husband is domiciled in California, his acquisitions are community property even though his wife may have a separate domicile. If the wife is domiciled in another state, the nature of the marital interests in her acquisitions will be determined by the law of her domicile. Objection was made to the previous version of the section because the domicile requirement was not clear. This objection has been met by deleting the words "either husband or wife, or both" and substituting "a married person."

In considering this question, the fact that the courts use the "tracing" principle to determine the nature of marital interests in property acquired should be kept in mind. Spouses have the same marital interests in property purchased as they had in the funds used to purchase the property -- absent some express or implied agreement to the contrary.

In connection with this section, the Commission should consider the following problem. The husband (H) moves to California and is domiciled here. The wife (W) remains domiciled in New York but intends to move to California to join her husband in six months (presumption abolished that domicile of wife is that of her husband so wife remains domiciled in New York). A minor child joins H in California and is injured here. What are the marital rights in the cause of action given H and W under Section 376 of the Code of Civil Procedure? The purpose of this section is to give the marital community a right of action for the injury to the minor child of the spouses and under the existing law the recovery would be community property. What would the marital rights in a cause of action for the wrongful death of the minor child be -- given the same circumstances as in the above problem?

When the Commission last considered this study, the Commission voted to insert the provision concerning the rule of law or presumption that the domicile of the wife is that of her husband. At the same time, the Commission voted to insert the introductory phrase "Subject to Section 164.3 of this code."

See recommendation pages 9-10.

Section 3. Creates Section 164.1 of Civil Code.

This section creates a new class of property designated as quasi-community property. The revisions are consistent with those made in the definition of community property contained in revised Section 164. In addition, provisions have been inserted to present specific policy questions to the Commission.

First, the section has been revised so that community property acquired in another community property state does not become quasi-community property when the spouses become domiciled in this state, rather it remains community property.

Second, the word "hereafter" has been inserted in the section to limit its application to spouses both of whom hereafter become domiciled in this state.

Third, a provision has been inserted to provide that, absent a specific statutory provision to the contrary, quasi-community property shall be considered and treated the same as separate property. By listing all the contrary statutory provisions in this new provision, the person using the statute will be able to determine without great difficulty whether there is a special provision applicable in a particular case.

See recommendation pages 5-9.

Section 4. Creates Section 164.3 of Civil Code.

This section contains the presumptions and limitation on actions formerly contained in Section 164. The substance of the former law has been retained.

Sections 5 and 6. Create two new sections, Section 172c and 172d of the Civil Code.

Form has been improved from previous version of statute.

These sections give to the spouse who originally acquired quasi-community property the management and control of such property. But such spouse cannot make a transfer by gift or for value without joinder of the other spouse and, if such a transfer is made, it can be set aside during the lifetime of both spouses or, after the death of the acquiring spouse, the other spouse can claim his statutory interest in the property despite the fact it has been transferred.

The conclusive presumption that the sole lease, contract, mortgage or deed of the spouse holding record title to quasi-community real property is valid has been made applicable to the wife as well as the husband.

The following is suggested as an alternative phrasing of subsection (3) of Section 172d:

> (3) The sole lease, contract, mortgage or deed of the spouse holding record title to such real property, to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation is as valid and effectual as if the property affected thereby was the sole and absolute property of the spouse executing such lease, contract, mortgage or deed.

Section 172c is based on Section 172 of the Civil Code. Section 172d is based on Section 172a of the Civil Code.

See recommendation, pages 11-12.

Sections 7 and 8. These sections amend Sections 1238 and 1265 of the Civil Code.

These sections treat quasi-community property like community property for the purposes of declaration of homestead. See also, Section 21 of bill, amending Section 661 of Probate Code; Section 22 of bill, amending Section 663 of Probate Code; Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code, various sections of which chapter are amended or created in Sections 24 through 30 of the bill; and Section 31 of bill, amending Section 1529 of Probate Code. The provisions listed also relate, at least in part, to the declaration of homestead provisions.

See recommendation, page 12.

Section 9. Amends Section 143 of Civil Code.

It is submitted that quasi-community property should be considered a separate class for the purpose of subjecting property to the support and education of children.

Section 10. Amends Section 146 of Civil Code.

The amendment of this section provides for the treatment of quasi-community property the same as community property in case of a divorce.

This means that if the decree is rendered on any other ground than that of adultery, incurable insanity or extreme cruelty, the quasi-community

property will be divided equally between the spouses. Thus when a woman's separate property in New York becomes quasi-community property here and the woman obtains a divorce for desertion by her husband, one-half of the former separate property of the wife will be given to the deserting husband.

Our consultant recommends that quasi-community property not be treated like community property in case of a divorce, but that the court be given the power to divide the property as it "may deem just."

See recommendation, page 12.

Sections 11 and 12. Amend Sections 148 and 149 of Civil Code.

These amendments are technical adjustments made desirable by the amendment of Section 146 of the Civil Code.

Section 13. Amends Section 21 of Probate Code.

The proposed amendment treats quasi-community property like community property so far as authorizing disposition by will is concerned. However, different limitations apply under other provisions of the bill to testamentary disposition of quasi-community property than apply to community property.

Section 14. Creates Section 201.4 of Probate Code.

This section provides for termination of the quasi-community property interest of the non-acquiring spouse upon his death prior to that of the spouse who acquired the property.

See recommendation, page 13.

Section 15. Amends Section 201.5 of Probate Code.

This provision deals with the disposition of quasi-community property upon the death of the spouse who originally acquired it, whether or not such spouse is domiciled in this State at the time of his death.

Our consultant is somewhat concerned about one application of the proposed amendment. Take this situation: H acquires property during marriage while domiciled in New York; he and his wife then become domiciled in California and H acquires personal property here with funds brought from New York; H then leaves his wife and becomes domiciled in Florida but the wife remains domiciled in California. H dies leaving a will purporting to give the personal property to his son A. The personal property is now situated in Florida. What if the personal property is stock in a California corporation? This problem should be considered in connection with the problem presented under Section 16, below.

The descriptive language of the property to which Section 201.5 applies has been deleted and replaced by the term "quasi-community property."

Section 16. Amends Section 201.6 of Probate Code.

Section 201.6 is amended to exclude quasi-community property therefrom. Thus, Section 201.5 rather than Section 201.6 will be applicable in such a situation as the following: H acquires property during marriage while domiciled in New York; he and his wife then become domiciled in California and H acquires real property here with the funds brought from New York; H then leaves his wife and becomes domiciled in Florida but the wife remains domiciled in California; H dies leaving a will purporting to give the real property to his son A. Since the wife remained domiciled here California continues to have a substantial interest in treating the property as quasi-

community property rather than relegating the wife to such right to claim against H's will as she would have under the law of Florida.

For a problem situation somewhat similar to the situation discussed in the above paragraph, see the comment under Section 15.

Section 17. Amends Section 228 of Probate Code.

The amendment makes Section 228 applicable to quasi-community property of the decedent and a previously deceased spouse originally acquired by the previously deceased spouse.

See recommendation, pages 14-15.

Section 18. Repeals Section 201.8 of Probate Code.

This section is superseded by proposed Sections 172c and 172d which go considerably further by way of limiting the power of the acquiring spouse to make an effective inter vivos transfer of quasi-community property than does Probate Code Section 201.8 which was enacted upon the recommendation of the Commission in 1957.

Our consultant believes that the policy embodied in Section 201.8 (Probate Code) is sound and should not be changed as in Sections 172c and 172d of proposed bill.

Section 19. Amends Section 296.4 of Probate Code.

In case of a simultaneous death of the husband and wife, the amendment to this section will treat quasi-community property the same as community property, rather than treating quasi-community property as the separate property of the spouse who originally acquired it.

Section 20. Amends Section 601 of Probate Code.

It is submitted that the inventory and appraisement of the estate of a decedent filed by the administrator or executor should show the quasi-community property as well as the community and separate property.

Since different treatment is provided to quasi-community property, depending upon whether the decedent was the spouse who originally acquired such property, the amendment requires that the fact as to which spouse originally acquired such property also be shown.

Section 21. Amends Section 661 of the Probate Code.

These are technical amendments required because of the adjustment of Section 201.5 and because a new class of quasi-community property is created.

Section 22. Amends Section 663 of Probate Code.

This is a technical amendment required because the bill gives a right to select a homestead inter vivos out of quasi-community property.

Section 23. Amends Section 172b of the Civil Code.

Under Sections 172c and 172d of the proposed bill one spouse is given management and control of quasi-community property and in certain circumstances the joinder of the other spouse is required for a transfer of the property. It is submitted that it is desirable to provide a procedure for dealing with and disposing of quasi-community property where one or both of the spouses is incompetent. Section 172b has been amended to have a built in reference to this procedure which is contained in Chapter 2A (commencing with

Section 1435.1) of Division 4 of the Probate Code.

Section 24. Amends Section 1435.1 of Probate Code.

