

## Memorandum 83-8

Subject: Study D-312 - Liability of Marital Property for Debts (Revised Draft of Recommendation)

Attached to this memorandum is a revised staff draft of the recommendation relating to liability of marital property. The draft incorporates decisions of the Commission made at the November 1982 meeting. We hope to submit this recommendation to the Legislature when the Commission completes its review of the issues that have been raised.

This memorandum discusses the few remaining unresolved questions concerning the recommendation. The comments of persons and groups referred to in the memorandum appear in letters attached to previous memoranda that the Commission has reviewed.

§ 5120.060. Liability of property after division

If a debt is incurred by a spouse during marriage, the general rule is that the creditor can reach all of the community property; the creditor can also reach the separate property of the spouse who incurred the debt but not the separate property of the nondebtor spouse. What happens to the creditor's rights when the marriage is dissolved? The creditor's rights remain the same--the creditor can continue to reach former community property in the hands of either spouse and former separate property of the debtor spouse, regardless which spouse was assigned the debt in the dissolution proceeding.

This state of affairs is generally unsatisfactory. A creditor can effectively destroy a balanced marriage termination package, if the spouse to whom the debt was assigned doesn't pay, by going against the property of the other spouse. It can also be a shock and a hardship to the other spouse if the creditor levies years after the marriage dissolution was settled. Civil Code Section 4800.6 was enacted in 1980 and revised in 1981 to warn spouses of this danger. The interlocutory judgment of dissolution must contain this notice: "Although an obligation based on a contract is assigned to one party as part of the division of the community, if the party to whom the obligation was assigned defaults on the contract, the creditor may have a cause of action against the other party."

What can be done to cure this problem, still protecting the rights of creditors? The Commission's tentative solution, embodied in the draft of Section 5120.060, is to provide that the creditor may no longer reach property simply on the basis that it is former community property. Instead, the creditor would be able to reach all property of the spouse to whom the debt was assigned, not merely former community property. However, this approach would also preserve the liability of the spouse who incurred the debt, even though the debt is assigned to the other spouse. It is important to preserve this liability because the creditor may have relied on the separate property and earning capacity of the spouse in extending credit, and the creditor is not a party to, and is unable to protect rights in, the proceeding where the debt is assigned to the other spouse. If the creditor seizes property contrary to the marriage termination provisions, the aggrieved spouse may seek reimbursement from the other spouse.

At the November 1982 meeting the Commission discussed proposals to require the creditor to rely exclusively on the party to whom the debt is assigned, but did not come to any conclusions on this point. Among the ways to achieve this objective that were discussed were: (1) Apply a solvency test and if the spouse to whom the debt is assigned is solvent, the creditor is relegated to that spouse; (2) Provide a three-year interim period for the creditor to reach former community property or the property of the spouse that incurred the debt, before the creditor is relegated to the spouse assigned the debt; (3) Simply provide that the creditor may only go against the spouse assigned the debt, but make the provision prospective so that creditors can plan accordingly; (4) Under some or all of these schemes, make creditors a party to dissolution proceedings.

The staff does not believe any of these proposals is advisable. They share the common defect that they restrict the potential fund for the creditor's recovery, which cannot help but restrict the availability of credit to married couples. It is likely that creditors and couples who want to obtain credit will have to waive the protection sought by these proposals or resort to other devices to assure the creditor adequate security. In addition, there are practical problems in implementing the proposals. The solvency test requires court proceedings and notice and an opportunity for the creditor to be heard. The three-year interim is arbitrary as to debts that do not mature within the three-year period

and involves complex problems of tracing to former community property. The prospective approach will create two classes of creditors and two classes of creditors' remedies, with attendant confusion and complications, in many marriages for years to come. Making creditors a party in effect converts a marriage dissolution into a bankruptcy proceeding, with the result that a simple proceeding becomes complex and costly.

The staff believes that the solution drafted in Section 5120.060 as part of the Commission's tentative recommendation, imperfect as it is, is preferable to the other concepts we have considered. It assures a creditor who relies on the credit of a particular person that the person will remain liable for the debt. It balances the loss to the creditor of one source of recovery (former community property) with access to another source (all property of the spouse to whom the debt is assigned). It cures with a minimum of procedural problems the situation where property of a nondebtor spouse not assigned the debt is taken for the debt. And the staff believes it can be fully retroactively applied since the harm to the creditor is not great compared with the social good to be achieved by the reform.

#### Civil Code § 4800

As a part of the tentative recommendation on liability of property after dissolution, the Commission proposed that upon dissolution the allocation of debts to the spouses should take into consideration the rights of creditors and the debts should be divided in a "just and equitable" manner. The intent of this proposal was to permit the court to assign debts in such a way that the person to whom a debt is assigned has sufficient assets to be able to pay the debt. This may result in an unequal division of the community property.

Carol Bruch, in her management and control study, argues for unequal division to accommodate not only the rights of creditors but also to take into account the circumstances surrounding the inception of the debts. She proposes addition of the following language to Civil Code Section 4800(b):

Debts are not property subject to the rule of equal division of community property set forth in subdivision (a) but are to be divided as set forth in this subdivision. Debts for which the community property is liable shall be allocated to the respective parties or ordered satisfied out of the community property as the court deems just and equitable, taking into account the abilities of the parties to pay and the facts surrounding the transaction or occurrence which gave rise to the debt. Such allocation shall be without prejudice to the rights of third parties.

Professor Bruch points out that despite the apparent vagueness of this test, the court should have little trouble in concrete fact situations deciding who should be obligated to pay.

While the court may have little trouble deciding, the parties may well disagree over who should be responsible for the debts. The staff foresees that such a provision would inject a whole new litigation factor in every disputed dissolution case. Many times certainty is a greater social good than equity. That appears to the staff to be the case here.

The proposal for unequal division was opposed by the State Bar Family Law Executive Committee because it allows or favors an unequal division and could be interpreted as allowing an award of debts based on fault, which would be a retrogression to pre-1970 status. "We see this proposal as a return to the ways of the past. The house to the wife, the business and the debts to the husband. It has been a long battle to convince the trial court that equal division meant equal and that the marital community could not be divided without valuing the assets." A similar view was stated by Dennis A. Cornell, who noted the tendency of the courts to find amendments such as the one proposed to be a directive for less than an equal division of property. He suggests that the amendment be revised to emphasize that the division is one that "takes into account the distribution of both the assets and the obligations and divides the net result equally." The State Bar Community Property Committee (South) also opposed the listing of factors for assignment of debts as ambiguous and unnecessary.

The staff agrees with these comments. Our objective here should be to help assure payment to the creditor following dissolution of marriage, rather than to encourage or even permit an unequal division of assets. Our commentators point out that the court has authority to take into account the rights of creditors in assigning debts to the spouses absent any amendment to Civil Code Section 4800. However, in Section 5120.060, we preclude the creditor from reaching former community property after dissolution, so we do need specific language directing the court to consider the rights of creditors in assigning the debts. The staff suggests the following language:

(5) In dividing the debts the court shall take into consideration such factors as the earning capacity of, and the exempt character

of property received by, the party to whom a debt is assigned so as to protect the rights of creditors to the extent practical, provided the division of the property is equal.

Comment. Paragraph (5) is added to Section 4800(b) to make clear the court's discretion to allocate debts in a way that will protect the rights of creditors. However, the division of debts must be made in such a manner that the totals of the assets awarded to the parties after deduction of the obligations allocated to the parties are equal. See, e.g., In re Marriage of Fonstein, 17 Cal.3d 738, 552 P.2d 1169, 131 Cal. Rptr. 873 (1976) (equal division required); In re Marriage of Schultz, 105 Cal. App.3d 846, 164 Cal. Rptr. 653 (1980) (court has no discretion to adjust the division of the residual assets to reflect equitable considerations).

A related problem is the extent to which "separate" and "community" debts should be distinguished at dissolution, with the separate debts assigned to the person who incurred them and the community debts divided. This problem is really distinct, and we will deal with it separately in connection with dissolution. It is discussed in Professor Bruch's division study.

#### § 5120.070. Liability of property after judgment of nullity

Luther J. Avery disagrees with the Commission's proposal to allow a creditor the same rights against property of an annulled marriage as against property of a valid marriage. "Your proposal has the effect of making the property of the couple community property for debt payment purposes even if the marriage is bigamous or if it is annulled on the basis of fraud." The staff does not feel strongly about this point; the reason for the provision is to clarify the law in an area that is now unclear, and it could be clarified either for or against liability of the property of the "spouses." The Commission has recommended in favor of liability of the property of the "spouses" because the couple has held themselves out as being married and third-party creditors may well have acted in reliance.

June McGee agrees that the statute should provide that creditors' rights are the same as against property of a valid marriage that ended in dissolution. "These parties held themselves out as being married, . . . and third party creditors should be entitled to rely on such representations without detriment."

#### Article 3. Transitional Provisions

The Commission's original tentative recommendation did not include any transitional provisions since none of the proposals were of a nature

that would require transitional provisions. The staff has added transitional provisions to make the new law apply retroactively to the extent feasible.

