66 9/22/69

Memorandum 69-123

Subject: Study 66 - Quasi-Community Property

Attached is a letter received from a practicing attorney commenting on certain aspects of the Commission's Recommendation Relating to Quasi-Community Property. (See Exhibit I.) This recommendation is already set in print but the staff was able to make very minor clarifying changes in the recommendation, making clear the effect of our statutory provisions.

The letter does, however, pose more basic problems--when should a court have jurisdiction to divide property upon dissolution of a marriage, and is legislative clarification needed in this area. These problems are not ones brought within the scope of the recommendation and the staff wonders if the Commission wishes to pursue these matters any further.

Respectfully submitted,

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EXHIBIT I

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September 10, 1969

California Law Revision Commission
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Gentlemen:

I have just concluded reading the Commission's Recommendation Relating to Quasi-Community Property (Revised August 1, 1969). On page 5 thereof, a statement is contained which I believe requires legislative clarification. The statement is as follows:

> ". . . Such treatment would create no substantial problems. The concept would be applicable only if a proceeding for dissolution or legal separation is filed after at least one of the spouses has become domiciled here and the court has personal jurisdiction over the other." (Emphasis mine.)

In Addison v. Addison, 62 Cal.2d 558, 43 Cal.Rptr. 97, (referred to in footnote 13 on page 5), the court, in its discussion of quasi-community property, assumes the necessity of both of the marital partners having been domiciled here. The court said:

> "Instead, the concept of quasi-community property is applicable only if a divorce or separate maintenance action is filed here after the parties have become domiciled in California. Thus, the concept is applicable only if, after acquisition of domicile in this State, certain acts or events occur which give rise to an action for divorce or separate maintenance . . ." (43 Cal.Rptr. at 102.) (Emphasis mine.)

While I see no policy objections to the suggestion that quasi-community property should exist where only one of the marital partners is domiciled in California, (except for the possible "forum-shopping" problem), the language of the Addison case

indicates the need for legislative clarification in this area.

The Cooper case (269 A.C.A. 1, 74 Cal.Rptr. 439) might indicate that such legislative clarification is not necessary. However, the Supreme Court's use in the Addison case of the phrase "after the parties have become domiciled in California" would lead to the conclusion that both parties must have been domiciled here at one time for the statutes to apply.

It would appear that the re-enactment of the quasi-community property statutes in substantially the form existing at the time of the decision of the Addison case would still leave the bench and bar with the question: Do the sections apply when only one of the parties is domiciled in California, and thereafter files an action for dissolution of the marriage or for legal separation?

Very truly yours,

Gerald E. Lichtig

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