#66 11/12/68

Memorandum 68-109

Subject: Study 66 - Quasi-Community Property

Legislation relating to quasi-community property was enacted in 1961 upon recommendation of the Law Revision Commission. Exhibit I (pink pages) is a letter from Sho Sato calling attention to a defect in the 1961 statute that is noted by Mrs. Armstrong in California Family Law.

Section 140.5 of the Civil Code (and other sections) define quasi-community property as follows:

> 140.5. As used in Sections 140.7, 141, 142, 143, 146, 148, 149, and 176 of this code, "quasi-community property" means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:
>
> (a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or
>
> (b) In exchange for real or person property, wherever situated, acquired other than by gift, devise, bequest or descent by either spouse during the marriage while domiciled elsewhere.
>
> For the purposes of this section, personal property does not include and real property does include leasehold interests in real property.

See the three printed pages from Armstrong, California Family Law, for a discussion pointing out the defect in subdivision (b) of this section. Briefly, subdivision (b) is based on the erroneous concept that all property acquired "other than by gift, devise, bequest or descent by either spouse during the marriage" is community property. This is not

true. For example, Civil Code Section 169 makes earnings of wife when living separate from her husband the separate property of the wife.

Professor Sato suggests a revision of subdivision (b), Section 140.5, to eliminate the defect:

> (b) In exchange for real or personal property, wherever situated, acquired ~~other-than-by-gift,-devise,-bequest-or-descent~~ by either spouse ~~during-the-marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this state at the time of its acquisition .

Since the staff proposed exactly the same language at the time the Commission drafted Section 140.5 and this language was rejected, it is worth tracing briefly the history of this definition before the staff states its views as to whether the suggested revision is desirable.

The staff originally proposed that quasi-community property be defined in language that conformed to the language then used in Section 201.5 of the Probate Code. The Commission rejected this suggestion because the words "and so acquired" (formerly used in Probate Code Section 201.5--see printed portion of Exhibit I (pink) at last two lines of page 2 and top of page 3) were considered unclear, and, in the words of Mrs. Armstrong, "amended and botched up a soundly worded Probate Code section of great importance" which had been drafted by the Commission in 1957. The staff does not propose that we go back to the wording of Section 201.5 (as it was drafted in 1957) because we believe that use of the words "and so acquired" would not be the best way to phrase this definition.

In response to the Commission's direction to revise and clarify

the Section 201.5 language, the staff proposed exactly the same wording for what is now subdivision (b) of Section 140.5 as is now proposed by Professor Sato. See Exhibit II (yellow) which was attached as Appendix II to Memorandum No. 46 (1960)(distributed May 4, 1960). This staff proposal was rejected by the Commission and the subdivision was worded as it now reads and not thereafter charged.

The Commission rejected the staff proposal (and the proposal now made by Professor Sato) because it concluded that the nature of the interest held by a married couple domiciled in California in real property located in another state would be determined by the law of the state where the real property is located, not by California law. Thus, according to the Commission's reasoning, where real property is acquired in another state by either spouse while domiciled outside of California and the property would be community property had the property been situated in California and the spouse acquiring the property been domiciled here, the language suggested by the staff would not make the property quasi-community property because the real property is not situated in California. In an analogous connection, this point is developed at some length in the 1961 Recommendation:

> Again, although there is no authority on the point, it seems exceedingly unlikely that our courts would hold that real property acquired in a separate property state by a married person domiciled in California is community property by virtue of Section 164 even if the purchase were made with community funds. Rather, our courts, applying the universally accepted choice of law rule that the law of the situs of real property governs the nature of the interests acquired therein, would take the position that it is for the situs state to define the kinds of estates in real property which exist there and to determine which of these is acquired in consequence of a purchase

by a married person domiciled in California.[9]

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[9] In Tomaier v. Tomaier, 23 Cal.2d 754, 146 P.2d 905 (1944), and Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957), it was held that when real property is acquired in another state with community funds the nonacquiring spouse has an equitable interest therein which will be recognized by the courts of this State. Those courts did not say, however, that such real property is community property. They said only that the interest of the other spouse survives to the extent of enabling that spouse to follow her community property interest in the money into the real property purchased with it. The proposed amendment of Section 164 of the Civil Code would, of course, have no effect on the application of this well established "tracing" principle.

It is now clear under Section 164 of the Civil Code that real property located in another state cannot be community property, even though the person acquiring the property is domiciled in this state at the time the property is acquired. Civil Code Section 164 provides in part: "All other real property situated in this state and all other personal property wherever situated acquired during the marriage by a married person while domiciled in this state is community property . . . ."