The amendments to this section make technical changes so that the procedure prescribed therein will be applicable to quasi-community property as well as community property.

Section 25. Amends Section 1435.4 of the Probate Code.

Technical amendment.

Section 26. Amends Section 1435.8 of Probate Code.

Technical amendment.

Section 27. Amends Section 1435.12 of Probate Code.

Technical amendment.

Section 28. Amends Section 1435.15 of Probate Code.

Technical amendment.

Section 29. Amends Section 1435.16 of Probate Code.

Technical amendment.

Section 30. Creates Section 1435.17a of Probate Code.

This new section is the same in substance as the similar provisions in Section 1435.17 of the Probate Code with the necessary adjustments to cover quasi-community property.

Section 31. Amends Section 1529 of Probate Code.

Technical amendment. Chapters referred to are chapter entitled Sales, Mortgages, Leases and Conveyances (Guardian and Ward) and chapter entitled Powers and Duties (Conservatorship).

Section 32. Amends Section 1557.1 of Probate Code.

This amendment is desirable if we are to permit the purchase of property which is to have the same marital interests as the money used to purchase it.

Sections 33 and 34. Amend Sections 15301 and 15302 of Revenue and Taxation Code.

Adjustments necessary to treat quasi-community property like community property for purposes of California gift tax.

See recommendation, page 15.

Section 35. Adds Section 15303.5 to Revenue and Taxation Code.

Exempts from gift tax a transfer of quasi-community property into community property.

See recommendation, page 15.

Section 36. Amends Section 13555 of Revenue and Taxation Code.

Makes imposition of inheritance tax on transfers of quasi-community property upon the death of the acquiring spouse inapplicable upon the death of the nonacquiring spouse.

See recommendation, pages 15-16.

Section 37. Amends Section 13552.5 of Revenue and Taxation Code.

Technical adjustment because Section 201.8 is repealed.

Section 38. Amends Section 13554.5 of Revenue and Taxation Code.

Adjustment to conform to proposed revision of Section 13555 -- that is to exempt from the tax transfers made to the spouse who originally acquired the property by the other spouse.

Section 39. Amends Section 682 of Civil Code.

Adjustment to recognize new class of property.

Section 40. Amends Section 686 of Civil Code.

Adjustment to recognize new class of property.

Section 41. Amends Section 687 of Civil Code.

Technical adjustment.

Section 42. Creates Section 687.5 of Civil Code.

Recognizes new class of property and is comparable to Section 687, above.

Section 43. Not to be codified.

Savings clause.

Respectfully submitted,

John H. DeMoully
Executive Secretary

"EXHIBIT I"

Summary of Commission's Recommendation and Statute

NEW CLASS OF PROPERTY

A new class of property is created -- quasi-community property. Generally speaking, separate property that would have been community property if acquired while the spouses were domiciled in this state becomes quasi-community property when both spouses become domiciled in this state and remains quasi-community property so long as either spouse remains domiciled in this state.

LAW APPLICABLE TO QUASI-COMMUNITY PROPERTY GENERALLY

A number of new statutory provisions are recommended to provide the substance of the law that is to apply to quasi-community property in particular cases. There is, however, a general provision in the proposed statute that indicates that quasi-community property is to be treated as separate property in cases not covered by a specific statutory provision.

MANAGEMENT AND CONTROL GENERALLY

Under the proposed statute, the spouse who originally acquired quasi-community real and personal property has the management and control of such property.

The proposed statute does NOT treat quasi-community property the same as community property so far as management and control is concerned. Under existing California law, the husband has the management and control of the general community personal property and of all community real property. On the other hand, the wife has the management and control of the community property money earned by her until it is commingled with other community property. Each spouse,

under the existing law, has the management and control of his 201.5 property because it is his separate propety.

The result of the proposed statute is to preserve the existing law that applies to 201.5 property as far as management and control generally is concerned.

Consultant recommends that no change be made in existing law applicable to the management and control of 201.5 property.

RIGHTS OF CREDITORS

There does not appear to be any specific provision in the proposed statute relating to the rights of creditors.

Consultant recommends that no change be made in existing law applicable to rights of creditors in 201.5 property.

INTER VIVOS TRANSFERS

The most significant changes in the existing law are those recommended to be made with respect to inter vivos transfers.

The proposed statute provides in substance that the spouse who originally acquired quasi-community property is subject to the same limitations with respect to inter vivos transfers of such property as are applicable to the husband with respect to community property.

Gifts.

Thus, any gift of quasi-community property -- even an outright and irrevocable gift -- without written consent of the other spouse will be voidable at the election of the other spouse and the entire property can be recovered

during the lifetime of both spouses. After the death of the transferring spouse, the other spouse can only recover one-half of the property transferred. The consultant is of the opinion that the Commission's recommendation is bad from a policy standpoint and is subject to serious constitutional objections. The consultant prefers the 1957 legislation adopted upon recommendation of the Commission which requires consent to a gift only in case of a gift which is in effect a "will substitute" and merely gives the spouse a nonbarrable which can be claimed after the death of the transferring spouse and only if the other spouse survives the transferring spouse.

Transfers for value.

The proposed statute requires joinder of the other spouse in any instrument by which real property is leased for a period longer than one year or is sold, conveyed or encumbered. In the absence of joinder, the other spouse during the lifetime of both spouses can recover all the real property conveyed or, after the death of the transferring spouse, can recover one-half of the real property.

The effect of the proposed statute on transfers for value of personal property is concerned only with furniture and household furnishing and wearing apparel. It will require joinder in a transfer or encumbrance for value of such personal property.

The same limitations on setting aside a transfer as apply to community property will, generally speaking, apply to a transfer of quasi-community property.

Our consultant objects to both the policy and the constitutionality of the proposed statutory provisions on inter vivos transfers for value.

DECLARATION OF HOMESTEAD

The proposed statute provides that real property should be treated like

community property for purpose of homestead provisions. The consultant also recommends this.

DIVISION ON DIVORCE

The proposed statute provides that quasi-community property should be treated the same as community property in case of a divorce. For example, if a wife has separate property in another state and she and her husband become domiciled in California and the separate property becomes quasi-community property, upon divorce granted to the wife for desertion by the husband, one-half of the former separate property of the wife is required to be granted to the deserting husband. Under the present California law, 201.5 property is considered separate property and the court has no power to divide it upon a divorce of the spouses. Our consultant recommends that a special provision dealing with Section 201.5 property authorize the court in the case of divorce for any cause to divide such property in such manner as the court "deems just."

GIFT TAX

The proposed statute treats quasi-community property like community property for purposes of the California gift tax. Our consultant recommends this with certain modifications.

OTHER PROVISIONS

A number of other provisionsare included in the proposed statute to cover problems that result from making a new class of property and from giving the other spouse a present interest in the property.

(#38) "EXHIBIT II"

SUMMARY OF CONCLUSIONS AND RECOMMENDATION OF CONSULTANT

Study #38 - Inter Vivos Rights

MANAGEMENT AND CONTROL.

Recommendation - No change in existing law relating to 201.5 property as far as the right to management and control is concerned. Under existing law, each spouse has management and control of his 201.5 property.

Reason: Now husband controls his 201.5 property as his separate property and under changed statute husband would manage and control it as quasi-community property. But this change is not desirable as far as wife is concerned because if wife has 201.5 property as a matter of policy she should continue to manage and control it; any other rule would be universally ignored and would probably be unconstitutional.

RIGHTS OF CREDITORS.

Recommendation: No change in existing law relating to 201.5 property as far as rights of creditors are concerned.

Reason: Change of the liability rules relating to Section 201.5 property from those concerning "separate property" to those concerning the two types of community property (general community property and general community property other than the wife's earnings) would make little difference with respect to the husband's Section 201.5 property.

As far as 201.5 property of the wife is concerned, the change would probably make some of the wife's 201.5 property liable for the debts of her husband - but the rules determining the liability of the wife's earnings and property derived therefrom are so fragmentary, ambiguous and irrational that to make them applicable to her Section 201.5 property would merely extend the area of confusion.

INTER VIVOS TRANSFERS.

(1) Gratuitous.

Recommendation: No change in existing law.

Reason: The 1957 legislation required consent to a gift only in case of gifts which are in effect "will substitutes." The abandonment of that decision in favor of one which would require the consent of the other spouse to all gifts of Section 201.5 property in order to cut off the nonbarrable share of the other spouse would not seem justified.

(2) For value.

Recommendation: No change in existing law.

Reason: Insufficient justification for imposition of the requirement of joinder by the other spouse in any conveyance for value of Section 201.5 real property.

Amendment relating to Section 201.5 personal property would need to be concerned only with furniture and wearing apparell etc., and such an amendment would probably not be of sufficient importance to justify its enactment.

DECLARATION OF HOMESTEAD.

Section 201.5 real property should be treated like community property

for purpose of homestead provisions.

