

Basics

- Absent valid agreement between the spouses or domestic partners
- The marital property rights of California domiciliaries are fixed in accordance with California CP law [**Fam C 750, 760, and 770**]



Basics (cont'd)

- Under California law, property may be owned either separately or jointly [**CC 681 and 682**]
- Spouses may co-own property as joint tenants, tenants in common, CP, or CP with right of survivorship [**Fam C 750, Fam C 297.5**]



Basics (cont'd)

- "Except as otherwise provided by statute," CP is all property acquired by a married person during marriage while domiciled in California [**Fam C 760; IRMO Bonds (2000) 24 Cal.4th 1**]
- A California domiciliary spouse's acquisitions fall under the **Fam C 760** "community property" umbrella regardless of whether the property is real or personal and no matter where situated [**Fam C 760**]



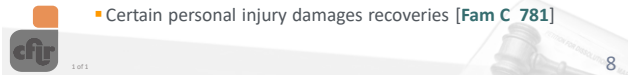
Fam C 751

- The parties' respective interests in CP are "present, existing, and equal" [**Fam C 751**]
- In other words, each spouse has a 50% ownership interest in CP, with equal rights of management and control ... but subject to interspousal fiduciary obligations [**Fam C 721(b)**, **Fam C 1100 et seq.**]



Fam C 760 Definition of CP

- The general **Fam C 760** definition of CP is subject to several statutory exceptions; they include
 - SP acquisitions during marriage [**Fam C 770(a)**]
 - Marital earnings and accumulations while living separate and apart or after a judgment of legal separation [**Fam C 771(a)** and **Fam C 772**]
 - CP transmuted to SP [**Fam C 850 et seq.**], and
 - Certain personal injury damages recoveries [**Fam C 781**]



CP Presumption

- For purposes of a division of property upon disso or legal separation, property acquired during marriage in joint form—including property held in tenancy in common, joint tenancy, tenancy in the entirety, or as CP—is presumed to be CP
- This is a presumption affecting the burden of proof [**Fam C 2581**]



CP Presumption (cont'd)

- The **Fam C 2581** presumption may only be rebutted by
- A clear statement in the deed (or other documentary evidence of title) that the property is SP, or
- Proof the parties made a written agreement that the property is SP [**Fam C 2581(a),(b)**]



CP Presumption (cont'd)

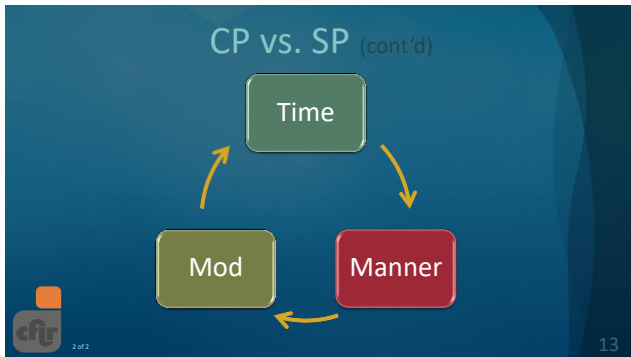
- The statutory CP presumption has been held to supersede **Ev C 662** presumption that favors the holder of legal title against persons claiming a beneficial interest in the property
- *Estate of Bibb* (2001) 87 Cal.App.4th 461; **IRMO Valli**

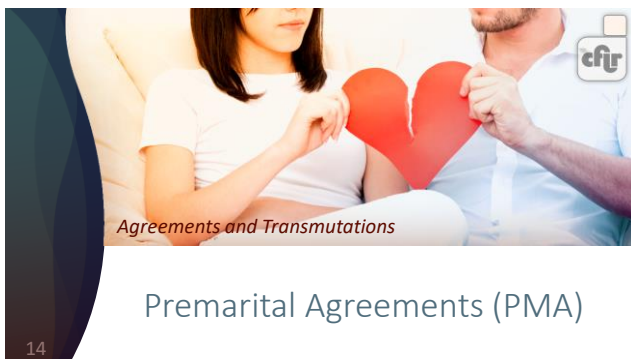


CP vs. SP

The initial CP vs. SP characterization of an asset determined under the rules and presumptions previously discussed (form of title, time or source of acquisition, etc.) may subsequently be affected by certain actions or agreements by or between the spouses







Fam C 1620

- “Except as otherwise provided by law, a husband and wife cannot, by a contract with each other, alter their legal relations, except as to property.”