In view of the language of Section 164 the staff is concerned that the revision suggested by Professor Sato would not make property quasi-community property where the property is acquired in exchange for real property situated in another state acquired by either spouse while domiciled elsewhere because such real property would not "have been community property of the husband and wife had the spouse acquiring the property been domiciled in this state at the time of its acquisition." It cannot be community property because only real property "situated in this state" can be community property (Civil Code Section 164).

An argument can be made that the words "wherever situated" in revised subdivision (b) make clear that even if the real property were located in another state, it would still be treated for the purpose of

subdivision (b) as if it would have been community property.

The point made when the Commission considered the earlier staff suggested revision is a very technical one. It may have little or no merit. Nevertheless, the Commission should consider the following revision of subdivision (b):

> (b) In exchange for real or personal property, wherever situated, acquired ~~other than by gift, devise, bequest or descent~~ by either spouse ~~during the marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had (1) the spouse acquiring the property been domiciled in this state at the time of its acquisition and (2) the property been situated in this state at the time of its acquisition .

Whatever revision is made in Section 140.5 of the Civil Code, a similar revision should be made in Section 1237.5 of the Civil Code, Section 201.5 of the Probate Code, and Section 15300 of the Revenue and Taxation Code.

Does the Commission wish to recommend a revision of the definition of quasi-community property and if so what language should be used in the revised definition? If a revision is to be recommended, what procedure does the Commission wish to follow in submitting it to the Legislature? Our Annual Report, listing our recommendations to the 1969 Legislature, is now being printed and no longer can be revised. The recommendation is not one that we would want to print in a separate pamphlet. We might prepare a recommendation and see if we can get it printed in the Journal of the Assembly or Senate. We could then reprint it as an Appendix to our Annual Report for the calendar year 1969.

On the other hand, the recommendation could be deferred for submission to the 1970 Legislature. (The problem dealt with in the recommendation has existed since 1961.)

The staff suggests that we submit a recommendation the the 1969 Legislature on this subject, that it be distributed after the November meeting for comment, that the comments be reviewed at the Commission's January meeting, and that we attempt to have the recommendation printed in the Senate Journal. Attached is a draft of a tentative recommendation.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 68-109 EXHIBIT I

UNIVERSITY OF CALIFORNIA, BERKELEY

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SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA 94720

November 7, 1968

Mr. John DeMoully
Executive Secretary
California Law Revision Commission
Stanford University
School of Law
Stanford, California

Dear John:

The Commission made a mistake when it drafted the definition of "quasi-community property" in 1961. Subdivision (b) of section 140.5 of the Civil Code is premised on the erroneous concept that all property acquired "other than by gift, devise, bequest or descent by either spouse during the marriage" is community property. This just is not so. See, for example, section 169 of the Civil Code.

I am enclosing a copy of a revision of § 140.5. Similar revisions should be made in section 1237.5 of Civil Code, section 201.5 of the Probate Code, and section 15300 of the Revenue and Taxation Code.

The arguments in support of the revision are contained in the supplement to Armstrong, California Family Law, an excerpt of which is enclosed. Mrs. Armstrong has pointed out this defect and she is absolutely right.

Sincerely yours,

Sho

Sho Sato

Enc.

§140.5 As used in Sections 140.7, 141, 142, 143, 146, 148, 149 and 176 of this code, "quasi-community property" means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:

(a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired by either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition.

EXCERPT FROM ARMSTRONG, CALIFORNIA FAMILY LAW
(1966 Cumulative Supplement for Volume One)
(pages 91-93)

Discussion re CC § 140.5

Note and Comment: There are 5 situations which produce separate estate of either husband or wife (or both) which do not involve the situations listed in CC §§ 162 and 163 (these two include only property owned by the spouse before marriage or acquired thereafter during the marriage by gift, devise, or descent, with the rents, issues and profits thereof).

The 5 additional situations which produce separate estate are found, in the order of their enactment, in (1) CC § 169 enacted in 1872, which makes the earnings and accumulations of the wife and of her minor children living with her or in her custody while she is living separate from her husband the wife's separate property. (2) CC § 169.1 enacted in 1951, which makes the earnings or accumulations of each spouse, after a judgment or decree for separate maintenance, the separate property of the party acquiring such earnings or accumulations. (3) CC § 175 (amendment of 1955) which makes the earnings of the husband during a period of unjustified abandonment by his wife, prior to her offer to return, his separate property. (4) CC § 163.5 enacted in 1957, which makes damages (special and general) awarded a married person in a civil action for personal injuries, the separate property of such married person. (5) CC § 169.2 enacted in 1959, which makes the earnings and accumulations of the husband, after rendition of an interlocutory decree of divorce and while the parties are living separate and apart, the separate property of the husband.