#### Civil Code § 5123

Mr. Avery objects to the proposed repeal of Section 5123, which immunizes separate property of a spouse from liability for a debt secured by community property unless the spouse consents in writing to the liability. Mr. Avery offers no reasons for the objection other than that the Commission does not offer reasons for the repeal. In fact, the Commission does offer reasons for the repeal in the tentative recommendation, but the reasons are somewhat succinctly stated. The staff has expanded the discussion of Section 5123.

The State Bar Business Law Section questions the repeal of Section 5123 for a different reason. They point out that the separate property of a spouse should not be liable for a debt secured by community property unless the spouse incurred the debt. The staff believes this is a good point; it is consistent with the rest of the policy decisions the Commission has made in this area. In place of the repealed Section 5123 the staff has added a provision to make clear that, "The separate property of a spouse is not liable for a debt, whether or not the spouse has joined in the encumbrance of property to secure the payment of the debt, unless the spouse incurred the debt." See Section 5120.030(b)(2).

#### Civil Code § 5131

Section 5131 states the general support obligation of spouses while living separate from each other by agreement--they are not liable for support unless support is stipulated in the agreement. The Commission has proposed to alter one aspect of this rule, making the separate property of a spouse liable for necessities debts of the other spouse unless the support obligation is expressly waived. Mr. Cornell believes the Commission's recommendation is sound but that the Commission should go the rest of the way and repeal Section 5131 outright. This would go beyond the scope of the present recommendation, as Mr. Cornell recognizes, which deals only with creditors' remedies and not rights of spouses as between each other.

#### Civil Code § 5132

Section 5132 provides that a spouse must support the other spouse while they are living together out of separate property if there is no

community or quasi-community property. The tentative recommendation amends this section to recognize that under proposed Section 5120.040 a necessary creditor can reach the separate property without having first to exhaust the community and quasi-community property. The State Bar Family Law Executive Committee feels that the amendment to Section 5132 is unnecessary and confusing. The staff agrees that it is somewhat confusing, but we believe that it is necessary to alert people to the interrelation of Sections 5132 and 5120.040. The staff has replaced the proposed amendment to Section 5132 with a simple prefatory "Subject to Section 5120.040, . . . ."

#### Liability of Unmarried Cohabitants

Ms. McGee proposes that where unmarried persons have a cohabitation living arrangement that endures five years or longer, the income of the persons should be treated as community property. "To exempt the income of partners to living arrangements from the debts of their long-term cohabitants is to penalize those who do make conventional commitments and enter into valid marriage agreements. Further, in most cases both partners benefit from the income and living standards of the other, and should, therefore, share the risks and liabilities as well as the benefits of combined incomes." Professor William Reppy in his debt collection study also discusses the possibility of making property of cohabitants liable for each other's debts on express or implied contract theories.

The Commission in the past has decided not to get involved in this area. The attempt to define by statute when two persons are "cohabiting" so as to allow creditors to reach their property seems destined to create nothing but more problems. And even if a satisfactory and politically feasible definition were achieved, it appears impossible to apply it in practice. The fact that the courts wish to pursue this avenue is no reason the Legislature should try to make sense out of the pursuit.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

STAFF DRAFT

LETTER OF TRANSMITTAL

January 21, 1983

To: THE HONORABLE GEORGE DEUKMEJIAN  
Governor of California and  
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 65 of the Statutes of 1978 to study whether the law relating to community property should be revised. The Commission submits this recommendation relating to one aspect of the study--the liability of marital property for debts. The recommendation recodifies and clarifies the law governing the rights of spouses and creditors, including provisions governing reimbursement rights between the spouses.

The Commission wishes to express its thanks to its community property consultants for their assistance in the development of this recommendation. Professor William A. Reppy, Jr., Duke Law School, is the Commission's principal consultant on this phase of the community property study. The background study he prepared for the Commission is published as Reppy, Debt Collection From Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143 (1980). The background studies prepared by the Commission's consultant, Professor Carol S. Bruch, U.C. Davis Law School, also cover aspects of this topic. See Bruch, The Definition and Division of Marital Property in California: Towards Parity and Simplicity, 33 Hastings L.J. 769 (1982), and Management Powers and Duties Under California's Community Property Laws, to be published in Volume 34 of Hastings Law Journal.

Respectfully submitted,

DAVID ROSENBERG  
Chairperson



RECOMMENDATION

relating to

LIABILITY OF MARITAL PROPERTY FOR DEBTS

General Approach

The eight community property jurisdictions in the United States have developed three distinct systems of applying marital property to the debts of one or both spouses.<sup>1</sup> Each system protects the marital property from creditors to varying degrees by creating exceptions to liability of the property for debts.<sup>2</sup>

The system least favorable to creditors is that developed in Washington and Arizona, which requires a classification of debts as community or separate.<sup>3</sup> All community property and the debtor's separate property is liable for a "community" debt, but only separate property of the debtor spouse is liable for a "separate" debt. Since in the ordinary case a substantial portion of the marital property is community, a creditor holding a separate debt may find the debt uncollectable. A practical consequence of this system is that creditors require consent of both spouses before extending credit and courts strive to classify debts as community in order to avoid unfairness to creditors.

A system more favorable to the interests of creditors is that developed in New Mexico. Under this system, debts are classified as community or separate, community property being liable for community debts and separate property of the debtor spouse being liable for that spouse's separate debts. In the case of a separate debt, if the separate property is exhausted and the debt remains unsatisfied, the creditor may reach the debtor's half-interest in the community property, in

1. Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L. Rev. 143, 168-75 (1981).
2. Marital property consists of the community property and the separate property of either of the spouses, but the separate property of the nondebtor spouse is ordinarily immune. In California, the separate property of a nondebtor spouse is liable for necessaries debts of the debtor spouse in limited situations. Civil Code §§ 5121, 5132.
3. For a discussion of the debt classification system, see Reppy, supra note 1, at 171-74.

effect forcing a partition. The mechanical operation of such a scheme, and the subsequent readjustment of property rights between the spouses, is not clear.<sup>4</sup>

Most community property states, including California, employ a system that is most favorable to creditors. Creditors under this system may satisfy their debts out of property over which the debtor spouse has management and control. In California, this means that generally a creditor may reach the separate property of the debtor spouse and all the community property since the spouses have equal management and control of the community property.<sup>5</sup> This general rule is subject to exceptions, which are dealt with below.

Of the possible approaches to liability of marital property for debts, the managerial system (which is the present California system) is generally most sound in theory and practice. It gives greatest assurance that debts of the spouses will be satisfied, subject to the statutory scheme of exemptions which will preserve property necessary for basic needs of the spouses.<sup>6</sup> Systems that require characterization of type of debt and partition of community property create serious administrative problems. Moreover, liability of the property over which the debtor has management and control conforms to the reasonable expectations of both spouses and creditors. The Commission recommends that the general approach of existing California law to liability of marital property for debts be preserved.

#### Property Under Management and Control of One Spouse

Under California's managerial approach to liability of marital property, property over which a spouse has management and control is liable for the debts of the spouse.<sup>7</sup> Since both spouses have equal

4. For a discussion of the partition system, see id., at 174-75.
5. For a discussion of the California managerial system, see id., at 168-70.
6. See discussion below of "Related Matters."
7. See Reppy, supra note 1, at 168-70; see also 1974 Cal. Stats. ch. 1206, § 1, p. 2609:

The Legislature finds and declares that . . . the liability of community property for the debts of the spouses has been coextensive with the right to manage and control community property and should remain so . . . .

management and control of the community property, this yields the rule that all community property is liable for a debt of either spouse.

California law, however, prescribes three situations where community property is under the management and control of only one spouse. A spouse who is operating or managing a business that is community personal property has the sole management and control of the business.<sup>8</sup> A community property bank account in the name of a spouse is free from the control of the other spouse.<sup>9</sup> If one spouse has a conservator, the other spouse having legal capacity has exclusive management and control of the community property.<sup>10</sup> Whether these types of community property are liable for a debt of the spouse not managing and controlling the property is not clear.<sup>11</sup>

The policy supporting liability of community property for a debt of either spouse incurred before or during marriage--maximum protection of creditors' rights with minimum procedural burdens--also supports liability of the property regardless whether it is under the management and control of one or both spouses. The law should make clear that the community property is liable for a debt of either spouse notwithstanding the concept that liability follows management and control.

#### Order of Satisfaction Against Property

Under the California approach to liability of marital property, all of the community property as well as the debtor's separate property is liable for a debt of the spouse. If the debt was incurred for community purposes, an argument can be made that the community property should be first exhausted before resort to the debtor's separate property is permitted. If the debt was incurred for separate purposes, an argument can be made that the separate property of the debtor should be first exhausted before resort to the community property is permitted.

