7/11/60

Memorandum No. 62 (1960)

Subject: Study No. 38 - Inter Vivos Rights

Attached as Exhibit I is a tentative recommendation and proposed statute on inter vivos rights. The letter of transmittal that will be a part of the pamphlet containing the Recommendation and Study is also attached as a part of Exhibit I.

There are still some unresolved policy questions in connection with this study. These are indicated below.

(1) The attached recommendation and statute provide that for the purposes of division on divorce quasi-community property is to be divided as the court considers just. This means that quasi-community property will not be treated exactly the same as community property in case of a divorce. In some cases community property is required to be divided equally between the spouses when a divorce is granted, i.e., when the divorce is granted on grounds other than cruelty, adultery or incurable insanity. The Commission discussed this matter at the May meeting but did not make a decision.

The consultant favors the attached recommendation. Furthermore, he believes that there would be a serious constitutional question if the statute provides that quasi-community property be treated exactly like community property for purposes of division on divorce. See Study, pp. 23-25.

If the Commission decides to treat quasi-community property the same as community property in case of a divorce, the language in Exhibit II

(attached) is suggested as an alternative to the portion of the recommendation dealing with division on divorce. In addition, Section 146 of the Civil Code (Section 8 of attached bill) would have to be revised to insert "quasi-community property" in subdivisions one and two and to delete new subdivision five.

(2) Under Section 661 of the Probate Code, a probate homestead can be selected from the quasi-community property of the decedent only if the decedent dies domiciled in California. This is because Section 661 applies to the property described in Section 201.5 of the Probate Code. In the case of community property, a probate homestead can be set aside even though the decedent dies not domiciled in California. Under the Commission's tentative recommendation, a homestead can be selected from quasi-community property during the lifetime of the spouse who originally acquired the property, whether or not such spouse is domiciled in California. Note that Section 1237 of the Civil Code defines a homestead as "the dwelling house in which the claimant resides, together with outbuildings, and the land on which the same are situated" and Section 1263 of the Civil Code requires that the person declaring the homestead state that he "is residing on the premises, and claims them as a homestead." Thus, the spouse who claims an inter vivos homestead will reside in the homestead in California. If the homestead is selected from quasi-community property during the lifetime of the acquiring spouse, under the Commission's recommendation it will vest in the surviving spouse upon the death of the acquiring spouse, whether or not the acquiring spouse is domiciled in California at the time of his or her death. The policy questions are:

(a) Does the Commission want to change the attached recommendation

and require that the spouse who owns the quasi-community property be domiciled in this State at the time the inter vivos homestead is claimed? Or at any subsequent time?

(b) Does the Commission wish to approve the attached recommendation and statute which eliminate the domicile requirement in Section 661 of the Probate Code so that a probate homestead can be set apart from quasi-community property, even where the decedent who originally acquired the property dies not domiciled in California?

(3) Under Section 201.5 of the Probate Code property is not subject to that section if acquired under the following circumstances: real property is acquired in another state by a married person domiciled in that state; such real property would be community property if located in California and if the spouse acquiring the property were domiciled in California (however, such real property would not be community property if located in another state even if the spouse acquiring the property is domiciled in California); the married person and his spouse move to California and exchange the real property in the other state for either real or personal property in California. The policy question is:

Does the Commission wish to approve the attached recommendation which amends Section 201.5(b) so that the property in California received in exchange for the real property in the other state would be subject to Section 201.5?

(4) The effect of the attached statute is that, for gift tax purposes, quasi-community property will be treated substantially like community property, even though neither the donor nor the donee are or ever were domiciled in California. Thus residents and nonresidents will be treated

the same for gift tax purposes.

The 1957 amendments to the inheritance tax law provided that quasi-community property be substantially treated like community property for inheritance tax purposes if the decedent died domiciled in this State. However, there is no substantial discrimination against nonresidents here because the surviving spouse is entitled to a marital exemption which in effect exempts one-half of the separate property of the decedent (including quasi-community separate property) from the inheritance tax.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

LETTER OF TRANSMITTAL

In 1957 the California Law Revision Commission made a number of recommendations relating to the rights of a surviving spouse in property acquired by a decedent while domiciled elsewhere. The bill which embodied these recommendations was enacted as law, becoming Chapter 490 of the Statutes of 1957. At the same time the Commission requested and was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study as to whether the law relating to inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised. The Commission herewith submits its recommendation relating to this subject and the study prepared by its research consultant, Mr. Harold Marsh, Jr. of the School of Law, University of California at Los Angeles.