In the face of the above facts, CC § 140.5 was enacted in 1961 pursuant to and following exactly the draft of legislation recommended by the Law Revision Commission in its report on "Inter-Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere" (October 1960) published in 1961 (see p. 14 of the Report). Its avowed objective was to apply to spouses who having

become domiciled in California after domicile and property acquisition elsewhere later sought divorce or separate maintenance. Such spouses were to be put, in these selected situations, in the same position in respect to marital property rights that they would have enjoyed had they been domiciled in California throughout the entire period of their marriage. The concept of quasi community property as defined in CC § 140.5 was created and made applicable on a parity with community property to the seven code sections that provide for community property division, assignment of homestead rights and liability of property for support of a spouse and children in such situations.

And how does the defining enactment CC § 140.5 read? In its (a) section, it reads as it should to achieve its avowed purpose. It states:

[As used in sections 140.7, 141-143, 146, 148, 149 and 176 of this code, "quasi-community property" means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:]

"(a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or"

The (b) section was designed supposedly to cover property that is not in the form in which it originally had been when acquired elsewhere but has been acquired in exchange for such property. It does not achieve this purpose. It falls lamentably short of its mark.

It reads:

"(b) In exchange for real or personal property, wherever situated, acquired other than by gift, devise, bequest or descent by either spouse during the marriage while domiciled elsewhere.

"For the purposes of this section, personal property does not include and real property does include leasehold interests in real property."

All that had been necessary in (b) to achieve its avowed objective was to substitute for the words that follow "in exchange for real or personal property, wherever situated," the phrase employed in (a), namely, "which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition." As it is, most absurd situations can follow. E.g., John Doe while married to Jane recovers $150,000 in damages for personal injuries in 1959 while living in Chicago. The Does move to California. He invests it here in PG & E stock. Later the marriage of the Does comes to grief. Jane sues John for divorce on the ground of extreme cruelty.

Had John been a California domiciliary when he recovered the $150,000 in California for California injuries, the PG & E stock would have been his separate estate (CC § 163.5). It was his in Illinois. But as John Doe did not get the money (i.e., the damages for his injuries in Illinois) by gift, bequest or descent (and did not have it when he married) the divorce court under § 140.5(b) and § 146 must find the PG & E stock quasi community property, and must award Jane half. It *may* award her, in its discretion, all.

Not content with this misadventure the Law Revision Commission amended and botched up a soundly worded Probate Code sec-

tion of great importance—Pr.C § 201.5, which originally had been enacted (in a badly drafted form) as a succession statute having the same objective as the later quasi community property legislation. As a result of a study and recommendation of the Law Revision Commission itself in 1957, it had been amended that year to produce a perfectly functioning section, reading:

"§ 201.5. Upon the death of any married person domiciled in this State one-half of the following property in his estate 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 acquired by the decedent while domiciled elsewhere which would have been the community property of the decedent and the surviving spouse had the decedent been domiciled in this State at the time of its acquisition [or 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."

The bracketed part of the 1957 section above was changed in 1961 to its present form to make its (b) section conform to the language of CC § 140(b). (See Law Revision Reports, Recommendations and Studies, 1961, vol. I-13.)

To give one more illustration of what has been made possible by CC § 140.5(b) and its victim, Pr.C § 201.5(b), assume Jane Doe and John not wishing to obtain a divorce live apart for twenty years in Chicago, and then both move to California and become domiciliaries. Jane had been a successful interior decorator and a shrewd investor in realty and in these twenty years had accumulated properties worth several hundred thousand dollars. She exchanges her properties for California realty.

Jane dies leaving her estate to her niece. Had she as a California domiciliary lived and accumulated in California this would have been her separate estate and would have gone as she willed it. Had she stayed in Illinois it would have been hers with the same result. But as a product of the interfering hand that rephrased Pr.C § 201.5(b), her niece will get only half of it. John will get the other half. Does this make sense?

It is not necessary to further labor the point. CC § 140.5(b) is an inexcusable blunder. It may be trusted that both it and Pr.C § 201.5(b) that was conformed to it will be corrected at the 1967 session of the legislature to make them mean what was intended rather than what they now say.