Existing California law prescribes an order of satisfaction in several situations. Civil Code Section 5122(b) requires a determination whether or not a tort judgment arises out of an activity that benefits

8. Civil Code § 5125(d).

9. Fin. Code § 851.

10. Prob. Code § 3051.

11. See Reppy, supra note 1, at 195-99.

the community--if so, the judgment must be satisfied first out of community property and then out of the separate property of the tortfeasor; if not, the judgment must be satisfied first out of the separate property of the tortfeasor and then out of community property.<sup>1</sup> Civil Code Section 5132 requires a spouse to support the other spouse out of separate property if there is no community or quasi-community property.<sup>2</sup>

An order of satisfaction scheme creates a number of practical problems. It requires a procedural mechanism for determining whether the debt is community or separate in character. It requires a creditor who seeks to satisfy the debt out of one type of property to ascertain whether the other types of property have been exhausted; this may involve cumbersome court proceedings. Moreover, even if there are other types of property that have not been exhausted, an order of satisfaction scheme may require the creditor to seek satisfaction from property that is likely to be exempt or that is of such a nature that the cost of applying it to the judgment will exceed its worth.

The California statutes do not attempt to resolve these problems and there is no useful experience of operation under them.<sup>3</sup> Other

1. Civil Code Section 5122(b) provides:

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community property and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community property.

2. Civil Code Section 5132 provides:

5132. A spouse must support the other spouse while they are living together out of the separate property of the spouse when there is no community property or quasi-community property.

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.

3. See generally discussion in Note, Tort Debts Versus Contract Debts: Liability of the Community Under California's New Community Property Law, 26 Hastings L.J. 1575 (1975).

jurisdictions have enacted limited order of satisfaction schemes, but these schemes offer no useful guidance; apparently, elaborate court proceedings are required to make them operable.<sup>4</sup>

The Commission believes the mechanical problems caused by an order of satisfaction against property are too great to justify such a scheme. A creditor should be able to reach any property that is liable for the satisfaction of the judgment without the burden of first seeking out and attempting to exhaust particular classes of assets. The existing California order of satisfaction provisions should be repealed. In place of the order of satisfaction provisions, the Commission recommends adoption of a reimbursement right between spouses, which is discussed below.

#### Reimbursement

Where community property has been used during marriage to satisfy a separate debt or obligation of one of the spouses, and where separate property of one of the spouses has been used during marriage to satisfy a community obligation, as a general rule there is a right to reimbursement of the community or separate estate only in limited situations. At dissolution the parties do not ordinarily go back through all the transactions that have occurred over the course of a marriage and attempt to ascertain whether a particular expenditure was for a community or separate purpose and whether the particular expenditure was made with community or separate funds. There are several important exceptions to this generalization.

In three types of situations the community may obtain reimbursement for expenditures for separate debts--where the separate property of the spouse making the expenditure is benefited by the expenditure, where the expenditure is for a child or spousal support obligation that predates the marriage, and where the expenditure is made within a short time before dissolution.

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4. See Bingaman, The Community Property Act of 1973: A Commentary and Quasi-Legislative History, 5 N.M. L. Rev. 1 (1974).

The California case law relating to reimbursement has been criticized by commentators as being confused and uncertain, with no sound logical or policy basis.<sup>5</sup> After reviewing the law of all the other community property jurisdictions, one critic states:<sup>6</sup>

The law of California must be discussed separately. It defies not only classification, but rationalization as well. It is based on misconceptions, faulty principles and errors compounded over the years. It harbors two mutually inconsistent lines of cases, and its confusion is such that consensus is lacking not only as to what it should be, but what it is.

The Commission believes that the general rule of California law denying reimbursement except in limited situations is sound in principle. Reimbursement generally involves close questions of characterization of debts and property and generates difficult accounting and proof problems. It is litigation-breeding and not conducive to easy settlement of rights between the parties. Reimbursement is also inimical to sharing principles during marriage, since it encourages spouses to scrutinize the type of debt and nature of funds being applied in the event of future accountability.

Even though reimbursement as a general marital property principle is undesirable, specific types of cases demand reimbursement. If community funds are used by a spouse to pay a premarital support obligation<sup>7</sup> or improve separate property,<sup>8</sup> if separate property is taken for a

5. See, e.g., De Funiak, Improving Separate Property or Retiring Liens or Paying Taxes on Separate Property with Community Funds, 9 Hastings L.J. 36 (1957); Comment, The Husband's Use of Community Funds to Improve His Separate Property, 50 Calif. L. Rev. 844 (1962); Knutson, California Community Property Laws: A Plea for Legislative Study and Reform, 39 S. Calif. L. Rev. 240, 259-260 (1966); Bartke, Yours, Mine and Ours--Separate Title and Community Funds, 44 Wash. L. Rev. 379 (1969).

6. Bartke, id. at 405.

7. See discussion below of "Support Obligations."

8. This matter will be the subject of a separate Commission recommendation.

necessaries debt of the other spouse,<sup>9</sup> or if property of a former spouse is taken for a debt assigned to the other spouse,<sup>10</sup> a right of reimbursement should arise. And of course if property not liable for a debt at all is applied by a spouse to the debt, there should be a reimbursement right.

In the case of a tort debt, California law requires that a separate debt be satisfied first out of separate property and then out of community property, and that a community debt be satisfied first out of community property and then out of separate property.<sup>11</sup> To implement the policy of this rule, the law should substitute a provision that where property of one type is in fact applied to a debt of the other type, a reimbursement right arises. The rule of reimbursement should not apply, however, where the tort debt is satisfied out of insurance proceeds, whether separate or community. The function of insurance is to spread the risk of loss, and reimbursement would not be appropriate in such a situation.

If the spouses are separated, any debt incurred should be the separate debt of the spouse that incurred it. This is consistent with the principle that after separation the earnings of a spouse are the separate property of the spouse.<sup>12</sup> Thus if the spouse applies community property to the postseparation debt, the community should be entitled to reimbursement.<sup>13</sup>

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9. See discussion below of "Liability for Necessaries."

10. See discussion below of "Liability after Division of Property."

11. Civil Code § 5122(b).

12. Civil Code § 5118.

13. This rule would not apply where the debt was incurred for production or preservation of community property or for the common necessities of life of a spouse.

The reimbursement right in these cases should apply regardless whether the debt was satisfied voluntarily by payment by a spouse or involuntarily by action of the creditor. This will eliminate litigation over such matters as intent to make a gift, consent to the payment, and agency relationship, and will also encourage expeditious settlement of debts out of the most readily available assets without the need for concern about legal implications of use of those assets. However, the law should also make clear that a spouse may expressly waive reimbursement rights.

A major problem with existing law as to reimbursement is that the character of the debt must be ascertained, the character of the property applied to the debt must be determined, and any gift, consent, or agency must be found, at the time of dissolution of marriage, which may occur many years after the operative events. This causes substantial discovery and proof problems and increases the likelihood of error. To minimize these problems, the reimbursement rights should be determinable during marriage as well as at dissolution, and the right should be strictly limited to a period of three years after satisfaction of the debt. It should be recognized that the reimbursement right will be largely unused during an ongoing marriage; nonetheless, the right should be authorized for those spouses concerned to keep an accurate accounting of property, particularly in second marriages or separate property marriages.

#### Prenuptial Debts

If a person contracts a debt before marriage, the earnings of the person's spouse after marriage are not liable for the debt.<sup>1</sup> This principle implies two corollaries:

- (1) Community property other than the earnings of the person's spouse after marriage is liable for prenuptial contract debts.
- (2) The earnings of the person's spouse after marriage are liable for tort and other noncontractual prenuptial debts.

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1. Civil Code § 5120.



The first corollary is correct. Since the debtor spouse owns the community property, all community property other than earnings of the nondebtor spouse (which is peculiarly personal) should be liable for the satisfaction of the prenuptial debt. This principle should be codified expressly.

The second corollary is not correct. There is no sound basis to distinguish prenuptial tort and other debts from contract debts. The earnings of the nondebtor spouse should not be liable for any prenuptial debts of the debtor spouse, whether based on contract or tort.<sup>2</sup>

A related matter is how long the earnings of the nondebtor spouse should remain not liable for a prenuptial debt of the debtor spouse.<sup>3</sup> The Commission recommends that the earnings should lose their protection from liability upon a change in form, but that they should retain their protection so long as traceable in bank accounts. This will ensure that substantial amounts of community property are not immunized from creditors, that the judicial system is not burdened by extensive tracing requirements, and that earnings will remain exempt so long as they retain their peculiarly personal character. This will also parallel the protection given to funds exempt from enforcement of judgments.<sup>4</sup>

#### Support Obligations

The extent to which marital property is liable for a child support obligation is unclear. Civil Code Section 199 provides that the obligation may be satisfied "only" from the total earnings (or assets acquired therefrom) of each spouse after dissolution of marriage.<sup>5</sup> Whether this provision is intended to place the child in a worse position than a general creditor is unclear. Civil Code Section 4807 appears to subject

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2. With the exception of certain support obligations. See discussion below.
  3. See Reppy, supra note 1, 199-200.
  4. Code Civ. Proc. § 703.080 (tracing exempt funds).
  5. Civil Code § 199.

community property, including the community property interest in the earnings of a nonobligor spouse, to a child support obligation.<sup>6</sup> In this regard, Civil Code Section 5127.5 and 5127.6 also appear to create exceptions to the rule of Section 199 under certain factual situations. These provisions are evidently intended to comport with AFDC standards.<sup>7</sup> However, the provisions are unworkable, confusing, obsolete, and probably unconstitutional.<sup>8</sup>

The liability of marital property for child support obligations (and for spousal support obligations as well) should be dealt with clearly and directly. A child or former spouse to whom a person owes an obligation of support should be in at least as good a position as a general creditor. This means that in the case of remarriage of the support obligor, the child or former spouse should be permitted to enforce the support obligation not only against the separate property of the support obligor but also against all community property of the subsequent marriage except the earnings of the nonobligor spouse.<sup>9</sup>

In addition, because a support obligation deserves special treatment, the child or former spouse should also be able to obtain a court order to reach earnings of the nonobligor spouse where there is no other property reasonably available to satisfy the obligation and to do so appears equitable. This additional liability is consistent with the rule that the earnings of the nonobligor spouse may be taken into account in setting the amount of the support obligation.<sup>10</sup>

Where community property is applied to a premarital support obligation of one of the spouses, the community should be entitled to reimbursement to the extent the amount of community property used is disproportionate to the amount of separate property of the obligor spouse that was available but not used to satisfy the obligation.<sup>11</sup>

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6. In re Marriage of Brown, 99 Cal. App.3d 702, 160 Cal. Rptr. 524 (1979).