(38) July 11, 1960

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

T E N T A T I V E

RECOMMENDATION AND PROPOSED LEGISLATION

Relating to

INTER VIVOS MARITAL PROPERTY RIGHTS IN PROPERTY ACQUIRED WHILE DOMICILED ELSEWHERE

NOTE: This is a tentative recommendation and proposed statute prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

(38)

T E N T A T I V E

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

Inter Vivos Marital Property Rights in Property

Acquired While Domiciled Elsewhere

Background

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

The California Legislature's first attempt to deal with property brought here by married persons domiciled elsewhere at the time of its acquisition took the form of a 1917 amendment to Section 164 of the Civil Code which purported to treat such property as community property if it would not have been separate property had the owner been domiciled

in California when it was acquired. However, in Estate of Thornton,* decided in 1933, the California Supreme Court held the 1917 amendment unconstitutional under the due process clause of the Fourteenth Amendment to the United States Constitution on the ground that a spouse's ownership of property acquired while domiciled elsewhere cannot be substantially modified during his lifetime merely because he moves to California and brings the property with him. Although the 1917 amendment has never been repealed, it has been tacitly assumed by both the bar and the courts to be a dead letter since Estate of Thorton was decided.

Legislation was enacted in 1935 and 1957 which, in effect, treats property acquired other than by gift, devise, bequest or descent by a married person while domiciled elsewhere substantially like community property upon his death.** However, such property heretofore has been considered to be the separate property of the acquiring spouse prior to his death except insofar as Section 201.8 of the Probate Code, enacted in 1957, places limitations on the owner's power to make "will substitute" gifts of such property during his lifetime. This study and recommendation is concerned with whether and to what extent such property should no longer be treated as separate property during the owner's lifetime.

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*1 Cal.2d 1, 33 P.2d 1 (1934).

**There is no valid constitutional objection to this legislation in its present form in view of the plenary power of the state over a decedent's property. See Recommendation and Study relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere, 1 Cal. Law Revision Comm'n Rep., Rec. & Studies E-1 et seq. (1956).

Recommendation

The Law Revision Commission believes that property acquired other than by gift, devise, bequest or descent by a married person while domiciled in a noncommunity property state should continue to be treated as his separate property during his lifetime for most purposes. This doubtless conforms to the owner's expectation in most cases and little if any useful purpose would be served by treating the property differently. The Commission has concluded, however, that for three important purposes such property should no longer be treated as the owner's separate property during his lifetime: (1) declaration of a homestead during the lifetime of the spouse who acquired the property; (2) division of the property in case of divorce; and (3) treatment of the property for gift tax purposes. The Commission recommends that special statutory provisions be enacted to deal specifically with each of these problems. In addition, various other revisions of the law, indicated below, should be made. Accordingly, the Commission makes the following recommendations:

1. Identification as "quasi-community property." The Commission recommends that property acquired other than by gift, devise, bequest or descent by a married person while domiciled elsewhere should be referred to as quasi-community property in the special statutory provisions that treat such property differently from other separate property.* A major advantage of such a label is that it makes it possible to draft statutes

*Of course, in situations not covered by the special statutes recommended herein such property will continue to be, and to be referred to as, separate property.

without repeating interminably the phrase "property acquired other than by gift, devise, bequest or descent by a married person while domiciled elsewhere." In addition, this designation will call attention to the fact that the property is being given a unique status for some purposes and will at the same time suggest that for these purposes the property is to be considered more analogous to community property than separate property.

