

7/18/60

First Supplement to Memorandum No. 62(1960)

Subject: Study No. 38 - Inter Vivos Rights

Commissioner Stanton suggests that the recommendation and proposed legislation on this subject include revisions of Sections 141 and 142 of the Civil Code. The substance of his suggested revisions is indicated in Exhibit I, attached.

Note the amendment he proposes to Section 141 of the Civil Code. The decrees, judgments and orders referred to in Section 141 include the following:

1. Maintenance by husband of wife and children in an action for divorce when judgment of divorce is denied. Section 136 of Civil Code.
2. Permanent support and maintenance of a spouse and support, maintenance and education of children during their minority. This is the action for separate maintenance. Section 137 of Civil Code.
3. Action for support, maintenance and education of children. Section 137.1 of Civil Code.
4. Costs and attorney's fees during the pendency of any action for annulment, for divorce or for separate maintenance, or for the custody, support, maintenance or education of children. Section 137.3 of Civil Code.
5. Alimony and child support under interlocutory or final divorce decree or in any final judgment or decree in an action for separate maintenance. Section 139 of Civil Code.

Section 143 of the Civil Code provides: "The community property and

the separate property may be subjected to the support and education of the children in such proportions as the Court deems just."

Section 174 of the Civil Code provides:

If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Section 175 of the Civil Code provides:

A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct, in abandoning him, and the earnings of the husband during the period of unjustified abandonment, prior to such offer, are his separate property; nor is a husband liable for his wife's support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

Section 176 of the Civil Code provides:

The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself.

Section 196 of the Civil Code provides:

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Section 206 of the Civil Code provides:

It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

CIVIL LIABILITY FOR SUPPORT ACT

Section 242 of the Civil Code provides:

Every man shall support his wife, and his child; and his parent when in need. The duty imposed by this section

shall be subject to the provisions of Sections 175, 196, and 206 of the Civil Code.

Section 243 of the Civil Code provides:

Every woman shall support her child; and her husband and her parent when in need. The duty imposed by this section shall be subject to the provisions of Sections 176, 196, and 206 of the Civil Code.

Section 251 of the Civil Code provides:

The rights herein created are in addition to and not in substitution for any other rights.

EXHIBIT I

ADD AMENDMENTS OF SECTIONS 141 and 142 OF CIVIL CODE:

SEC. Section 141 of the Civil Code is amended to read:

141. In the enforcement of any decree, judgment or order rendered pursuant to the provisions of this article, the court must resort:

1. To the community property; then,

2. To the quasi-community property; then,

[2.] 3. To the separate property of the party required to make such payments.

SEC. Section 142 of the Civil Code is amended to read:

142. When the prevailing party in the action has either a separate estate, or is earning his or her own livelihood, or there is community property or quasi-community property sufficient to give him or her alimony or a proper support, or if the custody of the children has been awarded to the other party, who is supporting them, the court in its discretion, may withhold any allowance to the prevailing party out of the separate property of the other party. Where there are no children, and either party has a separate estate sufficient for his or her proper support, no allowance shall be made from the separate estate of the other party.

REVISE SECTION 7 OF TENTATIVE STATUTE TO READ:

SEC. 7. Sections [~~145.5~~] 140.5 and [~~145.7~~] 140.7 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]~~ 140.5. As used in Sections ~~[145.7]~~ 140.7, 141, 142, 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]~~ 140.7. As used in Sections 141, 142, 146, 148 and 149 of this code, "separate property" does not include quasi-community property.