7. Bruch, Management Powers and Duties Under California's Community Property Law 44-48 (1980) (to be published).

8. Id., at 40-52; Reppy, supra note 1, at 204-06.

9. See discussion above of "Prenuptial Debts."

10. In re Marriage of Havens, 125 Cal. App.3d 1012, 178 Cal. Rptr. 477 (1981).

11. This codifies the rule of Weinberg v. Weinberg, 67 Cal.2d 557, 63 Cal. Rptr. 13, 432 P.2d 709 (1967). See also Bare v. Bare, 256

The law should make these rules clear and the inconsistent and confusing provisions of existing law should be repealed.

#### Liability for Necessaries

Under existing law, separate property of a spouse is not liable for the debts of the other spouse except that the separate property is liable for the necessities of life contracted by either spouse while living together.<sup>12</sup> This exception is based on the obligation of the spouses to support one another.<sup>13</sup>

The requirement that the necessities be "contracted" is unduly restrictive. This language has the effect of immunizing the separate property from debts for necessities such as emergency medical care not contracted by one of the spouses.<sup>14</sup> In such situations the separate property of the nondebtor spouse should be liable for the necessities debt regardless of the contractual nature of the debt.

The separate property of the nondebtor spouse is liable for necessities debts incurred only while the spouses are living together. After separation by agreement there is no liability unless support is stipulated in the agreement.<sup>15</sup> The provision abrogating the support obligation of the spouses in a separation by agreement penalizes spouses who need support following an informal separation and violates the policy of the Family Law Act requiring mutual support during marriage.<sup>16</sup> The presumption should be reversed--the separate property of the spouses should remain liable for the necessities obligations incurred following separation unless liability is expressly waived in the separation agreement. However, after informal separation the property should be liable only

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Cal. App.2d 684, 64 Cal. Rptr. 335 (1967); In re Marriage of Smaltz, 82 Cal. App.3d 568, 147 Cal. Rptr. 154 (1978).

12. Civil Code § 5121.

13. Civil Code § 5132.

14. See, e.g., Credit Bureau of San Diego v. Johnson, 61 Cal. App.2d Supp. 834, 142 P.2d 963 (1943). Cf. St. Vincent's Institution for Insane v. Davis, 129 Cal. 20, 61 P. 477 (1900) (earlier statute).

15. Civil Code § 5131.

16. Bruch, The Legal Import of Informed Marital Separations: A Survey of California Law and a Call for Change, 65 Calif. L. Rev., 1015, 1030-31 (1977); Reppy, supra note 1, 194-95.

for debts for "common" necessities of life;<sup>17</sup> the nondebtor spouse should not be required to maintain the estranged spouse after informal separation in the accustomed style of life.<sup>18</sup>

Case law provides that the separate property of the nondebtor spouse may not be applied to the satisfaction of a judgment unless the nondebtor spouse is made a party to the action.<sup>19</sup> This rule is sound and should be codified in terms of the personal liability of the nondebtor spouse. This will satisfy due process demands and will assure the nondebtor spouse the opportunity to contest the validity of the debt before his or her separate property is applied to its satisfaction.

Existing law permits satisfaction of a necessities debt out of separate property of the nondebtor spouse only after all other types of marital property have been exhausted.<sup>20</sup> Such a limitation on the right of a creditor is undesirable.<sup>21</sup> A preferable means of implementing the policy of existing law is to permit the creditor to reach separate property of the nondebtor spouse but to provide reimbursement if this is done when other marital property is available but not used. The proposed law adopts the reimbursement procedure.

#### Anti-Deficiency Protection of Separate Property

Civil Code Section 5123 provides that in the case of a security interest in community property, the separate property of a spouse is not liable for any deficiency in the security unless the spouse gives express written consent to liability.<sup>22</sup> This provision is peculiar in

17. Cf. Code Civ. Proc. § 706.051 (common necessities exception to wage exemption); Ratzlaff v. Portillo, 14 Cal. App.3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is necessary required to sustain life).

18. Cf. Wisnom v. McCarthy, 48 Cal. App. 697, 192 P. 337 (1920) (under necessities standard, maid necessary because of economic and social position of spouses).

19. See, e.g., Evans v. Noonan, 20 Cal. App. 288, 128 P. 794 (1912); Santa Monica Bay Dist. v. Terranova, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

20. Civil Code §§ 5121 and 8132.

21. See discussion above of "Order of Satisfaction."

22. Civil Code Section 5123 provides:

5123. (a) The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed

protecting separate property of a spouse in the event of a deficiency but not other community property. It is thus inconsistent not only with general rules governing deficiency judgments,<sup>23</sup> but also with general rules governing liability of property of a married person obligated on a debt.<sup>24</sup> Section 5123 was enacted at a time when the separate property of a married woman was not ordinarily liable for a debt; this is no longer the law. The historical reasons that led to enactment of the section are now obsolete.<sup>25</sup> The section should be repealed and replaced by a statement of the basic rule that the separate property of a spouse cannot be taken to satisfy a debt unless the spouse is personally liable for the debt.

#### Liability After Division of Property

Upon separation or divorce, the community and quasi-community property and the debts are divided between the spouses.<sup>26</sup> Notwithstanding the division of property and debts, a creditor may seek to satisfy the debt out of any property that would have been liable for the debt before the division.<sup>27</sup> Thus, a creditor may reach former community property awarded to a nondebtor spouse even though the property division requires that the debtor spouse pay the debt. In such a situation the

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of trust or other hypothecation of the community property which is executed prior to January 1, 1975, unless the wife expressly assents in writing to the liability of her separate property for such debt or obligation.

(b) The separate property of a spouse is not liable for any debt or obligation secured by a mortgage, deed of trust, or other hypothecation of the community property which is executed on or after January 1, 1975, unless the spouse expressly assents in writing to the liability of the separate property for the debt or obligation.

23. See, e.g., Code Civ. Proc. §§ 580a, 580b.
24. See, e.g., Civil Code § 5121 (liability of separate property of spouse). See, generally, discussion in *Carroll v. Puritan Leasing Co.*, 77 Cal. App.3d 481, 143 Cal. Rptr. 772 (1978).
25. See Reppy, supra note 1, at 202-03.
26. Civil Code § 4800.
27. See, e.g., *Mayberry v. Whittier*, 144 Cal. 322, 78 P. 16 (1904); *Bank of American v. Mantz*, 4 Cal.2d 322, 49 P.2d 279 (1935); *Vest v. Superior Court*, 294 P.2d 988, 140 Cal. App.2d 91 (1956).

nondebtor spouse has a cause of action against the debtor spouse for reimbursement.<sup>28</sup>

This scheme is unsound. It creates procedural burdens of tracing former community property in the hands of the nondebtor spouse and raises problems whether any increase in value of the property is also liable<sup>29</sup> and whether the property should be traceable through changes in form after it has lost its community identity. These practical difficulties also demonstrate that the principles supporting liability of community property during marriage are not applicable after division of the property upon dissolution. Community property is liable during marriage because this avoids the serious administrative problems of characterizing the type of property and debt and partitioning the community property, and gives greatest assurance that creditors will be satisfied.<sup>30</sup> Upon dissolution, however, the property and debts are characterized as separate or community, and the community property and debts are partitioned among the parties; one or both of the spouses are required to satisfy the creditors. The administrative and policy reasons for undifferentiated liability of community property are thus eliminated upon dissolution and division of the property and debts.

Liability of community property for debts should cease upon dissolution and division of the property.<sup>31</sup> A creditor should be able to collect a debt from the person to whom the debt is assigned for payment, without regard to the type of property--former community or separate property--from which the debt is satisfied. This eliminates tracing problems and is consistent with the purposes of the Family Law Act to require payment of a debt by the person to whom the debt is assigned,<sup>32</sup>

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28. Reppy, supra note 1, at 210-11.