2. Homestead. Quasi-community property should be treated like community property insofar as declared homesteads are concerned. The principal effect of this recommendation is that upon the death of the acquiring spouse a quasi-community property homestead will vest in the surviving spouse rather than in the heirs or devisees of the deceased spouse. In addition, a husband will be able to select a homestead from the quasi-community property of his wife without her consent. Under existing law, quasi-community property is considered separate property for this purpose and the wife, but not the husband, can select a homestead from the separate property of the other spouse without that spouse's consent. The Commission believes that for homestead purposes quasi-community property, like community property, should be regarded by a community property state having been accumulated through the joint efforts of the spouses. It should, therefore, be as open to the nonacquiring spouse to declare a homestead in such property as it is in the case of community property. Another reason for treating quasi-community property like community property for the purpose of a declared homestead is that Section 661 of the Probate Code was amended in 1957 to treat quasi-community property substantially like community property for probate homestead purposes.

Section 661 of the Probate Code was revised in 1957 upon recommendation of the Commission to permit creation of the same kind of probate homestead in quasi-community property as in community property if the spouse who originally acquired the property dies domiciled in California. Upon further consideration the Commission has concluded that the domiciliary requirement is not desirable. Where there is property in this State and the situation is one in which the right to a declared homestead or a probate homestead otherwise exists, the fact that the owner is not domiciled here should not be controlling. Accordingly, the Commission recommends (1) that a quasi-community property homestead created during the lifetime of the acquiring spouse be treated like a community property homestead, whether or not the spouse who originally acquired the homestead property is domiciled in California at the time of the declaration or thereafter and (2) that Section 661 of the Probate Code be amended to eliminate the present requirement that the decedent be domiciled here at the date of death.

To effectuate these recommendations, the recommended statute includes the following provisions:

(a) A new Section 1237.5 is added to the Civil Code and amendments are made to Sections 1238 and 1265 of the Civil Code to treat a homestead selected from quasi-community property during the lifetime of the acquiring spouse the same as a homestead selected from community property.

(b) Section 661 of the Probate Code is amended to delete the references to Section 201.5 of the Probate Code and thereby eliminate the present requirement that the decedent be domiciled here at the time of his death.

(c) A technical amendment is made to Section 663 of the Probate Code.

3. Division on Divorce. New Sections 145.5 and 145.7 should be added to the Civil Code and Sections 146, 148 and 149 of the Civil Code should be amended to authorize the court to make a division on divorce of quasi-community property in such proportions as the court, from all the facts of the case and the condition of the parties, may deem just. Under the existing law, the court has no authority to make a division of such property in case of a divorce because it is separate property. This seems incongruous in a community property state inasmuch as this property, like community property, was accumulated through the joint efforts of the spouses.

It is not, however, recommended that quasi-community property be treated exactly the same as community property in case of a divorce. Unless a divorce is granted on the ground of adultery, incurable insanity or extreme cruelty--in which case community property is divided in such proportions as the court from all the facts of the case and the condition of the parties may deem just--community property is required to be divided equally between the spouses. The Commission believes that an equal division of the quasi-community property would be unfair in a case in which the spouse who originally acquired the property is granted a divorce -- i.e., where a wife who originally acquired the quasi-community property is granted a divorce on the grounds of desertion. Instead, the Commission recommends that the court be permitted to make a just disposition of the property based on the circumstances of the particular case.

The Commission recommends that quasi-community property be subject to division when a divorce is granted in California, whether or not the spouse

owning the property is domiciled in California at the time of the divorce or at any time previous thereto. Since the spouse seeking the divorce will be domiciled in California, the California court should be authorized to make a division of such quasi-community property as is subject to its jurisdiction.

4. Gift Tax. New sections should be added to the Revenue and Taxation Code and other sections of that code should be amended to treat quasi-community property substantially like community property for purposes of the California gift tax. For inheritance tax purposes, quasi-community property is now treated substantially like community property. Accordingly, the recommended statute includes these provisions:

(a) A new Section 15300 is added to the Revenue and Taxation Code to define quasi-community property.

(b) Section 15301 of the Revenue and Taxation Code is amended to exempt one-half of the property from the gift tax in the case of a gift of quasi-community property by one spouse to the other. The same reasons that justify exemption of one-half of the property from tax in the case of a gift of community property by one spouse to the other would appear to be applicable to a similar gift of quasi-community property.