In re Marriage of Noghrey

(1985) 169 Cal.App.3d 326 (CA-6)

- PMA void if promotes divorce
- CA public policy supports marriage
- W received something, did not give up something
- "The prospect of receiving a house and a minimum of \$500,000 by obtaining the no-fault divorce available in California would menace the marriage of the best intentioned spouse."



Foley/Santa Clara/Thompson

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Fam C 1610

- "(a) 'Premarital agreement' means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
- (b) 'Property' means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings."



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Fam C 1612

- "(a) Parties to a premarital agreement may contract with respect to all of the following:
- (1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
- (2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.
- (3) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event."

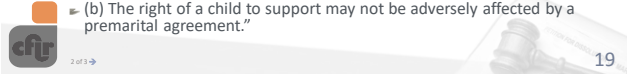


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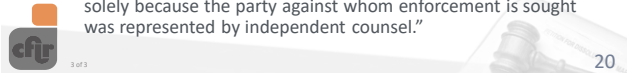
Fam C 1612 (cont'd)

- "(4) The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- (5) The ownership rights in and disposition of the death benefit from a life insurance policy.
- (6) The choice of law governing the construction of the agreement.
- (7) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.
- (b) The right of a child to support may not be adversely affected by a premarital agreement."



Fam C 1612 (cont'd)

- "(c) Any provision in a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable if the party against whom enforcement of the spousal support provision is sought was not represented by independent counsel at the time the agreement containing the provision was signed, or if the provision regarding spousal support is unconscionable at the time of enforcement. An otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel."



In re Marriage of Howell

(2011) 195 Cal.App.4th 1062 (CA-4(1))

- W was 44 years old and worked as a tax assistant/ bookkeeper
- W marries H, a letter carrier with U.S. Postal Service
- W and H began dating in 1997, became engaged in 1998, and married in mid-May 1999
- March 2008: DOS
- The PMA contained the following: "The parties mutually waive any right to receive future spousal support, maintenance or alimony from the other in the event of a Dissolution of Marriage or Legal Separation."



IRMO Howell (cont'd)

- The issue is whether **Fam C 1612(c)** applies to a PMA executed before its enactment
- In 2002, **Fam C 1612** was amended to invalidate any provision in a PMA regarding SS, "including, but not limited to, a waiver" of such support if
 - "the party against whom enforcement of the [SS] provision is sought was not represented by independent counsel at the time the agreement containing the provision was signed, or if
 - the provision is unconscionable at the time of enforcement."



Bank/San Diego/Cortel

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IRMO Howell (cont'd)

- T/Ct ruled the amendment applied retroactively
- And invalidated a provision in the parties' agreement waiving their right to receive "future spousal support, maintenance or alimony" from the other party in the event of a disso of marriage or legal separation



Bank/San Diego/Cortel

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IRMO Howell (cont'd)

- CA-4(1) held that T/Ct erred in ruling the 2002 amendment to **Fam C 1612** applied to PMA executed before the amendment's enactment
- CA-4(1) also found that there was substantial evidence to support findings that spouse against whom enforcement was sought voluntarily entered into that agreement and that the PMA was not unconscionable



Bank/San Diego/Cortel

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IRMO Howell (cont'd)

- This evidence included
 - W entered agreement voluntarily
 - W understood admonition to obtain an attorney
 - She had time to obtain an attorney
 - She understood the PMA
 - She was fluent in English
 - She was employed in the field of bookkeeping which involves keeping track of finances



Berkeley/San Diego/Cornell

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IRMO Howell (cont'd)

- This evidence included (cont'd)
 - W had at least 14 days prior to the wedding to consider the PMA
 - The Court found that PMA was not executed under duress, fraud, or undue influence
 - W had the capacity to enter into PMA
 - There was no evidence agreement was unconscionable when signed
- The Court held: "Based on the law that existed at the time the parties' executed their agreement, we conclude the parties' waiver of spousal support in their premarital agreement was valid and enforceable."