Reason: This is especially necessary since under the 1957 amendment to Section 661 of the Probate Code, it is treated like community property for the purpose of the selection of a probate homestead by the court after the death of either spouse.

DIVISION ON DIVORCE.

Recommendation: There should be a special separate provision dealing with Section 201.5 property authorizing the court in the case of a divorce for any cause to divide such property in a manner which the court "deems just."

Reason: Treating this like community property would create injustice because in some cases, like desertion, it would have to be divided 50-50. Under existing law, Section 201.5 property is treated like separate property and the court has no power to divide it upon a divorce of the spouses and this is not just either.

GIFT TAX.

Recommendation: A gift of Section 201.5 property should be treated as a gift of one-half by each spouse at the election of both of the spouses, and, with this modification, Section 201.5 property should be treated as community property for the purpose of the gift tax since it is so treated for the purpose of the inheritance tax.

REPEAL OF 1917 AMENDMENT TO SECTION 164 OF THE CIVIL CODE

Recommendation: Repeal that portion of Section 164 of the Civil Code which purports to transform Section 201.5 property into community property.

Reason: Leads only to confusion. 1957 amendment and proposed amendments will deal with all rights in such property that are likely to raise any problems.

EXHIBIT III

(38)

Revised - February 10, 1960
August 20, 1959

RECOMMENDATION OF CALIFORNIA LAW REVISION COMMISSION

relating to

Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere

Background

Married persons who move to California often bring with them property acquired during marriage while domiciled elsewhere. Such property is in some cases retained in the form in which it is brought to this State; in others, it is exchanged for real or personal property here. Other married persons who never become domiciled in this State purchase real property here with funds acquired during marriage while domiciled elsewhere. The Legislature and courts of this State have long been concerned with the problem of what rights, if any, the spouse of the person who originally acquired such property should have therein, or in property for which it is exchanged, both during the lifetime of the acquiring spouse and upon his death.

In 1957 the California Law Revision Commission made a number of recommendations as to what the rights of a surviving spouse in such property should be upon the death of the spouse who originally acquired the property. The bill which embodied these recommendations was passed by the Legislature and signed by the Governor, becoming Chapter 490 of the Statutes of 1957. At the same time the Commission requested and was

Revisions are shown by underscored material for new material and by bracketed and strike-out type for deleted material.

given authority to make a study to determine what the inter vivos rights of one spouse should be in property acquired by the other spouse during marriage while domiciled outside California.* This recommendation states the conclusions of the Commission on this subject.

The California Legislature's first attempt to deal with property brought here by married persons domiciled elsewhere at the time of its acquisition took the form of a 1917 amendment to Section 164 of the Civil Code which purported to convert such property into community property if it would not have been separate property had the owner been domiciled in California when it was acquired. However, in Estate of Thornton, decided in 1933, the California Supreme Court held the 1917 amendment unconstitutional under the due process clause of the Fourteenth Amendment to the United States Constitution on the ground that a spouse's ownership of property acquired while domiciled elsewhere could not be substantially modified during his lifetime merely because he moved to California and brought the property with him. Although the 1917 amendment has never been repealed, it has been tacitly assumed by both the bar and the courts to be a dead letter since Estate of Thornton was decided.

Legislation was enacted in 1935 and in 1957 which, in effect, treats property acquired by a married person while domiciled elsewhere substantially like community property upon his death. The constitutionality of this legislation has been tacitly assumed by both the bar and the courts because of the virtually plenary power which a State has to dispose of the assets of a decedent's estate. However, such property is generally

* Res. ch. 202, Statutes of 1957.

considered to be the separate property of the acquiring spouse prior to his death except insofar as Section 201.8 of the Probate Code, enacted in 1957, places limitations on the owner's power to make "will substitute" gifts of such property during his lifetime. The question with which this recommendation is principally concerned is whether such property should be treated like community property for at least some purposes during the lifetime of the acquiring spouse.

Basic Policy Considerations

It is arguable that all property acquired during marriage other than by gift, devise, bequest or descent should be treated substantially like community property whenever the question arises in a California court, without regard to where the acquiring spouse is domiciled at the time of acquisition or at the time of suit. Such an argument would run about as follows: The underlying theory of the community property system is that husband and wife are essentially a partnership insofar as the acquisition of property during marriage is concerned -- that both spouses contribute in substantial part to the effort by which such property is accumulated regardless of which of them is formally the recipient of the property. This theory is logically applicable to any property acquired by any married couple, without regard to where either spouse was domiciled at the time of acquisition. To take an example, suppose that a man and woman are married in New York and live there for 20 years, that they then move to California and live for a second 20 years and that at the end of the 40-year period they have $100,000 worth of property which was accumulated out of the the husband's earnings during the marriage. The wife's contribution to

the accumulation of the $100,000 would in all probability have been no greater during the second 20-year period than during the first. Why, then, should a California court in which the question arises treat the wife differently insofar as the property acquired before the parties moved to California is concerned than it treats her with respect to property acquired thereafter? To put the matter another way, why should she be treated differently than a wife who is otherwise similarly situated except that she lived in this State throughout her 40-year marriage.

It is true, of course, that under the law of New York the husband's earnings during the first 20-year period are regarded as his separate property. This was thought by the court which decided Estate of Thornton to preclude California from treating such earnings as community property. But solely as a matter of policy (leaving the constitutional question for discussion below), why should a State which has embraced the community property system view the equitable or moral claim of the wife to a share of her husband's earnings as turning upon where the parties were living when the joint and cooperative efforts by which the property was accumulated were expended?

The Law Revision Commission is not prepared to accept this argument in its most extreme form -- that is, to recommend that in all cases coming before the courts of this State property acquired during marriage be treated like community property whether or not the persons involved were ever domiciled in this State. The Commission believes that the argument is persuasive, however, as applied to those married persons in whom this State has a substantial and legitimate governmental

interest by virtue of their having become domiciled here after the property was acquired. Accordingly, it recommends that property acquired during marriage by a person who is then domiciled elsewhere be treated substantially like community property for a number of purposes (specified below) if and when the owner and the person to whom he was married at the time of its acquisition both become domiciled in California and that such property continue to be so treated so long as either of the spouses remains domiciled in California.

Proposed Legislation

The Commission does not recommend, however, that the Legislature undertake to accomplish this objective by the enactment of a single statutory provision similar to the 1917 amendment to Civil Code Section 164. Rather, it recommends that the various problems likely to arise with respect to such property be separately considered and that several narrowly drawn statutes dealing severally and specifically with these problems be enacted. Thus, the Commission makes the following recommendations:

1. A new Section 164.1 should be added to the Civil Code, providing that all real property situated in this State and all personal property wherever situated heretofore or after (a) acquired during marriage by [~~either husband or wife or both~~]a married person while domiciled outside of this State which is not community property but which would have been the community property of the person acquiring it and his spouse had [~~such~~] the person acquiring it been domiciled in this State at the time of its acquisition or (b) acquired in exchange for real or personal property wherever situated and so acquired becomes quasi-community property when, during such marriage, both

spouses become domiciled in this State and, subject to the provisions of proposed new Sections 201.4 and 201.5 of the Probate Code (which provide for the termination of quasi-community property interests upon the death of the nonacquiring spouse and the acquiring spouse, respectively), remains quasi-community so long as either spouse remains domiciled in this State. Of course, nothing in the proposed statute is intended to or will prevent the husband and wife from converting quasi-community property into community property or into separate property by an express oral or written agreement or an implied agreement between the spouses evidenced by their conduct. [Such a statute]

Proposed Section 164.1 would establish a new and distinctively named category of marital property in California. However, the substantive effect of the proposed section [~~164.1~~] is very limited inasmuch as most of the rights and interests of various persons in quasi-community property are established by the several statutory provisions which are discussed below. Under these statutes quasi-community property is treated for many purposes like community property; in other respects, however, it is not. This particularized approach to the problem differs substantially, of course, from that made in the very broad 1917 amendment to Section 164 of the Civil Code.

It should be noted in passing that proposed Civil Code Section 164.1 is narrower than the 1917 amendment to Section 164 in several important respects: (1) Section 164.1 does not apply to real property in California acquired by a married person domiciled elsewhere unless and until such person and his spouse become domiciled in California;* (2) under Section 164.1 the

* It should be noted, however, that in its first opinion in Estate of Thornton, the Supreme Court, by way of dicta, said: "Section 164 of the Civil Code obviously can apply only where a domicile has been acquired in this state." In re Thornton's Estate, 19 P.2d 778, 779 (1933), rev'd on rehearing sub nom. Estate of Thornton, 1 Cal.2d 1, 33 P.2d 1 (1934).

property in question is quasi-community property only so long as at least one of the spouses remains domiciled in this State whereas the transmutation of separate property into community property effected by the 1917 amendment was presumably intended to be permanent; and (3) under neither Section 164.1 nor Probate Code Section 201.5 is the nonacquiring spouse given testamentary power over quasi-community property.