(c) Analogous reasoning justifies the enactment of new Section 15302.5 of the Revenue and Taxation Code giving the spouses the election to treat a gift of quasi-community property to a person other than either of the spouses as being made one-half by each spouse. Unless both spouses make such an election, however, the gift will continue to be considered as a gift made by the spouse who originally acquired the property. The Commission has provided for an election to treat the gift as being made one-half by each

spouse because to treat it the same as a gift of community property would require the nonacquiring spouse who had no control over the gift to pay one-half of the gift tax on the gift. In addition, in a case where the donee is a close relative of the spouse who originally acquired the property and is not a relative of the other spouse, the gift tax on the gift might be increased if the gift were required to be considered as being made one-half by each spouse.

(d) A new Section 15303.5 is added to the Revenue and Taxation Code to exempt from the gift tax a transfer of quasi-community property into community property. The effect of the several recommendations made herein and of the recommendations made by the Commission in 1957 is to treat quasi-community property substantially like community property as far as some of the most important rights in the property are concerned. This being so, the change in the "bundle of rights" of either spouse by the conversion of the property into true community property appears too insignificant to justify a gift tax.

(e) A new Section 15306.5 is added to the Revenue and Taxation Code to place upon the person claiming that property is quasi-community property the burden of proving that the property is such.

5. Community Property Definition. Section 164 of the Civil Code, which defines community property, should be amended to delete the unconstitutional 1917 amendment and to substitute language which defines as community property only real property situated in this State and personal property wherever situated which is acquired during marriage by a married

person while he or she is domiciled in this State. The Commission does not believe that California can properly assert the right to determine the nature of marital property interests acquired in real property located outside of this State. Nor does the Commission believe that California should undertake to give a married person a community property interest in property acquired by his spouse unless the acquiring spouse is domiciled in California at the time of acquisition, even if the property in question is real or personal property situated in this State. California does not, in the opinion of the Commission, have sufficient interest in the marital property rights of nondomiciliaries to justify the application of its community property system to them.

6. Adjustment of Section 201.5 of the Probate Code. Section 201.5 of the Probate Code should be revised. The Commission has recommended herein that Section 164 of the Civil Code be revised so that it is clear that real property acquired in another state by a person domiciled in California is not community property but that the nature of the marital property interests in such property is determined by the marital property law of the state in which the property is situated. Thus, under Section 201.5 as it now reads, property received in exchange for real property located in another state would not be subject to Section 201.5. However, if the real property was acquired in the other state during marriage other than by gift, devise, bequest or descent, any property acquired in exchange therefor after the acquiring spouse becomes domiciled in California logically should be subject to Section 201.5. The recommended statute makes this change in Section 201.5 of the Probate Code.

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

An act to add Sections 145.5, 145.7 and 1237.5 to the Civil Code, to amend Sections 146, 148, 149, 164, 1238 and 1265 of said code, to amend Sections 201.5, 661 and 663 of the Probate Code, to add Sections 15300, 15302.5, 15303.5 and 15306.5 to the Revenue and Taxation Code and to amend Section 15301 of said code, all relating to property acquired by married persons.

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

SECTION 1. Section 164 of the Civil Code is amended to read:

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

and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of said property.

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

As used in this section, personal property does not include and real property does include leasehold interests in real property.

SEC. 2. Section 1237.5 is added to Chapter 1 of Title 5 of Part 4 of Division 2 of the Civil Code, to read:

1237.5. As used in this title:

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

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

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

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

SEC. 3. Section 1238 of the Civil Code is amended to read:

1238. If the claimant be married, the homestead may be selected:

1. From the community property [,] ; or

2. From the quasi-community property; or

3. From the separate property of the husband; or [,]

4. Subject to the provisions of Section 1239, from (a) the property held by the spouses as tenants in common or in joint tenancy or [from] (b) the separate property of the wife.

When the claimant is not married, but is the head of a family within the meaning of Section 1261, the homestead may be selected from any of his or her property. If the claimant be an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property. Property, within the meaning of this title, includes any freehold title, interest, or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive.