And should litigation in the interim squarely present questions on CC § 140.5(b) or Pr.C § 201.5(b), perhaps the court may conclude that they are so arbitrary as to be unconstitutional and therefore void. There certainly would seem to be a sound basis for such a conclusion as the possible results of its present wording are utterly unreasonable. Holding the (b) sections void would leave the courts free to let subsection (a), together with California's long established tracing rule, cover the situation. This it should be able to do without any strain on existing law or on the avowed objectives of the legislation.

EXHIBIT II

Memorandum No. 46 (1960) (Distributed May 4, 1960)

APPENDIX II

At the April 1960 meeting of the Commission, the staff was directed to attempt to improve the drafting of the definition of "quasi-community property" in subsection (2) of Section 1237.5 of the Civil Code, created by Section 2 of the proposed draft. It was pointed out that the language of this definition conforms to Section 201.5 of the Probate Code which was drafted by the Commission and that any revision of the definition of quasi-community property here would require a corresponding revision of other sections of the proposed draft and also a conforming revision in Section 201.5 of the Probate Code.

The following is a possible revision of the definition of quasi-community property:

(2) "Quasi-community property" means property situated in this State heretofore or hereafter acquired:

(a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired by either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition.

66 November 13, 1968

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

QUASI-COMMUNITY PROPERTY

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

LETTER OF TRANSMITTAL

Legislation relating to quasi-community property was enacted in 1961 upon recommendation of the Law Revision Commission. Cal. Stats. 1961, Ch. 636. See Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere, 3 Cal. L. Revision Comm'n Reports I-1 (1961).

Resolution Chapter 9 of the Statutes of 1966 authorized the Commission to continue its study of this topic. The Commission has reviewed the legislation enacted in 1961 and, as a result, submits this recommendation.

Respectfully submitted,

Sho Sato
Chairman

66 November 13, 1968

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

QUASI-COMMUNITY PROPERTY

Married persons who move to California often have acquired property while domiciled in a noncommunity property state that would have been community property had they been domiciled here at the time it was acquired. This type of property is referred to in the California statutes as quasi-community property. For most purposes, quasi-community property is treated during the lifetime of the spouse who acquired it as his separate property. However, legislation enacted in 1961 created the concept of quasi-community property and provides that such property is treated on a parity with community property for the purposes of division of such property on divorce or separate maintenance, assignment of homestead rights, and liability of property for support of a spouse and children. Special treatment also is given quasi-community property upon the death of the acquiring spouse and for purposes of California inheritance and gift taxes. See Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere, 3 Cal. L. Revision Comm'n Reports I-1 (1961).

Section 140.5 of the Civil Code and other sections[1] define "quasi-community property" as:

1. Similar definitions are found in Civil Code Section 1237.5, Probate Code Section 201.5, and Revenue and Taxation Code Section 15300.

all personal property wherever situated and all real property situated in this state heretofore or hereafter acquired:

(a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this state at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired other than by gift, devise, bequest or descent by either spouse during the marriage while domiciled elsewhere.

As Professor Armstrong has noted, the purpose of the 1961 legislation was to put the spouses, in selected situations, "in the same position in respect to marital property rights that they would have enjoyed had they been domiciled in California through the entire period of their marriage."[2] Yet, because of an unfortunate choice of language in subdivision (b) of Section 140.5, the definition of quasi-community property seemingly fails to accomplish this purpose in certain situations. Rather, a literal interpretation of the language could cause property to be treated as quasi-community property even though the property would not have been community property had the couple resided at all times in California. The language of subdivision (b) is based on the erroneous notion that all property acquired "other than by gift, devise, bequest or descent by either spouse during the marriage" is community property.

Although the quoted clause accurately paraphrases the familiar language of Civil Code Sections 162 and 163, it does not take account of five distinct statutory provisions that qualify those sections.[3] For example,

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2. 1 Armstrong, California Family Law, 1966 Cumulative Supplement at 91-92 (1966).

3. Professor Armstrong notes:

> There are 5 situations which produce separate estate of either husband or wife (or both) which do not involve the situations listed in CC §§ 162 and 163 (these two include only property

under Civil Code Section 169, the earnings and accumulations of the wife while she is living separate from her husband are the separate property of the wife. Professor Armstrong has demonstrated that a

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owned by the spouse before marriage or acquired thereafter during the marriage by gift, devise, or descent, with the rents, issues and profits thereof).