Why should a new category of property, called "quasi-

community" property, be established? Under California law the property with which this recommendation is concerned is not, of course, either separate property nor community property. It is not separate property within the meaning of Sections 162 and 163 of the Civil Code because it includes property acquired during marriage other than by gift, bequest, devise or descent. It is not community property within the meaning of Section 164 of the Civil Code (apart from the 1917 amendment) because the courts of this State have held that Section 164 does not apply to property acquired by married persons while domiciled outside of this State. Yet from time to time our courts are faced with the question whether this kind of property should be treated as separate property or as community property within the meaning of various statutes in which those terms are used. In such cases the question has usually been resolved by treating the property as separate property simply because it is not community property. Many such decisions have been based on superficial analysis and have failed to consider carefully whether the purpose of the statute involved would have been better effectuated by treating the property as community property. The Law Revision Commission believes that adequate analysis of legal problems involving property brought here by married persons is impossible unless it is recognized that such property is different from both separate and community property. The Commission has concluded that such recognition will be best achieved by giving such property an independent status and a distinctive name. Having concluded that property of this character should be treated for many purposes substantially like community property during the lifetime of the acquiring spouse, the Commission recommends

that it be defined as "quasi-community property."

2. A technical amendment should be made to Section 161 of the Civil Code authorizing a husband and wife to hold property as quasi-community property.

3. Section 164 of the Civil Code, which defines community property, should be amended in [~~three~~] four respects:

(a) The 1917 amendment should be repealed.

(b) Section 164 should define as community property only real property situated in this State and personal property wherever situated which is acquired during marriage by [~~persons~~] a married person domiciled in this State. The Commission does not believe that California can properly assert the right to determine the nature of marital property interests acquired in real property located outside of this State. Nor does the Commission believe that California should undertake to give a married person a community property interest in property acquired by his spouse unless the acquiring spouse is domiciled in California at the time of acquisition, even if the property in question is real property situated in this State.* California does not,

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* Under the legislation recommended by the Commission, the character of real property acquired in this State in exchange for services will be determined according to the marital property system of the state or country in which the spouse rendering the services is domiciled. The Commission sees no justification for making a distinction as to the marital interests in real property acquired in this State by a person domiciled in another state merely because the property is acquired in exchange for services instead of by purchase with money paid for services rendered in California.

in the opinion of the Commission, have sufficient interest in the marital property rights of nondomiciliaries to justify the application of its community property system to them as against the marital property system of the state or country in which they live. Rather, our courts should continue to apply in such cases California's long-standing policy of giving the nonacquiring spouse the same marital property interest in property acquired here as he or she had in the consideration paid for the property.

(c) A provision should be added to Section 164 to abolish the rule of law or presumption that the domicile of the wife is that of her husband. The Commission believes that separate domiciles of husband and wife should be recognized for the purpose of determining marital property interests and that the law of the domicile of each spouse should govern the marital property interests in his acquisitions.

(d) The provisions of Section 164 relating to presumptions and to the period of limitations on actions to establish that real property acquired by a married woman is community property should be transferred to a new Section 164.3 of the Civil Code. This will not only simplify Section 164 but will also give the provisions relating to presumptions an independent status, thus making them applicable in all cases, not merely in those cases in which the property was acquired by a married person while domiciled in this State.

4. New Sections 172c and 172d of the Civil Code should be enacted to subject the spouse who originally acquired quasi-community property to the same limitations with respect to inter vivos transfers of such property as are applicable to the husband in respect of community property. In its deliberations on this matter the Commission considered whether the husband should be given the same powers of management and control with respect to all quasi-community property, including that originally acquired by the wife, as he enjoys with respect to all community property. To have so provided would, of course, have made quasi-community property more like community property than is the case under proposed Sections 172c and 172d. However, to have given the husband management and control of property originally acquired by the

wife would have involved a more direct clash with Estate of Thornton than will be precipitated by Sections 172c and 172d (see discussion of their constitutionality infra), does not seem to be necessary to provide adequate protection of the husband's marital property rights, and is a more substantial interference with the inter vivos rights of the wife in such property than the Commission believes would be justifiable.

It will be noted that proposed Sections 172c and 172d go considerably further by way of limiting the power of the acquiring spouse to make an effective inter vivos transfer of quasi-community property than does Probate Code Section 201.8 which was enacted upon the recommendation of the Commission in 1957. Probate Code Section 201.8 is, therefore, repealed by the legislation proposed by the Commission.

5. Sections 1238 and 1265 of the Civil Code should be amended to treat quasi-community property like community property insofar as declared homesteads are concerned. Since in the eyes of a community property state quasi-community property is regarded as having been accumulated through the joint efforts of the spouses it is logical to treat it for purposes of creating a homestead like other property held by them in one form or another of common ownership rather than like separate property. The 1957 legislation recommended by the Commission similarly revised Section 661 of the Probate Code which governs the creation of probate homesteads.

6. Section 146 of the Civil Code should be amended to authorize a divorce court to treat quasi-community property like community property for purposes of division on divorce. Here again the property in question, having been acquired during marriage, is more like community property than separate property in the eyes of a community property state.

7. A new Section 201.4 of the Probate Code should be enacted to provide formally for the termination of the community property interest of the nonacquiring spouse upon his death prior to that of the spouse who acquired the property. No such provision has been necessary heretofore inasmuch as the nonacquiring spouse has no interest in quasi-community property during his lifetime if he predeceases the acquiring spouse (save some minimal interest may be thought to exist by virtue of the fact that Probate Code Section 201.8 inhibits the power of the acquiring spouse to make "will substitute" inter vivos transfers of such property). The effect of the new legislation herein proposed is to give the nonacquiring spouse a substantial "bundle of rights" in such property. It seems necessary or at least desirable to provide by statute for the termination of such rights upon his death. Probate Code Section 201.4 does this by restoring the property to its status as the separate property of the acquiring spouse.

8. Section 201.5 of the Probate Code should be amended to limit it in terms to the disposition of quasi-community property upon the death of the spouse who originally acquired it [~~.~~] , whether or not such spouse is domiciled in this State at the time of his death. [~~Neither this amendment nor~~] The substitution of the term "quasi-community property" for the lengthier provision heretofore necessary to define the scope of Section 201.5 is not intended to make any substantive change.[~~therein~~]

9. Section 201.6 of the Probate Code should be amended to exclude quasi-community property therefrom. Thus, Section 201.5 rather than Section 201.6 will be applicable in such a situation as the following: H acquires property during marriage while domiciled in New

York; he and his wife then become domiciled in California and H acquires real property here with the funds brought from New York; H then leaves his wife and becomes domiciled in Florida but the wife remains domiciled in California; H dies leaving a will purporting to give the real property to his son A. Since the wife remained domiciled here California continues to have a substantial interest in treating the property as quasi-community property rather than relegating the wife to such right to claim against H's will as she would have under the law of Florida.

10. Probate Code Section 228 should be amended to make it applicable to quasi-community property of the decedent and a previously deceased spouse originally acquired by the previously deceased spouse. Here again the property in question, having been acquired during marriage, is in the eyes of a community property state more analogous to community property, to which Probate Code Section 228 is applicable, than it is to separate property which is governed in this respect by Probate Code Section 229. The Commission recommends, however, that neither Section 228 nor Section 229 be made applicable when the nonacquiring spouse predeceases the spouse who acquired the property. In this situation the later-dying spouse originally acquired the property as his then "separate" property and the Commission does not believe that the collateral heirs of the nonacquiring spouse should be given any rights in it. To put the matter another way, the basic purpose of the legislation herein proposed and that enacted in 1957 is to give the nonacquiring spouse most of the benefits of California's community property system. This purpose does not require that the relatives of the nonacquiring

spouse also be given the benefits of that system .

11. Sections 15301 and 15302 of the Revenue and Taxation Code should be amended to treat quasi-community like community property for purposes of the California gift tax. Since in the eyes of a community property state the nonacquiring spouse is regarded as having contributed substantially to the acquisition of such property, the same reasons which justify exemption of one-half of the property from tax in the case of a gift of community property by one spouse to the other would appear to be applicable to a similar gift of quasi-community property. Analogous reasoning justifies treating a gift of quasi-community property to a person other than either of the spouses as being made one-half by each spouse.

12. A new Section 15303.5 should be added to the Revenue and Taxation Code to exempt from the gift tax a transfer of quasi-community property into community property. The effect of the several recommendations made herein is to treat quasi-community property substantially like community property. This being so, the change made in the "bundle of rights" of either spouse by the conversion of the property into true community property would appear too insignificant to justify a gift tax.