29. See Ryan v. Souza, 155 Cal. App.2d 213, 317 P.2d 655 (1957).

30. See discussion above of "General Approach."

31. Division of the community property does not affect enforceability of a valid lien on the property. See, e.g., Kinney v. Valentyne, 15 Cal.3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

32. The Family Law Act demands division of property and obligations so that the parties are placed in a position of equality. See Civil Code § 4800; In re Marriage of Schultz, 105 Cal. App.3d 846, 164 Cal. Rptr. 653 (1980).

but does not impair the creditor's rights against the debtor.<sup>33</sup> In allocating the debts to the parties, the court in the dissolution proceeding should take into account the rights of creditors so there will be available sufficient property to satisfy the debt by the person to whom the debt is assigned.<sup>34</sup> If a judgment on the debt is entered after division of the property and debts, the judgment should not be enforceable against the nondebtor spouse to whom the debt is assigned unless the nondebtor spouse is made a party. This preserves the due process rights of the nondebtor spouse after division by providing the nondebtor spouse the opportunity to contest the validity of the debt, raise defenses, and take other necessary actions.

#### Liability After Judgment of Nullity

The law relating to creditors' rights against property of former spouses whose marriage has been annulled as void or voidable is not clear.<sup>35</sup> The statute should make clear that creditors' rights against property of an annulled marriage are the same as against property of a valid marriage that ended in dissolution. The parties held themselves out as being married and third persons relied to their detriment. Fundamental community property principles demand that there be a community of property formed between the parties for purposes of creditors' rights even though the marriage is ultimately held invalid.

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33. Permitting a creditor to satisfy a debt out of property of a nondebtor spouse to whom the debt is assigned does not preclude the creditor from seeking to satisfy the debt out of the property of the debtor spouse as well. If the creditor satisfies the debt out of property of the debtor spouse, the debtor spouse has a right of reimbursement against the nondebtor spouse to whom the debt is assigned.

34. Existing law requires an equal division of property and debts except in the case where liabilities exceed assets, in which case the court may adjust the division to reflect equitable considerations. See, e.g., In re Marriage of Fonstein, 17 Cal.3d 738, 552 P.2d 1169, 131 Cal. Rptr. 873 (1976) (equal division); In re Marriage of Eastis, 47 Cal. App.3d 459, 120 Cal. Rptr. 86 (1975) (unequal division). The court should have greater discretion to allocate debts taking into account the rights of creditors. Contrast In re Marriage of Schultz, 105 Cal. App.3d 846, 164 Cal. Rptr. 653 (1980) (no discretion).

35. See Reppy, supra note 1, at 213-18.

### Related Matters

A complex aspect of the liability of marital property for debts is the extent to which exemptions from enforcement of a judgment are recognized for community property and separate property of the nondebtor spouse. This matter has been dealt with separately in the Law Revision Commission's recommendation relating to enforcement of judgments.<sup>36</sup>

A system prescribing the liability of separate and community property for the debts of spouses is subject to the ability of the spouses to transfer property between themselves thus affecting the character and liability of the property. California law is liberal in permitting transmutation of the character of property by spouses and requires few formalities. This matter will be the subject of a separate Commission recommendation.

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

An act to amend Sections 4800, 4800.6, 4807, 5131, and 5132 of, to add Section 5101 to, to add headings to Chapter 1 (commencing with Section 5100), Article 1 (commencing with Section 5100) and Article 2 (commencing with Section 5104) of Chapter 1, Chapter 2 (commencing with Section 5107), Chapter 4 (commencing with Section 5125), Chapter 5 (commencing with Section 5129), Chapter 6 (commencing with Section 5133), and Chapter 7 (commencing with Section 5138) of, and to add Chapter 3 (commencing with Section 5120.010) to, Title 8 of Part 5 of Division 4 of, and to repeal Sections 199, 5116, 5120, 5121, 5122, 5123, 5127.5, and 5127.6 of, the Civil Code, and to amend Section 27251 of the Government Code, relating to husband and wife.

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

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36. Code Civ. Proc. §§ 703.020, 703.110, 703.130, 704.010-704.990; Tentative Recommendation Proposing the Enforcement of Judgments Law, 15 Cal. L. Revision Comm'n Reports 2001, 2076-77 (1980).



Civil Code § 199 (repealed)

SECTION 1. Section 199 of the Civil Code is repealed.

~~199. The obligation of a father and mother to support their natural child under this chapter, including but not limited to Sections 196 and 206, shall extend only to and may be satisfied only from, the total earnings, or the assets acquired therefrom, and separate property of each, if there has been a dissolution of their marriage as specified by Section 4350.~~

Comment. Former Section 199 is superseded by Sections 5120.020 (liability of community property), 5120.030 (liability of separate property), and 5120.050 (liability for support obligation).

992/927

Civil Code § 4800 (amended)

SEC. 2. Section 4800 of the Civil Code is amended to read:

4800. (a) Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, the court shall, either in its interlocutory judgment of dissolution of the marriage, in its judgment decreeing the legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community property and the quasi-community property of the parties equally. For purposes of making such division, the court shall value the assets and liabilities as near as practicable to the time of trial, except that, upon 30 days' notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and prior to trial to accomplish an equal division of the community property and the quasi-community property of the parties in an equitable manner.

(b) Notwithstanding subdivision (a), the court may divide the community property and quasi-community property of the parties as follows:

(1) Where economic circumstances warrant, the court may award any asset to one party on such conditions as it deems proper to effect a substantially equal division of the property.

(2) As an additional award or offset against existing property, the court may award, from a party's share, any sum it determines to have been deliberately misappropriated by such party to the exclusion of the

community property or quasi-community property interest of the other party.

(3) If the net value of the community property and quasi-community property is less than five thousand dollars (\$5,000) and one party cannot be located through the exercise of reasonable diligence, the court may award all such property to the other party on such conditions as it deems proper in its final judgment decreeing the dissolution of the marriage or in its judgment decreeing the legal separation of the parties.

(4) Educational loans shall be assigned to the spouse receiving the education in the absence of extraordinary circumstances rendering such an assignment unjust.

(5) In dividing the debts the court shall take into consideration the earning capacities of the parties and other relevant factors including the rights of creditors and shall make such a division as is just and equitable.

(c) Notwithstanding the provisions of subdivision (a), community property personal injury damages shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages or the accrual of the cause of action, and all other facts of the case, determines that the interests of justice require another disposition. In such case, the community property personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just, except that at least one-half of such damages shall be assigned to the party who suffered the injuries. As used in this subdivision, "community property personal injury damages" means all money or other property received or to be received by a person in satisfaction of a judgment for damages for his or her personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages, if the cause of action for such damages arose during the marriage but is not separate property as defined in Section 5126, unless such money or other property has been commingled with other community property.

(d) The court may make such orders as it deems necessary to carry out the purposes of this section.

Comment. Paragraph (5) is added to subdivision (b) of Section 4800 to make clear the court's discretion to allocate debts in such a manner as to protect the rights of creditors by taking into account such factors as the earning capacity of the person to whom a debt is assigned, the exempt character of the property received by the person to whom the debt is assigned, and the separate property owned by the person to whom the debt is assigned. This abrogates the rule of In re Marriage of Schultz, 105 Cal. App.3d 846, 164 Cal. Rptr. 653 (1980) (no court discretion to adjust division of residual assets to reflect equitable considerations). The division of debts must be fair and equitable nonetheless, and the distribution of assets and obligations should be made in such a manner that the residual assets awarded to each party after deduction of the obligations are equal to the extent practical. See, e.g., In re Marriage of Fonstein, 17 Cal.3d 738, 552 P.2d 1169, 131 Cal. Rptr. 873 (1976) (equal division required); In re Marriage of Eastis, 47 Cal. App.3d 459, 120 Cal. Rptr. 86 (1975) (unequal division in "bankrupt family" situation).

07446

Civil Code § 4800.6 (amended).

SEC. 3. Section 4800.6 of the Civil Code is amended to read:

4800.6. The interlocutory judgment of dissolution, or the final judgment of legal separation, shall contain the following notice:  
**"Although an obligation based on a contract is assigned to one party as part of the division of the community, if the party to whom the obligation was assigned defaults on the contract, the creditor may have a cause of action against the other party. If a party who incurred an obligation is not assigned the obligation as part of the division of the community and the party to whom the obligation is assigned defaults, the creditor may enforce the obligation against the party who incurred it. In such a case the party against whom the obligation is enforced has a right of reimbursement from the party to whom the obligation is assigned."**

Comment. Section 4800.6 is amended to reflect the enactment of Section 5120.060, governing the liability of property after division. Section 5120.060 is not limited to contract obligations. See Section 5120.010 (debts).

18533

Civil Code § 4807 (amended)

4807. ~~The~~ Subject to Section 5120.050, the community property, the quasi-community property and the separate property of the parents may be

subjected to the support, maintenance, and education of the children in such proportions as the court deems just.

Comment. Section 4807 is amended to make clear it is not intended to apply to the property of a stepparent but only to property of a parent of the child. The extent to which property of a stepparent may be subjected to support of the child is governed by Section 5120.050 (liability for support obligation). Nothing in Section 4807 precludes the income of a stepparent from being taken into account in setting the amount of a support obligation. See, e.g., In re Marriage of Brown, 99 Cal. App.3d, 702, 160 Cal. Rptr. 524 (1979).