Berkeley/San Diego/Cornell

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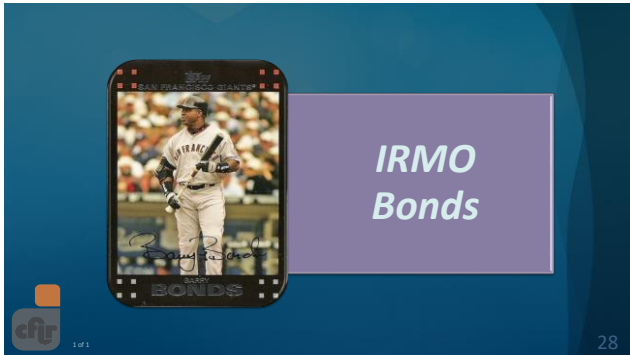
Fam C 1611

- "A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration."



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IRMO Bonds

In re Marriage of Bonds

(2000) 24 Cal.4th 1 (CASCT)

- W and H met in the summer of 1987 and maintained relationship through telephone contacts
- 10-1987:** W visited H for 10 days at his home in AZ
- 11-1987:** W moved to AZ to take up residence with H and, one week later, the two became engaged to be married
- 1-1988:** H and W decided to marry before spring training

cfr George/San Mateo/Kozlowski 1 of 5 29

IRMO Bonds (cont'd)

- 2-5-1988:** Parties entered into written PMA; that same day, they flew to Las Vegas, and were married the following day
- Each of the parties was 23 years old
- W had emigrated to Canada from Sweden in 1985, had worked as a waitress and bartender, and had undertaken some training as a cosmetologist

cfr George/San Mateo/Kozlowski 2 of 5 30

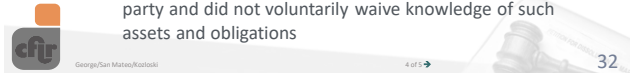
IRMO Bonds (cont'd)

- Although her native language was Swedish, she had used both French and English in her employment, education, and personal relationships when she lived in Canada
- W was unemployed at the time she entered into PMA
- H told W he would not marry without PMA, and she had no objection



IRMO Bonds (cont'd)

- CASCT found **Fam C 1615** provides that a premarital agreement will be enforced unless party resisting enforcement can demonstrate either
 1. That he or she did not enter into contract voluntarily, or
 2. That contract was unconscionable when entered into and that he or she did not have actual or constructive knowledge of the assets and obligations of the other party and did not voluntarily waive knowledge of such assets and obligations



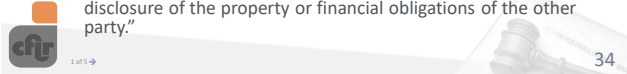
IRMO Bonds (cont'd)

- The Court also held that substantial evidence supported T/Ct's finding that W voluntarily entered into agreement



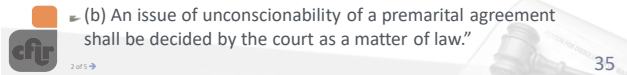
Fam C 1615

- “(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:
 - (1) That party did not execute the agreement voluntarily.
 - (2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:
 - (A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.”



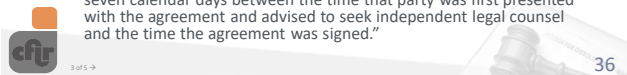
Fam C 1615 (cont'd)

- “(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.
- (C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.



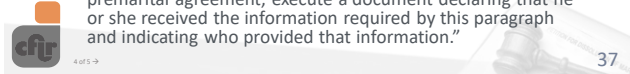
Fam C 1615 (cont'd)

- “(c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:
 - (1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.
 - (2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.”



Fam C 1615 (cont'd)

- “(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.”



Fam C 1615 (cont'd)

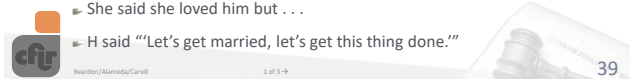
- “(4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.
- (5) Any other factors the court deems relevant.”



In re Marriage of Cadwell-Faso & Faso

(2011) 191 Cal.App.4th 945 (CA-1(4))

- T/Ct found final draft addenda to PMA unenforceable because 7 days had not elapsed between time H was presented with addenda and time he signed it
- Prior to marriage, parties began to work on PMA; their lawyers drafted and exchanged 5 drafts
- With the last draft, W sent H a “goodbye” letter along with the drafts of the PMA
- She said she loved him but . . .
- H said “Let’s get married, let’s get this thing done.”



IRMO Cadwell-Faso & Faso (cont'd)

- They did. . .
- H and W met at lawyers' office and signed PMA; they got married two days later
- At disso proceeding, H maintained that **Fam C 1615** was not complied with, because PMA was presented to him and signed within 7 day waiting period



IRMO Cadwell-Faso & Faso (cont'd)

- CA-1(4) found that H was represented throughout the transaction and had multiple versions of PMA during drafting process
- Fam C 1615(c)(2)** did not apply to him and the agreement was enforceable



Premarital Agreements

Pre-1970 Promote divorce?