13. Section 13555 of the Revenue and Taxation Code, which provides for the imposition of the inheritance tax on transfers of quasi-community property upon the death of the acquiring spouse, should be amended to make it inapplicable upon the death of the nonacquiring spouse. This reflects the distinction taken by Sections 201.4 and 201.5 of the Probate Code with respect to the effect of the death of the

nonacquiring spouse and of the acquiring spouse, respectively, on quasi-community property. Where the nonacquiring spouse dies first the property simply reverts to its original status as separate property by virtue of Section 201.4. This termination by death of the "bundle of rights" of the nonacquiring spouse does not appear to the Commission to be a substantial enough enhancement of the property rights of the surviving acquiring spouse to warrant the imposition of the inheritance tax.

14. Section 13554.5 of the Revenue and Taxation Code, which provides for the imposition of the inheritance tax on certain inter vivos transfers, should be amended insofar as it applies to quasi-community property to conform to the proposed revision of Section 13555 - that is, to exempt from the tax transfers made to the spouse who originally acquired the property by the other spouse.

Constitutionality of Proposed Legislation

The Law Revision Commission recognizes, of course, that doubt may be expressed by some as to whether the legislation which it proposes is constitutional in light of Estate of Thornton. This question can only be answered, the Commission believes, by analyzing separately each of the statutes which it recommends to determine whether the application of that statute to property acquired by a married person while domiciled elsewhere [~~and brought to California~~] when he moves here would be held invalid by the courts of this State or of the United States.

It seems too clear for argument that no substantial due process question would be presented by the enactment of proposed Civil Code

Section 164.3, Probate Code Section 201.4 or Revenue and Taxation Code Section 15303.5, by the proposed amendment of Civil Code Sections 161 and 164, Probate Code Sections 201.5, 201.6 and 228 or Revenue and Taxation Code Sections 13555, 13552.5, 13554.5, 15301 and 15302 or by the repeal of Probate Code Section 201.8. In none of these cases would a substantial disturbance of "vested rights" be involved. Nor, does the Commission believe, is it likely that any or all of these statutes would be held to violate the principle of equal protection of laws insofar as they treat quasi-community property differently than separate property or community property for specific purposes. The fact that quasi-community property is acquired during marriage by one domiciled outside this State and that the owner subsequently becomes domiciled in California differentiates such property from either separate property or community property and thus provides a rational basis for the classifications made in the statutes recommended by the Commission.

Little if any more substantial constitutional questions would apeear to be raised by the proposed amendment of Civil Code Sections 146, 1238 and 1265. While California does not presently divide separate property upon divorce other states do so and no one appears to have questioned the constitutionality of such state action. Similarly, while California has historically distinguished between community property and separate property insofar as the devolution upon death of declared homesteads is concerned, no reason appears why the State could not, consistently with due process, abolish this distinction and treat all types of property the same for this purpose. Treating quasi-community property like community property is merely a step in this direction. And

here, again, there would appear to be sufficient factual differences between separate property and quasi-community property to warrant the distinctions taken between them in the legislation proposed by the Commission insofar as the principle of equal protection of the laws is concerned.

There remains the question of the constitutionality of proposed new Sections 164.1, 172c and 172d of the Civil Code. These sections, taken together, establish the most substantial restrictions upon the ownership of quasi-community property during the lifetime of the acquiring spouse. Perhaps they would have been regarded as unconstitutional by the court which decided Estate of Thornton. But Estate of Thornton is the only case of which the Commission is aware on the point which it decided. In Paley v. Bank of America, 159 Cal. App.2d 500, 324 P.2d 35 (1958) the court held that Section 201.5 of the Probate Code (as it read prior to 1957) did not give a pre-deceased spouse testamentary power over property of the surviving spouse which would be quasi-community property under the Commission's recommendation. However, the court went on to say, following the reasoning of Estate of Thornton, that such a statute would be unconstitutional. The Commission does not, however, recommend that a pre-deceased spouse be given testamentary power over quasi-community property originally acquired by the surviving spouse. The Commission and its research consultant have found no decision of the United States Supreme Court or of the courts of any other State which holds that a State may not constitutionally apply its marital property law to property brought to that State by a married person who deliberately chooses to become domiciled there. Moreover, it seems reasonably clear that the due process and equal protection clauses of the State and Federal Constitutions have considerably more restricted scope today, insofar as the invalidation of economic legislation is concerned, than

they were thought to have in 1933 when Estate of Thornton was decided. The Law Revision Commission believes, therefore, that proposed Sections 164.1, 172c and 172d would not be unconstitutional if enacted. This seems particularly clear with respect to the application of these sections to cases in which property brought to this State by married persons is used to acquire property here at a time when the owner is domiciled here. At most, the Commission believes, the constitutionality of proposed Sections 164.1, 172c and 172d of the Civil Code presents a close question which the Legislature would be perfectly justified in leaving to the courts to decide if and when the occasion arises.

(38)

Revised Feb. 10, 1960
8/18/59

EXHIBIT IV

Proposed Legislative Bill Relating to Inter Vivos Rights in Quasi-Community Property

Note: In sections of existing law, changes are shown by strike out type (deleted material) and underscoring (new material). In new sections, changes from previous version of statute are shown by strike out type for deleted material and underscoring for new material. Sections not contained in the previous draft are indicated by the designation "NEW" in the margin next to the section.

An act to add Sections 164.1, 164.3, 172c, 172d and 687.5 to the Civil Code, to amend Section 143, 146, 148, 149, 161, 164, 172b, 682, 686, 687, 1238 and 1265 of said code, to add Sections 201.4 and 1435.17a to the Probate Code, to amend Sections 21, 201.5, 201.6, 228, 296.4, 601, 661, 663, 1435.1, 1435.4, 1435.8, 1435.12, 1435.15, 1435.16, 1529 and 1557.1 of said code, to repeal Section 201.8 of said code, to add Section 15303.5 to the Revenue and Taxation Code, to amend Sections 13552.5, 13554.5, 13555, 15301 and 15302 of said code, and to provide a savings clause, all relating to property acquired by married persons.

The people of the State of California do enact as follows:

SECTION 1. Section 161 of the Civil Code is amended to read:

161. ~~May-be-joint-tenants,-etc.~~ A husband and wife may hold property as joint tenants, tenants in common, or as community property or quasi-community property.

SEC. 2. Section 164 of the Civil Code is amended to read:

164. Subject to Section 164.3 of this code, all other real property situated in this State and all personal property wherever situated acquired [~~after~~] during marriage by [~~either-husband-or-wife,-or-both,~~] a married person while domiciled in this State is community property. [~~including-real-property situated-in-this-State-and-personal-property-wherever-situated,-heretofore or-hereafter-acquired-while-domiciled-elsewhere,-which-would-not-have-been the-separate-property-of-either-if-acquired-while-domiciled-in-this-State,-is community-property-but-whenever-any-real-or-personal-property,-or-any-interest therein-or-encumbrance-thereon,-is-acquired-by-a-married-woman-by-an instrument-in-writing,-the-presumption-is-that-the-same-is-her-separate property,-and-if-acquired-by-such-married-woman-and-any-other-person-the presumption-is-that-she-takes-the-part-acquired-by-her,-as-tenant-in-common, unless-a-different-intention-is-expressed-in-the-instrument,-except,-that when-any-of-such-property-is-acquired-by-the-husband-and-wife-while-domiciled in-this-State-by-an-instrument-in-which-they-are-described-as-husband-and wife,-unless-a-different-intention-is-expressed-in-the-instrument,-the presumption-is-that-such-property-is-the-community-property-of-said-husband~~

~~and-wife.--The-presumptions-in-this-section-mentioned-are-conclusive-in-favor of-any-person-dealing-in-good-faith-and-for-a-valuable-consideration-with such-married-woman-or-her-legal-representatives-or-successors-in-interest, and-regardless-of-any-change-in-her-marital-status-after-acquisition-of-said property.~~

~~In-cases-where-a-married-woman-has-conveyed,-or-shall-hereafter-convey, real-property-which-she-acquired-prior-to-May-19,-1889-the-husband,-or-his heirs-or-assigns,-of-such-married-woman,-shall-be-barred-from-commencing-or maintaining-any-action-to-show-that-said-real-property-was-community-property, or-to-recover-said-real-property-from-and-after-one-year-from-the-filing-for record-in-the-recorder's-office-of-such-conveyances,-respectively.~~

In determining the domicile of a wife under this section the court shall not apply a rule of law or presumption that the domicile of a wife is that of her husband.

As used in this section, "real property" includes leasehold interests in real property.

SEC. 3. Section 164.1 is added to the Civil Code, to read:

164.1. All real property situated in this State and all personal property wherever situated heretofore or hereafter (a) acquired during marriage by a married person [~~either-husband-or-wife-or-both~~] while domiciled outside of this State which is not community property but which would have been the community property of the person acquiring it and his spouse had [~~such~~] the person acquiring it been domiciled in this State at the time of its acquisition

or (b) acquired in exchange for real or personal property wherever situated and so acquired, becomes quasi-community property when, during such marriage, both spouses hereafter become domiciled in this State and, subject to the provisions of [Probate Code] Sections 201.4 and 201.5 of the Probate Code, remains quasi-community property so long as either spouse remains domiciled in this State.