32227

Civil Code §§ 5100-5106 (chapter and article heading)

SEC. 5. A chapter and article heading are added immediately preceding Section 5100 of the Civil Code, to read:

CHAPTER 1. GENERAL PROVISIONS

Article 1. Relation of Husband and Wife

32228

Civil Code § 5101 (added). Liability of married person for injury or damage caused by other spouse

SEC. 6. Section 5101 is added to the Civil Code, to read:

5101. A married person is not liable for any injury or damage caused by the other spouse except in cases where the married person would be liable therefor if the marriage did not exist.

Comment. Section 5101 continues without substantive change former Section 5122(a).

32229

Civil Code §§ 5104-5106 (article heading)

SEC. 7. An article heading is added immediately preceding Section 5104 of the Civil Code, to read:

Article 2. Property Rights

Civil Code §§ 5107-5119 (chapter heading)

SEC. 8. A chapter heading is added immediately preceding Section 5107 of the Civil Code, to read:

CHAPTER 2. CHARACTERIZATION OF MARITAL PROPERTY

32232 N/Z

Civil Code § 5116 (repealed)

SEC. 9. Section 5116 of the Civil Code is repealed.

~~5116. The property of the community is liable for the contracts of either spouse which are made after marriage and prior to or on or after January 1, 1975.~~

Comment. The substance of former Section 5116 is continued in Section 5120.020(a).

32275 N/Z

Civil Code § 5120 (repealed)

SEC. 10. Section 5120 of the Civil Code is repealed.

~~5120. Neither the separate property of a spouse nor the earnings of the spouse after marriage is liable for the debts of the other spouse contracted before the marriage.~~

Comment. The portion of former Section 5120 making separate property of a spouse not liable for the debts of the other spouse contracted before marriage is continued in Section 5120.030(b)(1). The portion making earnings after marriage not liable is continued in Section 5120.020(b).

32276

Civil Code §§ 5120.010-5120.320 (added)

SEC. 11. Chapter 3 (commencing with Section 5120.010) is added to Title 8 of Part 5 of Division 4 of the Civil Code, to read:

CHAPTER 3. LIABILITY OF MARITAL PROPERTY

Article 1. General Rules of Liability

§ 5120.010. Definitions

5120.010. Unless the provision or context otherwise requires, as used in this chapter:

(a) "Debt" means an obligation incurred by a spouse before or during marriage, whether based on contract, tort, or otherwise.

(b) A debt is "incurred" at the following time:

(1) In the case of a contract, at the time the contract is made.

(2) In the case of a tort, at the time the tort occurs.

(3) In other cases, at the time the obligation arises.

Comment. Subdivision (a) of Section 5120.010 is intended to facilitate drafting. Subdivision (b) makes more precise the meaning of the time a debt is incurred. For treatment of a pre-existing child or spousal support obligation as a premarital debt, see Section 5120.050 (liability for support obligation).

32277

§ 5120.020. Liability of community property

5120.020. (a) Except as otherwise expressly provided by statute, the property of the community is liable for a debt of either spouse incurred before or during marriage, regardless which spouse has the management and control of the property and regardless whether both spouses are parties.

(b) The earnings of a spouse during marriage are not liable for a debt of the other spouse incurred before marriage. The earnings remain not liable if they are held uncommingled in a deposit account by or in the name of the spouse, to the extent they can be traced in the manner prescribed by statute for tracing funds exempt from enforcement of a money judgment. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise.

Comment. Subdivision (a) of Section 5120.020 continues the substance of former Section 5116 (contracts after marriage) and the implication of Section 5122(b) (torts), and makes clear that the community property (other than earnings of the nondebtor spouse) is liable for the prenuptial contracts of the spouses. The nondebtor spouse need not be made a party for the purpose of enforcing a judgment out of community property. Subdivision (a) applies regardless whether the debt was incurred prior to, on, or after January 1, 1975. For rules governing liability after division of the community property, see Section 5120.060.

The introductory and concluding clauses of subdivision (a) are intended to negate the implication of language found in 1974 Cal. Stats. ch. 1206, § 1, p. 2609, that community property is liable only for the debts of the spouse having management and control. The introductory and concluding clauses make clear that the community property is liable for all debts of either spouse absent an express statutory exception. Thus community property under the management and control of one spouse pursuant to Section 5125(d) (spouse operating or managing business) or Financial Code Section 851 (one spouse bank account) or 3051 (conservatorship) remains liable for the debts of the other spouse. For an express statutory exception from liability of community property, see subdivision (b) (premarital debts). See also Section 5120.240 (reimbursement for postseparation debts).

The first sentence of subdivision (b) continues the substance of a portion of former Section 5120 and extends it to include all debts, not just those based on contract. The second sentence codifies the rule that, for purposes of liability, earnings may not be traced through changes in form. See, e.g., Pfunder v. Goodwin, 83 Cal. App. 551, 257 P. 119 (1927). Earnings may be traced only into deposit accounts in the same manner as funds exempt from enforcement of judgments. See Code Civ. Proc. § 703.030 (tracing).

32278

§ 5120.030. Liability of separate property

5120.030. (a) The separate property of a spouse is liable for a debt of the spouse incurred before or during marriage.

(b) Except as otherwise provided by statute:

(1) The separate property of a spouse is not liable for a debt of the other spouse incurred before or during marriage.

(2) The separate property of a spouse is not liable for a debt, whether or not the spouse has joined in the encumbrance of community property to secure payment of the debt, unless the spouse incurred the debt.

Comment. Subdivision (a) of Section 5120.030 continues the substance of a portion of former Section 5121 (contracts) and the implication of former Section 5122(b) (torts).

Subdivision (b)(1) continues the substance of former Section 5120 (prenuptial contracts), a portion of former Section 5121 (contracts after marriage), and the implication of former Section 5122(b) (torts). Subdivision (b)(2) supersedes former Section 5123 (liability of separate property for debt secured by community property). Cf. Carroll v. Puritan Leasing Co., 77 Cal. App.3d 481, 143 Cal. Rptr. 772 (1978). For an exception to the rule of subdivision (b), see Section 5120.030 (liability for necessities).

§ 5120.040. Liability for necessities

5120.040. (a) A spouse is personally liable for the following debts of the other spouse incurred during marriage:

(1) A debt incurred for necessities of life of the other spouse while the spouses are living together.

(2) A debt incurred for common necessities of life of the other spouse while the spouses are living separate and apart, unless the spouses are living separate and apart by a written agreement that waives the obligation of support. A spouse is not personally liable pursuant to this subdivision for a debt incurred while there is in effect a court order for support of the other spouse.

(b) If, pursuant to this section, separate property of a spouse is applied to the satisfaction of a debt of the other spouse at a time when nonexempt community property or separate property of the other spouse is available but is not applied to the satisfaction of the debt, the spouse is entitled to reimbursement to the extent the property was available.

Comment. Section 5120.040 is an exception to the rule of Section 5120.030 that the separate property of a spouse is not liable for a debt of the other spouse incurred during marriage. The separate property of a spouse may not be subjected to process by necessities creditors of the other spouse unless the spouse is made a party for the purpose of enforcing the liability. See, e.g., former Section 5121(b); *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912); *Santa Monica Bay Dist. v. Terranova*, 15 Cal. App.3d 854, 93 Cal. Rptr. 538 (1971).

Subdivision (a)(1) continues the substance of a portion of former Section 5121, but eliminates the implication that the necessities must have been contracted for. See, e.g., *Credit Bureau of San Diego v. Johnson*, 61 Cal. App.2d Supp. 834, 142 P.2d 963 (1943) (medical care not contracted by either spouse). Subdivision (a)(1) is consistent with Section 5132 (support obligation while spouses live together) but does not require exhaustion of community and quasi-community property before separate property of a nondebtor spouse can be reached. But see subdivision (b) (reimbursement for necessities).

Subdivision (a)(2) is an exception to the rule of Section 5131, which abrogates the obligation of support between spouses living separate and apart by agreement, unless support is stipulated in the agreement. Nothing in subdivision (a)(2) should be deemed to limit the obligation of a spouse for support pursuant to a court order pendente lite or in a judgment decreeing the legal separation of the spouses. A spouse who desires to limit the liability pursuant to subdivision (a)(2), or a spouse who desires a greater support obligation than provided in subdivision (a)(2), may seek a support order, which supersedes liability under subdivision (a)(2).

Subdivision (a)(2) also abolishes the "station in life" test of cases such as *Wisnom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920) (maid necessary because of economic and social position of spouses), in



determining what is a necessary of life; the separate property of the nondebtor spouse is liable only for debts for the "common" necessities of life of the other spouse while living separate and apart. Cf. Ratzlaff v. Portillo, 14 Cal. App.3d 1013, 92 Cal. Rptr. 722 (1971) ("common" necessary is necessary required to sustain life).

Subdivision (b) implements a portion of former Sections 5121 and 5132 (order of satisfaction out of marital property). For general provisions governing reimbursement, see Section 5120.210.

32106

§ 5120.050. Liability for support obligation

5120.050. (a) For the purpose of this chapter, a child or spousal support obligation of a married person that does not arise out of the marriage shall be treated as a debt incurred before marriage, regardless whether a court order for support is made or modified before or during marriage and regardless whether any installment payment on the obligation accrues before or during marriage.