Post-1970

Jan. 1, 1986 (Fam C 1503)

**IRMO Bonds
IRMO
Pendleton &
Fireman**

Jan. 1, 2002



SS Waivers In Premarital Agreements

Historically, SS waivers in premarital agreements were unenforceable as contrary to public policy



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In re Marriage of Higgason

(1973) 10 Cal.3d 476 (CASCT)

- CASCT held that premarital agreements which waived, diminished, or altered statutory obligation of spouses to mutually support one another were void and unenforceable as contrary to public policy
 - The decision reinforced the public policy in place since 1872: **CC 159** provided that spouses could not alter their legal relations by contract
 - Marriage was considered more than a mere contract, but rather a social institution vital to society's stability – the state had an interest in ensuring the permanency of the marriage



McComb/Carla Barbara/Widwick

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In re Marriage of Pendleton & Fireman

(2000) 24 Cal.4th 39 (CASCT)

- CASCT held that SS waivers and limitations in premarital agreement were not invalid per se
 - Cited legislative history, changing social mores, increasing employment of married women, adoption of no-fault divorce, and statutory goal that the supported party shall be self-supporting within a reasonable time
 - Noted that both parties to the premarital agreement had advice of counsel before signing the agreement, both had graduate degrees, and both had an ability to earn income to be self-sufficient



Baxter/Mook, ssp.com; Kennard, ds/Los Angeles/Clemens


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SS Waivers: Current Law

- **Fam C 1612(c)**, modified effective 1-1-2002, codified two hurdles for enforcement of SS waivers in premarital agreements
 - Representation by independent counsel, and
 - Unconscionability at the time of enforcement of the agreement





But what constitutes "unconscionable"?

CFR 1 of 1 47

In re Marriage of Facter

(2013) 212 Cal.App.4th 967 (CA-1(1))

- W is unemployed, high-school graduate
- H is Harvard-educated atty earning \$500K/year – with \$3M in SP at time of marriage
- H personally drafted premarital agreement and told W that SS waiver was non-negotiable



Quarles/Morris/Adams

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IRMO Facter (cont'd)

- The Court used a temporary guideline support calculation as a measuring stick
- And found that W's property award in the divorce would be inadequate to sufficiently support her
- And the SS waiver was therefore unconscionable

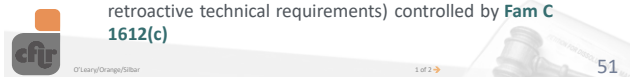


Slide content for Premarital agreements. It features a green rounded rectangle with a yellow circle containing an image of two hands shaking. Below the image, the text reads: "Premarital agreements are treated differently depending on when they were executed". A large white double-headed arrow is positioned below the text. The slide footer includes the CTR logo, "1 of 1", and the slide number "50".

In re Marriage of Melissa

(2013) 212 Cal.App.4th 598 (CA-4(3))

- *IRMO Melissa* confirms that the validity/ enforceability of premarital agreements turns on the date of execution
 - I.e., pre-1986 (before Uniform Act) unenforceable
 - 1986-2002 (before amendment of Uniform Act) not presumptively invalid
 - Post-2002 (when Uniform Act amended with non-retroactive technical requirements) controlled by **Fam C 1612(c)**



IRMO Melissa (cont'd)

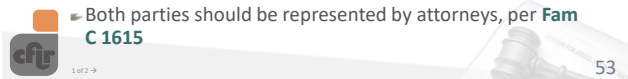
- IRMO Pendelton & Fireman upholds a 1991 waiver
- Does **IRMO Pendelton & Fireman** apply to premarital agreements between 1986 and 1990 in the post-**IRMO Melissa** landscape?