The 5 additional situations which produce separate estate are found, in the order of their enactment, in (1) CC § 169 enacted in 1872, which makes the earnings and accumulations of the wife and of her minor children living with her or in her custody while she is living separate from her husband the wife's separate property. (2) CC § 169.1 enacted in 1951, which makes the earnings or accumulations of each spouse, after a judgment or decree for separate maintenance, the separate property of the party acquiring such earnings or accumulations. (3) CC § 175 (amendment of 1955) which makes the earnings of the husband during a period of unjustified abandonment by his wife, prior to her offer to return, his separate property. (4) CC § 163.5 enacted in 1957, which makes damages (special and general) awarded a married person in a civil action for personal injuries, the separate property of such married person. [Legislation enacted at the 1968 legislative session makes personal injury damages generally community property. See Cal. Stats. 1968, Chs. 457, 458.] (5) CC § 169.2 enacted in 1959, which makes the earnings and accumulations of the husband, after rendition of an interlocutory decree of divorce and while the parties are living separate and apart, the separate property of the husband. [1 Armstrong, California Family Law, 1966 Cumulative Supplement at 91 (1966).]

literal application of the statutory definition of quasi-community property would have undesirable consequences.[4] To assure that the statutory definition of quasi-community property will accomplish the avowed objective of the 1961 legislation, the Commission recommends that subdivision (b) of Section 140.5 (and the comparable portion of each of the other statutory definitions of quasi-community property) be revised to make clear that the concept of quasi-community property includes only property that would have been community property had the spouse acquiring the property been domiciled in this state at the time of its acquisition.

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4. She gives the following example:

> To give one more illustration of what has been made possible by CC § 140.5(b) and its victim, Pr.C § 201.5(b), assume Jane Doe and John not wishing to obtain a divorce live apart for twenty years in Chicago, and then both move to California and become domiciliaries. Jane had been a successful interior decorator and a shrewd investor in realty and in these twenty years had accumulated properties worth several hundred thousand dollars. She exchanges her properties for California realty.
>
> Jane dies leaving her estate to her niece. Had she as a California domiciliary lived and accumulated in California this would have been her separate estate and would have gone as she willed it. Had she stayed in Illinois it would have been hers with the same result. But as a product of the interfering hand that rephrased Pr.C § 201.5(b), her niece will get only half of it. John will get the other half. Does this make sense? [1 Armstrong, California Family Law, 1966 Cumulative Supplement at 93 (1966).]

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 140.5 and 1237.5 of the Civil Code, to amend Section 201.5 of the Probate Code, and to amend Section 15300 of the Revenue and Taxation Code, relating to quasi-community property.

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

Section 1. Section 140.5 of the Civil Code is amended to read:

140.5. As used in Sections 140.7, 141, 142, 143, 146, 148, 149 and 176 of this code, "quasi-community property" means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:

(a) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired ~~other than by gift, devise, bequest or descent~~ by either spouse ~~during the marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had (1) the spouse acquiring the property been domiciled in this state at the time of its acquisition and (2) the property been situated in this state at the time of its acquisition .

For the purposes of this section, personal property does not include and real property does include leasehold interests in real property.

Sec. 2. Section 1237.5 of the Civil Code is amended to read:

1237.5. As used in this title:

(a) "Quasi-community property" means real property situated in this State heretofore or hereafter acquired:

(1) By either spouse while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or

(2) In exchange for real or personal property, wherever situated, acquired ~~other than by gift, devise, bequest or descent~~ by either spouse ~~during the marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had (1) the spouse acquiring the property been domiciled in this state at the time of its acquisition and (2) the property been situated in this state at the time of its acquisition .

(b) "Separate property" does not include quasi-community property.

Sec. 3. 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 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 acquired:

(a) By the decedent while domiciled elsewhere which would have been the community property of the decedent and the surviving spouse had the decedent been domiciled in this State at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired ~~other than by gift, devise, bequest or descent~~ by the decedent ~~during the marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had (1) the spouse acquiring the property been domiciled in this state at the time of its acquisition and (2) the property been situated in this state at the time of its acquisition .

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. 4. Section 15300 of the Revenue and Taxation Code is amended to read:

15300. For the purposes of this chapter, property is "quasi-community property" if it is heretofore or hereafter acquired:

(a) By either spouse while domiciled elsewhere and would have been the community property of the husband and wife had the spouse acquiring the property been domiciled in this State at the time of its acquisition; or

(b) In exchange for real or personal property, wherever situated, acquired ~~other than by gift, devise, bequest or descent~~ by either spouse ~~during the marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had (1) the spouse acquiring the property been domiciled in this state at the time of its acquisition and (2) the property been situated in this state at the time of its acquisition .