SEC. 4. Section 1265 of the Civil Code is amended to read:

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

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

SEC. 5. Section 661 of the Probate Code is amended to read:

661. If no homestead has been selected, designated and recorded, or in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court, in the manner hereinafter provided, must select, designate and set apart and cause to be recorded a homestead for the use of the surviving spouse and the minor children, or, if there be no surviving spouse, then for the use of the minor child or children, out of the

community property or [~~property to which Section 201.5 of this code is applicable~~] quasi-community property or out of real property owned in common by the decedent and the person or persons entitled to have the homestead set apart, or if there be no community property or [~~property to which Section 201.5 of this code is applicable~~] quasi-community property and no such property owned in common, then out of the separate property of the decedent. If the property set apart is the separate property of the decedent, [~~other than property to which Section 201.5 of this code is applicable,~~] the court can set it apart only for a limited period, to be designated in the order, and in no case beyond the lifetime of the surviving spouse, or, as to a child, beyond its minority; and, subject to such homestead right, the property remains subject to administration.

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms in Section 1237.5 of the Civil Code.

SEC. 6. Section 663 of the Probate Code is amended to read:

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

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

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms in Section 1237.5 of the Civil Code.

SEC. 7. Sections 145.5 and 145.7 are added to Article 4 of Chapter 2 of Title 1 of Part 3 of Division 1 of the Civil Code, to read:

145.5 As used in Sections 145.7, 146, 148 and 149 of this code, "quasi-community property" means all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:

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

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

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

145.7. As used in Sections 146, 148 and 149 of this code, "separate property" does not include quasi-community property.

SEC. 8. Section 146 of the Civil Code is amended to read:

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

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

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

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

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

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

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

Five. The quasi-community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

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

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

SEC. 9. Section 148 of the Civil Code is amended to read:

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

SEC. 10. Section 149 of the Civil Code is amended to read:

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

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

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

SEC. 11. Section 15300 is added to Chapter 3 of Part 9 of Division 2 of the Revenue and Taxation Code, to read:

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

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

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

SEC. 12. Section 15301 of the Revenue and Taxation Code is amended to read:

15301. In a case of a transfer to either spouse by the other of

community property or quasi-community property [~~to either spouse~~] one-half of the property transferred is not subject to this part.

SEC. 13. Sections 15302.5, 15303.5 and 15306.5 are added to the Revenue and Taxation Code, to read:

15302.5. If any quasi-community property is transferred to a person other than one of the spouses, all of the property transferred is subject to this part, and:

(a) The spouse owning the property is the donor; or

(b) At the election of both of the spouses, each spouse shall be considered to be the donor of one-half.

15303.5. A transfer of quasi-community property of either spouse into community property of both spouses is not subject to this part; but if the property so transferred is the property of the wife and upon her death and survival by her husband the entire community property passing to her husband is not subject to Part 8 of this division, one-half of the separate property so transferred is subject to this part upon the death of the wife as a gift from the wife to her surviving husband at the time of her death.

15306.5. As against any claim made by the State for the tax imposed by this part, there is no presumption that property acquired by a spouse after marriage is quasi-community property. Any person who claims that any property acquired after marriage is quasi-community property has the burden of proving that it is such.

SEC. 14. Section 201.5 of the Probate Code is amended to read:

201.5. Upon the death of any married person domiciled in this State one-half of the following property in his estate shall belong to the surviving spouse and the other one-half of such property is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse: all personal property wherever situated and all real property situated in this State heretofore or hereafter acquired:

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

(b) [~~acquired~~] In exchange for real or personal property, wherever situated, [~~and so~~] acquired other than by gift, devise, bequest or descent by the decedent during the marriage while domiciled elsewhere.

All such property is subject to the debts of the decedent and to administration and disposal under the provisions of Division 3 of this code.

As used in this section personal property does not include and real property does include leasehold interests in real property.

EXHIBIT II

3. Division on Divorce. New Sections 145.5 and 145.7 should be added to the Civil Code and Sections 146, 148 and 149 of the Civil Code should be amended to authorize the divorce court to treat quasi-community property like community property for the purpose of division on divorce. Under the existing law, the court has no authority to make a division of such property in case of a divorce because it is separate property. This seems incongruous in a community property state inasmuch as this property, like community property, was accumulated through the joint efforts of the spouses.