Premarital Agreements

Best Practice For Drafting SS Waivers

- Advise wealthier spouse to provide consideration for waiver, i.e., gifts during marriage with goal of creating SP estate to support less-wealthy spouse
- Include descriptions of parties' education and earnings
- Include statement that the parties read and understood agreement
- Both parties should be represented by attorneys, per **Fam C 1615**



Premarital Agreements

Best Practice For Drafting SS Waivers (cont'd)

- Include certifications by attorneys that clients read and understood agreement
- Have parties' signatures notarized and perhaps videotaped
- Warn clients that SS waivers are an uncertain, evolving area of law



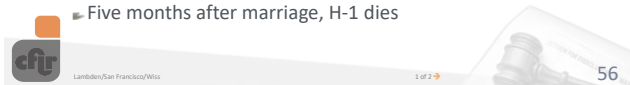
Pre-Domestic Partnership Agreements

- Pursuant to **Fam C 297.5(a)**, registered domestic partners have the same rights and responsibilities under the law as spouses
- Pre-domestic partnership agreements are therefore subject to the same rules that govern premarital agreements in **Fam C 1600 et seq.**



Estate of Wilson (2012) 211 Cal.App.4th 1284 (CA-1(2))

- The Court held that waiver in pre-domestic partnership agreement was not nullified by subsequent marriage
- Pre-DP agreement signed in 2006: With waiver of any interest in future property, income, or estate of the other
- 2008: DOM
- Five months after marriage, H-1 dies



Estate of Wilson (cont'd)

- H-2 files petition alleging an omitted spouse's interest in H-1's estate
 - And argues that the marriage was a contract which terminated the property arrangement in the pre-DP agreement
- T/Ct says DP agreement remained valid after marriage, just like a prenup



In re Marriage of Carpenter

(2002) 100 Cal.App.4th 424 (CA-2(6))

- PMA stated that, upon marriage, residence H was buying would be the parties' CP
- H paid \$415,000 HSP for Residence; escrow closed on wedding day
- Shortly after marriage, H deeded residence to H & W as CP



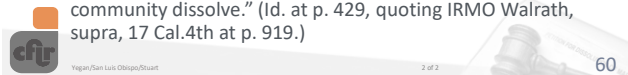
IRMO Carpenter (cont'd)

- After separation, Residence was sold for \$650,000.
- T/Ct awarded H \$415,000 as section 2640(b) reimbursement, then divided sale proceeds balance as CP.
- CA-2(6): **AFFIRMS**
 - H had not made a written waiver of his reimbursement rights as required under section 2640(b)

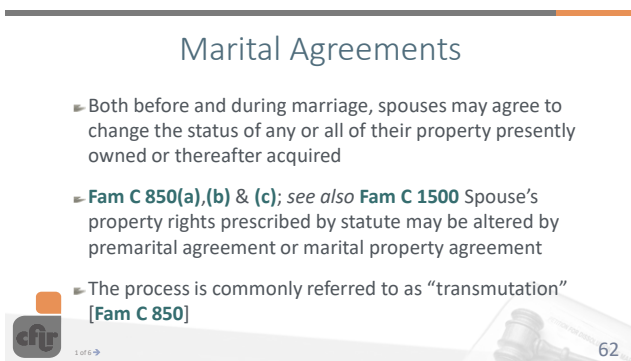


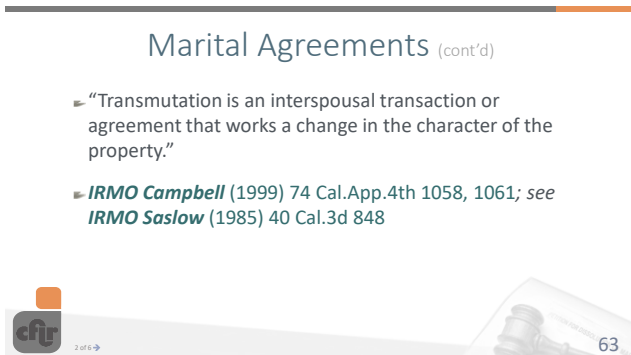
IRMO Carpenter (cont'd)

Section 2640 "encourages married persons to freely and without reservation contribute their separate property assets to benefit the community, and alleviates the need for spouses to negotiate with each other during marriage regarding continuing reimbursement rights. . . . [S]ection 2640 protects the general expectations of most people in marriage, i.e., that spouses will be reimbursed for significant monetary contributions to the community should the community dissolve." (Id. at p. 429, quoting IRMO Walrath, supra, 17 Cal.4th at p. 919.)