Except as otherwise provided in Sections 143, 146, 148, 149, 161, 164, 164.1, 164.3, 172b, 172c, 172d, 682, 686, 687, 687.5, 1238 and 1265 of the Civil Code, in Sections 21, 201.4, 201.5, 201.6, 228, 296.4, 601, 661, 663, 1435.1, 1435.4, 1435.8, 1435.12, 1435.15, 1435.16, 1435.17a, 1529 and 1557.1 of the Probate Code and in Sections 13552.5, 13554.5, 13555, 15301, 15302 and 15303.5 of the Revenue and Taxation Code, quasi-community property shall be considered and treated the same as separate property.

In determining the domicile of a wife under this section the court shall not apply a rule of law or presumption that the domicile of a wife is that of her husband.

As used in this section real property includes leasehold interests in real property.

SEC. 4. Section 164.3 is added to the Civil Code, to read:

164.3. Whenever any real or personal property or any interest therein or encumbrance thereon is acquired by a married woman by an instrument in writing, there is a presumption that the same is her separate property. If such property is acquired by a married woman and any other person by an

instrument in writing, there is a presumption that she takes the part acquired by her as a tenant in common, unless a different intention is expressed in the instrument; provided, that when any such property is acquired by husband and wife by an instrument in which they are described as husband and wife, there is a presumption that such property is the community property of the husband and wife, unless a different intention is expressed in the instrument.

The presumptions mentioned in this section are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after the acquisition of the property; in all other cases the presumptions are disputable.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband of such married woman, or his heirs or assigns, are barred from commencing or maintaining any action to show that the real property was community property, or to recover the real property from and after one year from the filing for record in the recorder's office of such conveyances, respectively.

SEC. 5. Section 172c is added to the Civil Code, to read:

172c. The spouse who originally acquired quasi-community personal property has the management and control of such property, with like absolute power of disposition, other than testamentary, as he has of his separate estate, [~~; provided, however,~~] except that he cannot, without the written consent of the other spouse [,] :

(a) Make a gift of such property. [~~, or~~]

(b) Dispose of [~~the same~~] such property without a valuable consideration. [~~, or~~]

(c) Sell, convey or encumber any such property which constitutes furniture, furnishings or fittings of the home or clothing or wearing apparel of the other spouse or the minor children.

SEC. 6. Section 172d is added to the Civil Code, to read:

172d. (1) The spouse who originally acquired quasi-community real property has the management and control of such property [~~,~~] ; but, except as otherwise provided in subsections (2), (3) and (4) of this section, the other spouse, either personally or by duly authorized agent, must join with the acquiring spouse in executing any instrument by which such real property or any interest therein is leased for a longer period than one year or is sold, conveyed or encumbered.

(2) [~~Provided, however, that (a) nothing herein contained shall be construed to~~] This section does not apply to a lease, mortgage, conveyance [~~,~~] or transfer of real property or of any interest in real property between husband and wife. [~~; and (b)~~]

(3) The sole lease, contract, mortgage or deed of the [~~husband~~] spouse holding record title to such real property to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation [~~shall be~~] is conclusively presumed to be valid.

(4) No action to avoid any instrument mentioned in this section

affecting any property standing of record in the name of either spouse alone, executed by him alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county where the land is situate.

SEC. 7. Section 1238 of the Civil Code is amended to read:

1238. If the claimant be married, the homestead may be selected from the community property, the quasi-community property or the separate property of the husband or, subject to the provisions of Section 1239, from the property held by the spouses as tenants in common or in joint tenancy or from the separate property of the wife. When the claimant is not married, but is the head of a family within the meaning of Section 1261, the homestead may be selected from any of his or her property. If the claimant be an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property. Property, within the meaning of this title, includes any freehold title, interest, or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive.

SEC. 8. Section 1265 of the Civil Code is amended to read:

1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, the quasi-community property or from the separate property of the spouse making the selection or joining

therein and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the land so selected, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent, but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale.

SEC. 9. Section 143 of the Civil Code is amended to read:

NEW 143. ~~[COMMUNITY AND SEPARATE PROPERTY MAY BE SUBJECTED TO SUPPORT AND EDUCATE CHILDREN.]~~ The community property, quasi-community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

SEC. 10. Section 146 of the Civil Code is amended to read:

146. In case of the dissolution of the marriage by decree of a court of competent jurisdiction or in the case of judgment or decree for separate

maintenance of the husband or the wife without dissolution of the marriage, the court shall make an order for disposition of the community property and the quasi-community property and for the assignment of the homestead as follows:

One. If the decree is rendered on the ground of adultery, incurable insanity or extreme cruelty, the community property and the quasi-community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

Two. If the decree be rendered on any other ground than that of adultery, incurable insanity or extreme cruelty, the community property and the quasi-community property shall be equally divided between the parties.

Three. If a homestead has been selected from the community property or the quasi-community property, it may be assigned to the party to whom the divorce or decree of separate maintenance is granted, or, in cases where a divorce or decree of separate maintenance is granted upon the ground of incurable insanity, to the party against whom the divorce or decree of separate maintenance is granted. The assignment may be either absolutely or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

Four. If a homestead has been selected from the separate property of either, in cases in which the decree is rendered upon any ground other than incurable insanity, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the party to whom the divorce or decree of separate maintenance is granted, and in cases where the decree is rendered upon the ground of incurable insanity, it

shall be assigned to the former owner of such property, subject to the power of the court to assign it to the party against whom the divorce or decree of separate maintenance is granted for a term of years not to exceed the life of such party.

This section shall not limit the power of the court to make temporary assignment of the homestead at any stage of the proceedings.

Whenever necessary to carry out the purpose of this section, the court may order a partition or sale of the property and a division or other disposition of the proceeds.

SEC. 11. Section 148 of the Civil Code is amended to read:

NEW 148. The disposition of the community property, quasi-community property and [of] the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

SEC. 12. Section 149 of the Civil Code is amended to read:

NEW 149. When service of summons is made pursuant to the provisions of Sections 412 and 413 of the Code of Civil Procedure upon a spouse sued under the provisions of this chapter, the court, without the aid of attachment thereof or the appointment of a receiver, shall have and may exercise the same jurisdiction over:

(a) The community real property of the spouse so served situated in this State as it has or may exercise over the community real property of a spouse sued under the provisions of this chapter and personally served with process within this State.

(b) The quasi-community real property of the spouse so served situated in this State as it has or may exercise over the quasi-community real property of a spouse sued under the provisions of this chapter and personally served with process within this State.

SEC. 13. Section 21 of the Probate Code is amended to read:

NEW

21. Every person of sound mind, over the age of 18 years, may dispose of community and quasi-community property by will to the extent provided in Chapter 1 of Division 2 of this code.

SEC. 14. Section 201.4 is added to the Probate Code, to read:

201.4. Upon the death of any married person, the surviving spouse holds any quasi-community property originally acquired by such surviving spouse free of any quasi-community property interest which the decedent had therein at the time of his death and such property becomes the separate property of the surviving spouse.

SEC. 15. Section 201.5 of the Probate Code is amended to read:

201.5. Upon the death of any married person ~~domiciled in this State~~ one-half of ~~the following property in his estate~~ any quasi-community property originally acquired by the decedent shall belong to the surviving spouse and the other one-half of such property is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse~~:--all personal property wherever situated and all real property situated in this State heretofore or hereafter (a) acquired by the decedent while domiciled elsewhere which would have been the community property of decedent and the~~

~~surviving spouse had the decedent been domiciled in this State at the time of its acquisition or (b) acquired in exchange for real or personal property wherever situated and so acquired.~~ All such property is subject to the debts of the decedent and to administration and disposal under the provisions of Division 3 of this code. ~~As used in this section personal property does not include and real property does include leasehold interests in real property.~~

SEC. 16. Section 201.6 of the Probate Code is amended to read:

201.6. Upon the death of any married person not domiciled in this State who leaves a valid will disposing of real property in this State which is not the community property or the quasi-community property of the decedent and the surviving spouse, the surviving spouse has the same right to elect to take a portion of or interest in such property against the will of the decedent as though the property were situated in decedent's domicile at death. As used in this section real property includes leasehold interests in real property.