(b) The earnings of a spouse during marriage are liable for a child or spousal support obligation of the other spouse that does not arise out of the marriage, notwithstanding Section 5120.020, to the extent ordered by the court, subject to any applicable limitation imposed by law. The court order shall be made upon a determination that there is no other property reasonably available to satisfy the support obligation and that it would be just and equitable to apply the earnings of the spouse to the support obligation of the other spouse under the circumstances of the particular case. The court order shall be made upon motion to the court in which the support order is entered. If the spouse resides in a county other than the county where the support order is entered, the person seeking enforcement of the support obligation shall do all of the following:

(1) Apply to the superior court in the county in which the spouse resides.

(2) File with the application an abstract of judgment in the form prescribed by Section 674 of the Code of Civil Procedure.

(3) Pay a filing fee of twelve dollars (\$12). No law library fee shall be charged.

(c) If community property is applied to the satisfaction of a child or spousal support obligation of a married person that does not arise

out of the marriage, the community is entitled to reimbursement from the married person to the extent the amount of community property used to satisfy the support obligation exceeds the proportionate obligation of the community. As used in this subdivision, the proportionate obligation of the community is the proportion of the total community income during the marriage to the total separate income of the married person during the marriage.

(d) Nothing in this section limits the matters a court may take into consideration in determining or modifying the amount of a support order including, but not limited to, the earnings of the spouse of the person obligated for child or spousal support.

Comment. Subdivision (a) of Section 5120.050 makes clear that a support obligation that arises before the marriage is a prenuptial debt for purposes of liability of marital property. As a result, the general rule is that the separate property of the obligor spouse and the community property of the marriage is liable for the support obligation, other than the earnings of the non-obligor spouse. See Section 5120.020 (liability of community property).

Subdivision (b) makes an exception to the general rule of nonliability of the earnings of the non-obligor spouse in special circumstances. Subdivision (b) is not intended to be applied routinely but is intended as a narrow exception to achieve an equitable result in an unjust case. The ability of the court to make earnings of the non-obligor spouse liable are subject to applicable limitations such as those found in Code of Civil Procedure Sections 706.030 and 706.052 (withholding order for support).

Subdivision (c) codifies the rule of Weinberg v. Weinberg, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. (1967). See also Bare v. Bare, 256 Cal. App.2d 684, 64 Cal. Rptr. 335 (1967); In re Marriage of Smaltz, 82 Cal. App.3d 568, 147 Cal. Rptr. 154 (1978).

Subdivision (d) makes clear that despite the general rule that earnings of the non-obligor spouse are not liable for the support obligation, the earnings may be taken into account by the court in setting the amount of the support obligation. This codifies existing law. See, e.g., In re Marriage of Havens, 125 Cal. App.3d 1012, 178 Cal. Rptr. 477 (1981).

968/697

§ 5120.060. Liability of property after division

5120.060. (a) Notwithstanding any other provision of this article, after division of community and quasi-community property pursuant to Section 4800:

(1) The separate property owned by a spouse at the time of the division and the property received by the spouse in the division is

liable for a debt of the spouse incurred before or during marriage and the spouse is personally liable for the debt, whether or not the debt was assigned for payment by the other spouse in the division.

(2) The separate property owned by a spouse at the time of the division and the property received by the spouse in the division is not liable for a debt of the other spouse incurred before or during marriage, and the spouse is not personally liable for the debt, unless the debt was assigned for payment by the spouse in the division of the property. Nothing in this paragraph affects the liability of property for the satisfaction of a lien on the property.

(3) The separate property owned by a spouse at the time of the division and the property received by a spouse in the division is liable for a debt of the other spouse incurred before or during marriage, and the spouse is personally liable for the debt, if the debt was assigned for payment by the spouse in the division of the property. If a money judgment for the debt is entered after the division, the property is not subject to enforcement of the judgment and the judgment may not be enforced against the spouse, unless the spouse is made a judgment debtor under the judgment for the purpose of this paragraph.

(b) If the separate property owned by a spouse at the time of the division or the property received by the spouse in a division of community and quasi-community property pursuant to Section 4800 is applied to the satisfaction of a money judgment for a debt of the spouse that is assigned for payment by the other spouse in the division, the spouse has a right of reimbursement from the other spouse to the extent of the property applied, with interest at the legal rate, and may recover reasonable attorney's fees incurred in enforcing the right of reimbursement.

Comment. Section 5120.060 prescribes rules of liability of former community and quasi-community property and former separate property following a division of the property pursuant to a court judgment of separation, dissolution, or later division.

Subdivision (a)(1) states the rule that the rights of a creditor against the property of a debtor are not affected by assignment of the debt to the other spouse for payment pursuant to a property division. A creditor who is not paid may seek to satisfy the debt out of property of the debtor. Former law on this point was not clear. The debtor in such a case will have a right of reimbursement against the former spouse pursuant to subdivision (b).

Paragraphs (2) and (3) of subdivision (a) reverse the case law rule that a creditor may seek enforcement of a money judgment against the former community property in the hands of a nondebtor spouse after

dissolution of the marriage. See, e.g., Bank of America N.T. & S.A. v. Mantz, 4 Cal.2d 322, 49 P.2d 279 (1935). Subdivision (a)(2) makes clear that former community property received by the nondebtor spouse at division is liable only if the nondebtor spouse is assigned the debt in division. In the case of a judgment entered after the division of property, the nondebtor spouse must be made a party for due process reasons. If the property division calls for the one spouse to pay the debt and the creditor satisfies the judgment out of property of the other spouse, the other spouse will have a right of reimbursement pursuant to subdivision (b). Subdivision (a)(2) does not affect enforceability of liens on the property. See, e.g., Kinney v. Valentyne, 15 Cal.3d 475, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

Subdivision (b) states the rule as to reimbursement where a debt is satisfied out of the property of a spouse other than the spouse to whom the debt was assigned pursuant to a property division. Former law on this point was not clear. For general provisions governing reimbursement, see Section 5120.210 (reimbursement).

32280

§ 5120.070. Liability of property after judgment of nullity

5120.070. After a judgment of nullity of a marriage, whether void or voidable, the property that would have been community property and the property that would have been the separate property of the parties had the marriage been valid is liable for the debts of the parties to the same extent as if the marriage were valid and the judgment of nullity were a judgment of dissolution, regardless whether the parties are declared to have the status of putative spouses and regardless whether the property is quasi-marital property.

Comment. Section 5120.070 is consistent with Section 4451 (judgment of nullity conclusive only as to parties to the proceeding). Former law was not clear.

27872

Article 2. Reimbursement

§ 5120.210. General provisions

5120.210. A right of reimbursement provided by this chapter is subject to the following provisions:

(a) The right arises regardless which spouse applies the property to the satisfaction of the debt, regardless whether the property is applied to the satisfaction of the debt voluntarily or involuntarily,

and regardless whether the debt to which the property is applied is satisfied in whole or in part. The right is subject to an express waiver by the spouse in whose favor the right arises.

(b) The measure of reimbursement is the value of the property or interest in property at the time the right arises.

(c) The right shall be exercised not later than the earlier of the following times:

(1) Within three years after application of the property to the satisfaction of the debt.

(2) In proceedings for division of community and quasi-community property pursuant to Section 4800 or in proceedings upon the death of a spouse.

Comment. Section 5120.210 governs not only the reimbursement rights provided in this article but also reimbursement rights provided elsewhere in this chapter. See Sections 5120.040 (reimbursement for necessities), 5120.050 (reimbursement for support), and 5120.060 (reimbursement after division). The reimbursement rights are strictly limited to a three-year enforceability period, or less if a dissolution occurs within the three-year period. Contrast *Weinberg v. Weiberg*, 67 Cal.2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967) (community property applied to support payments entitled to reimbursement at dissolution); In re *Marriage of Walter*, 57 Cal. App.3d 802, 129 Cal. Rptr. 351 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution). Under Section 5120.210, the reimbursement right applies even though the spouse seeking reimbursement may have satisfied or consented to satisfaction of the debt out of a particular type of property, unless the spouse expressly waived the reimbursement right. Contrast In re *Marriage of Smaltz*, 82 Cal. App.3d 568, 147 Cal. Rptr. 154 (1978) (no reimbursement where community property applied to support payments and no separate property available to make payments).

27233

§ 5120.220. Reimbursement for property not liable for debt

5120.220. (a) If community property is applied to the satisfaction of a debt for which the community property is not liable, the community is entitled to reimbursement from the spouse who incurred the debt to the extent of the property so applied.

(b) If separate property of a spouse is applied to the satisfaction of a debt for which the separate property is not liable, the spouse is entitled to reimbursement from the other spouse to the extent of the separate property so applied.

Comment. Section 5120.220 recognizes that even though some marital property is not liable for certain debts, the property may nonetheless in fact be applied by either spouse to the satisfaction of the debts. In such a case a right of reimbursement arises unless the spouse entitled to reimbursement expressly waives the right. See Section 5120.210. The reimbursement right provided in this section is limited to three years or division of the marital property, whichever occurs first. Section 5120.210.