Marital Agreements (cont'd)

- Like all interspousal property transactions, property transmutations are subject to the **Fam C 721(b)** fiduciary standards
- Even if a transmutation is evidenced by the requisite writing, its validity depends on the parties' compliance with standards of disclosure that arise out of their confidential and fiduciary relationship [**Fam C 721(b)**, **Fam C 1100**]

IRMO Haines; IRMO Barneson (1999) 69 Cal.App.4th 583



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Marital Agreements (cont'd)

- Common purpose of marital agreements
 - Modify or prevent the application of CA law to the spouses' property or income [**Fam C 1500**]
 - Change the character of their property ("transmutation" agreements per **Fam C 850 et seq.**; and see *Balkema v. Deiches* (1949) 90 Cal.App.2d 427; *Tompkins v. Bishop* (1949) 94 Cal.App.2d 546)



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Marital Agreements (cont'd)

- Spouses may agree during marriage to change (or "transmute") ownership status of any or all of their property (presently owned or thereafter acquired)
- I.e., they may convert SP into CP, CP into SP, or SP of one into SP of the other, with or without consideration
- Fam C 850(a),(b) & (c)**; see also **Fam C 1500** (marital property rights prescribed by statute may be altered by premarital or other marital property agreement)

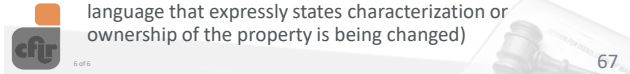


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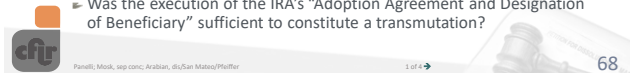
Marital Agreements (cont'd)

- Except for personal property items of nominal value, transmutation of real or personal property on or after **January 1, 1985**, is valid only if made "in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." [Fam C 852(a)]
- Estate of MacDonald** (1990) 51 Cal.3d 262 (adversely-affected spouse's "express declaration" must contain language that expressly states characterization or ownership of the property is being changed)



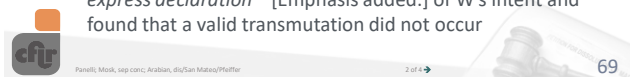
Estate of MacDonald (1990) 51 Cal.3d 262 (CASCT)

- W and H married in 1973; each had children by a previous spouse
- In 1984, W learned she was terminally ill
- W wanted to leave her property to her children & the parties entered into an estate plan
- The plan included IRAs in H's name which contained community funds
- Was the execution of the IRA's "Adoption Agreement and Designation of Beneficiary" sufficient to constitute a transmutation?



Estate of MacDonald (cont'd)

- T/Ct found: "[d]ecedent, in executing the Adoption Agreement[s] for the three IRA's, intended to waive any community right she had in those IRA's and in fact to transmute her share of that community property asset to the separate property of Respondent."
- CASCT found that the adoption agreements were "not 'an express declaration'" [Emphasis added.] of W's intent and found that a valid transmutation did not occur



Estate of MacDonald (cont'd)

- "We do not hold that [the statute] requires use of the term 'transmutation' or any other particular locution. Although a writing sufficient to satisfy the 'express declaration' requirement ... might very well contain the words 'transmutation,' 'community property,' or 'separate property,' it need not. For example, the paragraph signed by decedent here would have been sufficient if it had included an additional sentence reading: 'I give to the account holder any interest I have in the funds deposited in this account.' "



Panel@, Mosk, sep conc; Arabian, dis/San Mateo/Hoffer

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Estate of MacDonald (cont'd)

- "We are aware that [the statute] construed as we have construed it today, may preclude the finding of a transmutation in some cases, where some extrinsic evidence of an intent to transmute exists. But, as previously discussed, it is just such reliance on extrinsic evidence for the proof of transmutations which the Legislature intended to eliminate in enacting the writing requirement of [the statute]."



Panel@, Mosk, sep conc; Arabian, dis/San Mateo/Hoffer

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Fam C 852

- "(a) A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.
- (b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded.
- (c) This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage."



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Fam C 852 (cont'd)

- "(d) Nothing in this section affects the law governing characterization of property in which separate property and community property are commingled or otherwise combined.
- "(e) This section does not apply to or affect a transmutation of property made before January 1, 1985, and the law that would otherwise be applicable to that transmutation shall continue to apply."

