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#F-602

Memorandum 85-102

Subject: Study F-602 - Division Upon Dissolution of Marriage of
Property Held in Joint Tenancy Form (Retroactive
Application of Statute--Buol case)

At the October meeting the Commission decided to attend to problems caused by the recent California Supreme Court case of Marriage of Buol. This case holds that a family law property division statute enacted upon Commission recommendation cannot constitutionally be applied retroactively.

As the staff reported to the Commission at the meeting, the staff has sent a letter to the Court suggesting a modification of the Buol decision to make clear its scope. A copy of the letter is attached to this memorandum.

Apparently in response to the staff letter, the Court extended its time to take further action in the case. The extension has not yet run, and we are waiting to see what action if any the Court will take.

If the Court modifies the opinion in the way suggested in the staff letter, we believe no further Commission or legislative action will be necessary on this matter. If the Court applies the opinion broadly or fails to clarify the scope of the opinion, then further action will be necessary.

We will supplement this memorandum when more information is available and our course of action becomes clear.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

CALIFORNIA LAW REVISION COMMISSION

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October 8, 1985

Supreme Court
State of California
4250 State Building
San Francisco, CA 94102

Re: In re Marriage of Buol/request for modification

Honorable Chief Justice and Associate Justices:

This letter is to suggest a modification of the opinion in the case of In re Marriage of Buol, filed September 16, 1985.

Buol holds that Civil Code Section 4800.1 (effective January 1, 1984) cannot be retroactively applied. As draftsman of Section 4800.1, I believe it is important that the Buol opinion spell out the limits of its holding with some precision in order to help avoid the need for further clarifying litigation as well as remedial legislation.

There are two aspects of the opinion that I believe require clarification. The first is whether Section 4800.1 may be applied to cases in which an alleged oral agreement or understanding occurred before January 1, 1984, but the dissolution proceeding was not commenced or the case tried until after January 1, 1984. The Buol opinion appears to be limited to dissolution proceedings commenced or tried before January 1, 1984. For example, the opening paragraph of the opinion asks whether the legislation may be applied to cases "pending before" its operative date. The concluding paragraph refers to constitutionality of changes in law "occurring after trial". And one of the grounds of the holding of unconstitutionality is the disruptive effect of changes in law on cases that have already been tried.

However, there is also language in the opinion that could be construed to apply Buol more broadly. Much of the argument for unconstitutionality relates to the expectations of the parties at the time of the alleged oral agreement, and is not tied to the pendency of litigation at the time of the change in law. And in the last paragraph of the opinion, the holding is broadly stated: "We conclude that retroactive application of section 4800.1 would substantially impair Esther's vested property right without due process of law."

I believe the opinion should state precisely that the holding is limited to cases pending on [or tried before] January 1, 1984, but that the legislation may be applied to cases commenced [or tried] after January 1, 1984. Otherwise further litigation will be necessary to resolve this issue and further legislation will be necessary to attempt to effectuate legislative policy and to avoid having two bodies of law apply in marital dissolution cases for the next generation.

The second matter I believe requires clarification is whether Buol is limited to Section 4800.1 as it applies to oral agreements and understandings. Section 4800.1 does more than impose a statute of frauds--it also creates a general community property presumption for property acquired during marriage in joint tenancy form and, in conjunction with Section 4800.2, specifies the manner in which separate property contributions to the community property are to be reimbursed.

Although the facts of Buol concern the statute of frauds aspect of Section 4800.1, the language of the opinion is indiscriminate in several instances. Part I of the argument begins "We must determine whether section 4800.1 may be given retroactive effect without offending the state Constitution." Other statements include, "Retroactive application of section 4800.1 would operate to deprive Esther of a vested property right without due process of law." Although the context of these statements helps minimize the ambiguity, the broad language creates a problem when read in conjunction with footnote 10 which disapproves contrary holdings in several cases including In re Marriage of Anderson, 154 Cal. App.3d 572 (1984). The Anderson case did not involve an oral agreement or understanding, and the trial court in that case found the property to be community property under prior law. Overruling Anderson could be read to imply that the Buol holding of unconstitutionality applies to more than just the statute of frauds aspect of Section 4800.1.

Again, in this highly litigated area of law I think it is important to be very specific about the extent to which Section 4800.1 may not be retroactively applied in order to avoid further litigation and further legislative action.

To tie down these two facets of the holding in Buol I would revise the concluding paragraph of the opinion as follows:

We conclude that retroactive application of section 4800.1 to preclude proof of an oral agreement or understanding in cases pending [tried] before its effective date would substantially impair Esther's vested property rights without due process of law.¹⁰ The legislation may properly be applied to cases commenced [tried] on or after its effective date, or to cases commenced before its effective date where there is no oral agreement or understanding, but the state interest in equitable dissolution of the marital partnership is not furthered by retroactive effect as to oral agreements or understandings in pending cases. Such retroactivity only serves to destroy Esther's legitimate separate property expectations as a penalty for lack of prescience of changes in the law occurring after trial. Due process cannot tolerate such a result. We therefore hold that Section 4(b) of Chapter 342 of the Statutes of 1983 is unconstitutional to the extent it seeks to apply Section 4800.1 to preclude proof of a separate property oral agreement or

understanding in a marital dissolution proceeding commenced [tried] before January 1, 1984.

The judgment is affirmed.

10. Holdings or language to the contrary in the following cases are disapproved: Taylor, supra, 160 Cal.App.3d 471; Benart, supra, 160 Cal.App.3d 183; Martinez, supra, 156 Cal.App.3d 20; Anderson, supra, 154 Cal.App.3d 572; Neal, supra, 153 Cal.App.3d 117.

I believe these changes would help clarify the intent and scope of Buol. Thank you for your consideration.

Sincerely,

Nathaniel Sterling
Assistant Executive Secretary

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cc: Alister McAlister