SEC. 17. Section 228 of the Probate Code is amended to read:

228. If the decedent leaves neither spouse nor issue, and the estate, or any portion thereof was community property of the decedent and a previously deceased spouse, or was quasi-community property of the decedent and a previously deceased spouse originally acquired by such previously deceased spouse, and belonged or went to the decedent by virtue of its community or quasi-community character on the death of such spouse, or came to the decedent from said spouse by gift, descent, devise or bequest, or became vested in the decedent on the

death of such spouse by right of survivorship in a homestead, or in a joint tenancy between such spouse and the decedent or was set aside as a probate homestead, such property goes in equal shares to the children of the deceased spouse and their descendants by right of representation, and if none, then one-half of such community or quasi-community property goes to the parents of the decedent in equal shares, or if either is dead to the survivor, or if both are dead in equal shares to the brothers and sisters of the decedent and their descendants by right of representation and the other half goes to the parents of the deceased spouse in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of said deceased spouse and to their descendants by right of representation.

SEC. 18. Section 201.8 of the Probate Code is hereby repealed.

SEC. 19. Section 296.4 of the Probate Code is amended to read:

NEW 296.4. Where a husband and wife have died, leaving community or quasi-community property and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community or quasi-community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if said one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if said other one-half were her separate property, except as provided in Section 296.3.

SEC. 20. Section 601 of the Probate Code is amended to read:

601. The inventory must show, so far as the same can be ascertained by the executor or administrator [~~,~~] :

NEW (a) What portion of the property is community property [~~,~~] ;

(b) What portion of the property is quasi-community property originally acquired by the decedent;

(c) What portion of the property is quasi-community property originally acquired by the spouse of the decedent; and

(d) What portion of the property is separate property of the decedent.

SEC. 21. Section 661 of the Probate Code is amended to read:

NEW 661. If no homestead has been selected, designated and recorded, or in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court, in the manner hereinafter provided, must select, designate and set apart and cause to be recorded a homestead for the use of the surviving spouse and the minor children, or, if there be no surviving spouse, then for the use of the minor child or children, out of the community property or quasi-community property [~~to which Section 201.5 of this code is applicable~~] or out of real property owned in common by the decedent and the person or persons entitled to have the homestead set apart, or if there be no community property or quasi-community property [~~to which Section 201.5 of this code is applicable~~] and no such property owned in common, then out of the separate property of the decedent. If the property set apart is the separate property of the decedent [~~, other than property to which Section 201.5 of this code is applicable,~~] the court can set it apart only for a limited period, to be designated in the order,

and in no case beyond the lifetime of the surviving spouse, or, as to a child, beyond its minority; and, subject to such homestead right, the property remains subject to administration.

SEC. 22. Section 663 of the Probate Code is amended to read:

NEW 663. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, other than a married person's separate homestead, was selected from the community or quasi-community property, or from the separate property of the person selecting or joining in the selection of the same, and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the homestead vests, on the death of either spouse, absolutely in the survivor.

If the homestead was selected from the separate property of the decedent without his consent, or if the surviving spouse has conveyed the homestead to the other spouse by a conveyance which failed to expressly reserve homestead rights as provided by Section 1242 of the Civil Code, the homestead vests, on death, in his heirs or devisees, subject to the power of the court to set it apart for a limited period to the family of the decedent as hereinabove provided. In either case the homestead is not subject to the payment of any debt or liability existing against the spouses or either of them, at the time of the death of either, except as provided in the Civil Code.

SEC. 23. Section 172b of the Civil Code is amended to read:

NEW 172b. Where one or both of the spouses is incompetent, the procedure for dealing with and disposing of community property and quasi-community property is prescribed in Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code.

SEC. 24. Section 1435.1 of the Probate Code is amended to read:

NEW 1435.1. Where real or personal property or any interest therein or lien or encumbrance thereon is owned by husband and wife as community or quasi-community property, or as community or quasi-community property or separate property subject to a homestead, and one or both of the spouses is incompetent, such property, interest, lien, or encumbrance may be sold and conveyed, assigned, transferred or exchanged, conveyed pursuant to any pre-existing contract, encumbered by pledge, deed of trust or mortgage, leased, including a lease for the exploration for and production of oil, gas, minerals or other substances, or unitized or pooled with other property for or in connection with such exploration and production, or assigned, transferred or conveyed, in whole or in part, in compromise, composition or settlement of any indebtedness, demand, or proceeding to which such property may be subject, or any easement therein or thereover conveyed or dedicated, with or without consideration, to the State or any county or municipal corporation or any district or to any person, firm, association, or public or private corporation; all in the manner provided in this chapter, notwithstanding the provisions of Section 172a, 172d, 1242 or 1243 of the Civil Code.

Nothing herein is intended to or shall affect:

(a) The husband's management and control of community personal property unless he is incompetent as hereinafter defined.

(b) A spouse's management and control of quasi-community personal property under Section 172c of the Civil Code unless such spouse is incompetent as hereinafter defined.

SEC. 25. Section 1435.4 of the Probate Code is amended to read:

NEW 1435.4. The petition shall be verified and filed in the superior court of the county in which the real property, or some part thereof, or which is subject to the lien or encumbrance affected, is situated, or, if the proceeding affects only personal property other than a lien or encumbrance on real property, in the superior court of the county in which the spouses or either of them reside or in which a guardian for either spouse has been appointed; and shall set forth the following:

(a) The name, age, and residence of both spouses and, if one or both of them has been adjudged incompetent, the fact of such adjudication, otherwise the facts establishing incompetency.

(b) The name of the guardian, if any, and the county in which the guardianship proceeding is pending, and the court number of said proceeding.

(c) The names and addresses of the adult relatives of the incompetent person or persons within the second degree residing in this State, other than a spouse, if such names and addresses are known to the petitioner.

(d) An allegation as to the status of the property described in the petition, whether (1) homestead or (2) community or quasi-community or (3) both. In case of quasi-community property, the name of the spouse originally

acquiring such property shall also be specified.

(e) The estimated value of the property.

(f) A sufficient legal description of the property.

(g) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(h) Such facts, in addition to the incompetency of the spouse or spouses, as may be relied upon to show that the order sought is for the advantage, benefit, or best interests of the spouses or their estates; or for the care and support of either of them, or of their minor child or children, or of such members of their families as either of them may be legally obligated to support; or to pay taxes, interest or other encumbrances and charges for the protection and preservation of the homestead or the community or quasi-community property.

SEC. 26. Section 1435.8 of the Probate Code is amended to read:

NEW 1435.8. If it appears to the court that said property is the homestead or community or quasi-community property of the spouses, and if it also appears that a spouse is or the spouses are then incompetent or has or have been so found under Division 4 or Division 5 of this code and has not or have not been restored to capacity, it shall so adjudge. If it further appears to the court that the petition should be granted it may then so order and authorize the petitioner to do and perform all acts and execute and deliver all papers, documents, and instruments necessary to effectuate the same.

SEC. 27. Section 1435.12 of the Probate Code is amended to read:

NEW 1435.12. If a sale is made upon a credit in pursuance of the order, the petitioner must take the note or notes of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for payment thereof as the court shall by order approve. Such note or notes shall be made payable to the petitioner or if his petition was made as guardian, then made payable to him as such guardian.

The proceeds, rents, issues and profits of community property dealt with or disposed of under the provisions of this chapter, and any property taken in exchange therefor, shall be community property; the proceeds, rents, issues and profits of quasi-community property dealt with or disposed of under the provisions of this chapter, and any property taken in exchange therefor, shall be quasi-community property; and the proceeds of sale of homestead property and any property taken in exchange therefor, or acquired with such proceeds with court approval, shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code; provided, in the case of property so taken or acquired, the declaration required by said Section 1265a is made by the petitioner, with leave of court.

SEC. 28. Section 1435.15 of the Probate Code is amended to read:

NEW 1435.15. As an alternative to the procedure elsewhere in this chapter prescribed, where there is a guardian of the respective estates of one or both of the spouses, the court having jurisdiction of the or either such estate shall for the purposes of administration under Section 1435.16 or 1435.17 or 1435.17a have jurisdiction to determine the validity of the homestead and

whether or not specific property is in fact community property or quasi-community property or the separate property of one or both of the spouses, and which spouse originally acquired the property if it is quasi-community property, and thereafter to authorize the guardian or guardians to deal with or dispose of such homestead or community or quasi-community property or consent to such dealing therewith or disposition thereof, in the manner hereinafter provided.

SEC. 29. Section 1435.16 of the Probate Code is amended to read:

NEW 1435.16. (a) Where homestead property is community property or the separate property of the husband of whose estate the guardian has been appointed and the wife, being competent, consents thereto in writing, such homestead property may be included in and dealt with and disposed of as a part of the guardianship estate, but the wife must join in any such dealing therewith or disposition thereof.

(b) Where homestead property is the separate property of the wife and there is a guardian of the estate of the husband, the wife, being competent, may deal with or dispose of the homestead property as fully as though no homestead existed thereon provided the guardian of the estate of the husband join therein, being first thereunto duly authorized by order of court under Section 1516 of this code. Where there is a guardian of the estate of the wife, such homestead property may be included in and dealt with and disposed of as a part of the guardianship estate, but the husband, being competent, must join an any such dealing therewith or disposition thereof.