27634

§ 5120.230. Reimbursement for torts

5120.230. (a) This section applies to the liability of a married person for death or injury to person or property. This section does not apply to the extent the liability is satisfied out of proceeds of insurance for the liability, whether the proceeds are community or separate.

(b) If the liability of a married person is based upon an act or omission that occurred while the married person was performing an activity for the benefit of the community, the married person is entitled to reimbursement from the community to the extent the liability is satisfied from the separate property of the married person.

(c) If the liability of a married person is not based upon an act or omission that occurred while the married person was performing an activity for the benefit of the community, the community is entitled to reimbursement from the married person to the extent the liability is satisfied from community property.

Comment. Section 5120.230 continues the portion of former Section 5122 that provided an order of satisfaction for tort debts, to the extent the order of satisfaction implied a reimbursement right.

27873

§ 5120.240. Reimbursement for postseparation debts

5120.240. (a) If community property is applied to the satisfaction of a debt incurred by a spouse while the spouses are living separate and apart, the community is entitled to reimbursement from the spouse that incurred the debt to the extent of the property applied.

(b) This section does not apply to any of the following debts:

(1) A debt incurred primarily for the production or preservation of community property.

(2) A debt incurred for common necessities of life of a spouse to the extent the other spouse would be personally liable for the debt pursuant to Section 5120.040.

Comment. Section 5120.240 implements the policy that postseparation debts are the obligation of the spouse that incurred them. It is consistent with Section 5118 (postseparation earnings are separate property). The right provided in Section 5120.240 is limited to reimbursement; it does not exempt the interest of the nondebtor spouse in community property from judicial process. See Section 5120.020 (liability of community property).

32279

Article 3. Transitional Provisions

§ 5120.310. Enforcement of debts

5120.310. Except as otherwise provided by statute, the provisions of this chapter govern the liability of separate and community property for a debt enforced on or after the operative date of this chapter, regardless whether the debt was incurred before, on, or after the operative date.

Comment. Section 5120.310 states the general rule that this chapter applies immediately to all debts regardless of the time they were incurred. For an exception to the general rule, see Section 5120.320 (reimbursement rights).

27868

§ 5120.320. Reimbursement rights

5120.320. (a) The provisions of this chapter that govern reimbursement apply to all debts, regardless whether satisfied before, on, or after the operative date of this chapter.

(b) If the time within which a reimbursement right provided by this chapter expires before or on the operative date of this chapter pursuant to subdivision (c)(1) of Section 5120.210, the time prescribed in subdivision (c)(1) of Section 5120.210 is extended until one year after the operative date.

Comment. Section 5120.320 makes clear that reimbursement rights provided in this chapter apply to debts satisfied before as well as after the operative date. A one-year grace period for enforcement is provided in the case of a marriage not already terminated on the operative date.

Civil Code § 5121 (repealed)

SEC. 12. Section 5121 of the Civil Code is repealed.

~~5121. (a) The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse; but is not liable for the debts of the other spouse contracted after marriage; provided, that the separate property of the spouse is liable for the payment of debts contracted by either spouse for the necessities of life pursuant to Section 5132.~~

~~(b) The separate property of a spouse is not subject to enforcement of a money judgment for a debt of the other spouse unless the spouse is made a judgment debtor under the judgment for the purpose of liability.~~

Comment. The substance of former Section 5121 is continued in Sections 5120.030 and 5120.040.

32287 N/Z

Civil Code § 5122 (repealed)

SEC. 13. Section 5122 of the Civil Code is repealed.

~~5122. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where he would be liable therefor if the marriage did not exist.~~

~~(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:~~

~~(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community property and second from the separate property of the married person.~~

~~(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community property.~~

Comment. Subdivision (a) of former Section 5122 is continued without substantive change in Section 5101.

Subdivision (b) is superseded by Section 5120.230 (reimbursement for torts).



Civil Code § 5123 (repealed)

SEC. 14. Section 5123 of the Civil Code is repealed.

~~5123. (a) The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed of trust or other hypothecation of the community property which is executed prior to January 1, 1975, unless the wife expressly assents in writing to the liability of her separate property for such debt or obligation.~~

~~(b) The separate property of a spouse is not liable for any debt or obligation secured by a mortgage, deed of trust, or other hypothecation of the community property which is executed on or after January 1, 1975, unless the spouse expressly assents in writing to the liability of the separate property for the debt or obligation.~~

Comment. Section 5123 is superseded by Section 5120.030. Section 5123 is a form of antideficiency judgment that purports to protect some but not all assets of a spouse for obligations secured by any community property, real or personal, residential or otherwise. It is thus inconsistent with general rules governing deficiency judgments.

32461

Civil Code §§ 5125-5128 (chapter heading)

SEC. 15. A chapter heading is added immediately preceding Section 5125 of the Civil Code, to read:

CHAPTER 4. MANAGEMENT AND CONTROL OF MARITAL PROPERTY

34709 N/Z

Civil Code § 5127.5 (repealed)

SEC. 16. Section 5127.5 of the Civil Code is repealed.

~~5127.5. Notwithstanding the provisions of Section 5125 or 5127 granting the husband the management and control of the community property, to the extent necessary to fulfill a duty of a wife to support her children, the wife is entitled to the management and control of her share of the community property.~~

The wife's interest in the community property, including the earnings of her husband, is liable for the support of her children to whom the duty to support is owed, provided that for the purposes of this section, prior support liability of her husband plus three hundred dollars (<\$300) gross monthly income shall first be excluded in determining the wife's interest in the community property earnings of her husband.

The wife may bring an action in the superior court to enforce such right provided that such action is not brought under influence of fraud or duress by any individual, corporation or governmental agency.

A natural father is not relieved of any legal obligation to support his children by the liability for their support imposed by this section and such contribution shall reduce the liability to which the interest of the wife in the community property is subject.

Comment. Former Section 5127.5 is superseded by Sections 5120.020 (liability of community property), 5120.030 (liability of separate property), and 5120.050 (liability for support obligation). Repeal of Section 5127.5 is not intended to affect any consideration of the earnings of a person's spouse under AFDC regulations.

34710 N/Z

Civil Code § 5127.6 (repealed)

SEC. 17. Section 5127.6 of the Civil Code is repealed.

~~5127.6:~~ Notwithstanding Section ~~5127.5,~~ the community property interest of a natural or adoptive parent in the income of his or her spouse shall be considered unconditionally available for the care and support of any child who resides with the child's natural or adoptive parent who is married to such spouse. The amount arising from such duty to care for and support shall be reduced by the amount of any existing previously court ordered child support obligations of such spouse.

Any contribution for care and support provided by a spouse who is not a natural or adoptive parent of the child shall not be considered a change in circumstances that would affect a court ordered support obligation of a natural or adoptive parent for that child.

Comment. Former Section 5127.6 is superseded by Sections 5120.020 (liability of community property), 5120.030 (liability of separate property), and 5120.050 (liability of support obligation). Repeal of Section 5127.6 is not intended to affect any consideration of the earnings of a person's spouse under AFDC regulations.

Civil Code §§ 5129-5132 (chapter heading)

SEC. 18. A chapter heading is added immediately preceding Section 5129 of the Civil Code, to read:

CHAPTER 5. SUPPORT

10168

Civil Code § 5131 (amended)

SEC. 19. Section 5131 of the Civil Code is amended to read:

5131. A Except as provided in Section 5120.040, a spouse is not liable for the support of the other spouse when the other spouse is living separate from the spouse by agreement unless such support is stipulated in the agreement.

Comment. Section 5131 is amended to recognize Section 5120.040(a)(2), which continues the liability of property of a spouse for common necessities debts incurred after separation unless expressly waived in the separation agreement.

10169

Civil Code § 5132 (amended)

SEC. 20. Section 5132 of the Civil Code is amended to read:

5132. A (a) Subject to Section 5120.040, a spouse must support the other spouse while they are living together out of the separate property of the spouse when there is no community property or quasi-community property. For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.

Comment. Section 5132 is amended to incorporate Section 5120.040 (liability for necessities). Section 5132 is consistent with Section 5120.040(a)(1) and (b), but Section 5120.040(a)(1) and (b) do not require exhaustion of community and quasi-community property before separate property of a nondebtor spouse can be reached by a third-party creditor.

Civil Code §§ 5133-5137 (chapter heading)

SEC. 21. A chapter heading is added immediately preceding Section 5133 of the Civil Code, to read:

CHAPTER 6. PREMARITAL AGREEMENTS

32678

Civil Code § 5138 (chapter heading)

SEC. 22. A chapter heading is added immediately preceding Section 5138 of the Civil Code, to read:

CHAPTER 7. MISCELLANEOUS PROVISIONS

34271

Government Code § 27251 (amended)

SEC. 23. Section 27251 of the Government Code is amended to read:

27251. The recorder shall keep an index of the separate property of married ~~women~~ persons , labeled: "Separate property," each page divided into five columns, headed respectively: "Names of married ~~women~~ persons ," "Names of their ~~husbands~~ spouses ," "Nature of instruments recorded," "When recorded," and "Where recorded."

Comment. Section 27251 of the Government Code is amended to conform to Civil Code Sections 5114 and 5115 which permit husbands as well as married women to record an inventory of separate personal property.