(c) Where there are guardians of the respective estates of both husband and wife, the homestead property, if community property or the separate

property of the husband, may be included in and dealt with and disposed of as a part of his guardianship estate or, if the separate property of the wife, then as a part of her guardianship estate or, if quasi-community property, then as a part of the guardianship estate of the spouse who originally acquired the property; but the guardian of the estate of the other spouse must join in any such dealing therewith or disposition thereof, being first thereunto duly authorized by an order of court under Section 1516 of this code. If the homestead property is the separate property of both spouses as joint tenants, tenants in common, or otherwise, the respective interests of each may be included in and dealt with or disposed of as a part of their respective guardianship estates but both guardians must concur therein under appropriate orders of court.

(d) Where homestead property is quasi-community property originally acquired by the spouse of whose estate the guardian has been appointed and the other spouse, being competent, consents thereto in writing, such homestead property may be included in and dealt with and disposed of as a part of the guardianship, but the spouse who did not originally acquire the property must join in any such dealing therewith or disposition thereof.

The court, on petition of the guardian of either estate or of the competent spouse, with such notice to the other as the court shall prescribe, may authorize the investment of the proceeds in another home for the spouses, to be held by the same tenure as the homestead property so sold or exchanged. The proceeds of the sale of homestead property and any property taken in exchange therefor or acquired with such proceeds shall enjoy the exemptions prescribed in Sections 1265 and 1265a of the Civil Code; provided, in the case of property so taken or acquired the declaration required by Section 1265a

is made by the petitioner with leave of court.

SEC. 30. Section 1435.17a is added to the Probate Code, to read:

NEW 1435.17a. (a) Where there is a guardian of the estate of the spouse who originally acquired quasi-community property, and the other spouse, being competent, consents thereto in writing, such quasi-community property may be included in and dealt with or disposed of as a part of the guardianship estate of the spouse who originally acquired such quasi-community property. The spouse who did not originally acquire such quasi-community property must join in any such dealings with or disposition of quasi-community real property.

(b) Where there is a guardian of the estate of the spouse who did not originally acquire the quasi-community property, the other spouse, being competent, has the management, control and disposition thereof but, in lieu of the joinder of the other spouse required by Section 172d of the Civil Code, the guardian of the estate of the spouse who did not originally acquire the quasi-community property must join therein, being first thereunto duly authorized by an order of court under Section 1516 of this code.

(c) Where there are guardians of the respective estates of both husband and wife, an undivided one-half interest in such quasi-community property may be included in and dealt with and disposed of as a part of the guardianship estate of the husband and an undivided one-half interest therein as a part of the guardianship estate of the wife, but both guardians must concur therein under appropriate orders of court.

Proceedings under this section shall not alter the character of the property or the proceeds, rents, issues or profits thereof, or the rights of the respective spouses therein save as herein expressly provided with respect to the procedure for the management and disposition thereof.

SEC. 31. Section 1529 of the Probate Code is amended to read:

NEW 1529. The provisions of this chapter and Chapter 4 (commencing with Section 1851) of Division 5 shall apply to property owned by husband and wife as community or quasi-community property or owned by husband and wife or either of them which is subject to a homestead only to the extent authorized by Chapter 2A (commencing with Section 1435.1) of Division 4 of this code.

SEC. 32. Section 1557.1 of the Probate Code is amended to read:

NEW 1557.1. On the application of the guardian, the court may authorize the guardian to purchase or join with the spouse of the ward or with any other person or persons in the purchase of real property, or some interest, equity or estate therein, in severalty, in common, in community, in quasi-community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. Upon the filing of the application, the clerk shall set the same for hearing by the court and shall give notice thereof by causing a notice to be posted at the courthouse of the county where the proceeding is pending at least five days before the day of hearing in the manner prescribed in Section 1200 of this code. At least five days before the day of hearing, the guardian shall cause a copy of the notice to be given to all persons who have requested special notice in the manner prescribed in Section 1200 of this code. The court or judge may order the notice to be given for a shorter period or dispensed with. At the hearing the court shall proceed to hear the application and any objection thereto that may be presented and may require such additional proof of the fairness and feasibility of the

transaction as it deems proper and may inquire into the terms of the purchase. If, after such hearing, the court is satisfied that it will be to the advantage of the ward or those whom he is legally bound to support to enter into the proposed purchase, it may make an order authorizing the guardian to consummate such purchase on behalf of the ward and to execute all necessary instruments and commitments to consummate the transaction, and such order may prescribe the terms upon which the purchase shall be made.

SEC. 33. Section 15301 of the Revenue and Taxation Code is amended to read:

15301. In a case of a transfer to either spouse by the other of community property or quasi-community property ~~to either spouse~~ one-half of the property transferred is not subject to this part.

SEC. 34. Section 15302 of the Revenue and Taxation Code is amended to read:

15302. If any community property or quasi-community property is transferred to a person other than one of the spouses, all of the property transferred is subject to this part, and each spouse is a donor of one-half.

SEC. 35. Section 15303.5 is added to the Revenue and Taxation Code, to read:

15303.5. This part does not apply to quasi-community property which is transferred into community property.

SEC. 36. Section 13555 of the Revenue and Taxation Code is amended to read:

13555. Upon the death of any married person:

(a) No property to which Section 201.4 of the Probate Code is applicable is subject to this part.

~~(a)~~ (b) At least one-half of any property ~~in-the-deeedent's~~ estate to which Section 201.5 of the Probate Code is applicable, ~~except-property-restored-to-the-estate-under-Seetion-201.8-of-the Probate-Code,~~ is subject to this part.

~~(b)~~ (c) The one-half of any property which, under Section 201.5 of the Probate Code, belongs to the surviving spouse whether or not the decedent attempted to dispose of it otherwise by will, ~~and all-of-any-property-restored-to-the-deeedent's-estate-under-Seetion 201.8-of-the-Probate-Code-are~~ is not subject to this part.

~~(c)~~ (d) All of any property in the decedent's estate to which Section 201.5 of the Probate Code is applicable passing to anyone other than the surviving spouse is subject to this part.

SEC. 37. Section 13552.5 of the Revenue and Taxation Code is amended to read:

13552.5. Whenever a married person dies having provided by will for his surviving spouse and having also made a testamentary dispostion of any property to which Section 201.5 of the Probate Code is applicable ~~or-having-made-an-inter-vivos-transfer-to-which Seetion-201.8-of-the-Probate-Code-is-applicable,~~ and the surviving spouse is required to elect whether to share in the estate under the will or to take a share of the decedent's property under Section 201.5 of the Probate Code, and the spouse elects to take under the will, the property thus taken up to a value not exceeding one-half of the value of any property to which Section 201.5 of the Probate Code is applicable ~~and-the-full-value-of-any-property-which-the~~

~~surviving-spouse-might-have-required-to-be-restored-to-the-decedent's estate-under-Section-201.8-of-the-Probate-Code~~ is not subject to this part.

SEC. 38. Section 13554.5 of the Revenue and Taxation Code is amended to read:

13554.5. Where quasi-community property ~~to-which-Section 201.5-of-the-Probate-Code-is-or-would-have-been-applicable~~ is transferred ~~from-one-spouse-to-the-other~~ by the spouse who originally acquired the property to the other spouse within the provisions of Chapter 4 of this part other than by will or the laws of succession, the property transferred is subject to this part up to a value not exceeding one-half of the clear market value thereof.

Where quasi-community property is transferred to the spouse who originally acquired the property by the other spouse within the provisions of Chapter 4 of this part other than by will or the laws of succession, the property transferred is not subject to this part.

SEC. 39. Section 682 of the Civil Code is amended to read:

NEW

682. ~~OWNERSHIP-OF-SEVERAL-PERSONS.~~ The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife [~~.~~] ;
5. Of quasi-community interest of husband and wife.

SEC. 40. Section 686 of the Civil Code is amended to read:

NEW 686. [~~WHAT-INTERESTS-ARE-IN-COMMON~~] Every interest created in favor of several persons in their own right is an interest in common[~~,~~] unless:

(a) Acquired by them in partnership, for partnership purposes. [~~,-or-unless~~]

(b) Declared in its creation to be a joint interest, as provided in Section 683 of this code. [~~,-or-unless~~]

(c) Acquired as community property.

(d) The interest is a quasi-community property interest under Section 164.1 of this code.

SEC. 41. Section 687 of the Civil Code is amended to read:

NEW 687. [~~COMMUNITY-PROPERTY~~] Community property is property (other than quasi-community property) acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

SEC. 42. Section 687.5 is added to the Civil Code, to read:

NEW 687.5. Quasi-community property is property described in Section 164.1 of this code.

SEC. 43. If any provision of this 1961 Act or the application thereof to any person or circumstances is held invalid, the NEW invalidity shall not affect other provisions or applications of this 1961 Act which can be given effect without the invalid provision or application, and to this end the provisions of this 1961 Act are severable.