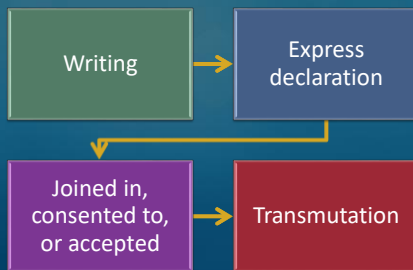


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Transmutation



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Estate of Bibb



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Estate of Bibb (2001) 87 Cal.App.4th 461 (CA-1(3))

- H and W-1 had one child, D – appellant
- During marriage to W-1, H purchases a lot in Berkeley and builds apartment building; W-1 died on 11-25-1977
- H began dating W-2 in 1988 or 1989
- In 1991, H purchased Rolls Royce and registered it in his name
- After their marriage, the Rolls Royce was reregistered in 1995 in names of H or W-2



Walker/Centra Costa/Flinn

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76

Estate of Bibb (cont'd)

- In the latter part of 1994, H applied for \$225K loan, which was to be secured by Berkeley property
- H was unable to qualify for the loan
- In order to qualify, H signed grant deed, conveying property from himself to himself and W-2, "his wife as joint tenants."



Walker/Centra Costa/Flinn

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77

The Apartment

Estate of Bibb (cont'd)

- CA-1(3) held that there was no dispute that the grant deed, signed by H, was a writing that was "made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected"
- The question was whether the deed, independent of extrinsic evidence, contained a clear and unambiguous expression of intent to transfer an interest in the property



Walker/Centra Costa/Flinn

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Estate of Bibb (cont'd)

- CA-1(3) found that since the **MacDonald** Court held that the consent paragraphs would have been adequate for a valid transmutation had they said, "I give to the account holder any interest I have ...,"
- And since "grant" is the historically operative word for transferring interests in real property, there was no doubt that H's use of the word "grant" to convey real property into joint tenancy satisfied express declaration requirement of **Fam C 852**



Walker/Centra Costa/Flinn

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Estate of Bibb (cont'd)

- The document re: the Rolls Royce was a computer printout – "DMV Vehicle Registration Information"
- The car, which had been previously registered in H's name alone, was reregistered in the names of H or W-2; no signature of any party appeared on document
- CA-1(3) held that although the DMV printout may comply with requirements for a presumption of joint tenancy under the Vehicle Code



Walker/Centra Costa/Flinn

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Estate of Bibb (cont'd)

- There was nothing on the face of the document evidencing that the change in the form of title was "made, joined in, consented to, or accepted by" H
- The document did not contain a clear and unambiguous expression of H's intent to transfer his interest in the subject property, as required by **Fam C 852**
- The Rolls Royce was not validly transmuted from H's SP



Walker/Centra Costa/Flinn

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81

Proving a Valid Transmutation

- Compliance with the **Fam C 852** express declaration formalities does not alone establish that a valid transmutation has occurred
- Where a presumption of undue influence does not attach in first instance, burden remains with the challenging party to prove (without the aid of a presumption) that undue influence was exerted [**IRMO Kieturakis** (2006) 138 Cal.App.4th 56]



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Proving a Valid Transmutation (cont'd)

- However, when characterization is disputed and the unfair advantage presumption applies
- The advantaged spouse has the burden of proving the alleged transmutation was not the product of undue influence
- IRMO Balcof** (2006) 141 Cal.App.4th 1509



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In re Marriage of Buie & Neighbors

(2009) 179 Cal.App.4th 1170 (CA-4(1))

- W and H marry in 1999
- During marriage, H paid \$60K for 2001 Porsche 996 with check drawn on W's SP account
- H considered the Porsche to be a gift from her, because he bought it right before his birthday



Winn/Stan Drago/Brannigan

1 of 4 →

84

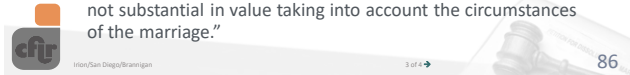
IRMO Buie & Neighbors (cont'd)

- T/Ct found that the Porsche was a gift and had been transmuted to H's SP under **Fam C 852(c)**, which provides that a written transmutation is not necessary for gifts of "tangible articles of a personal nature" that are "not substantial in value" relative to marital circumstances
- W appealed, and CA-4(1) **REVERSES** and remands



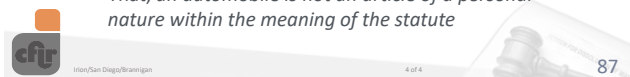
IRMO Buie & Neighbors (cont'd)


- CA-4(1) found that, per **Fam C 760**, car was presumed to be CP because it was purchased during marriage
- It would be CP unless **Fam C 852(c)** applied; this statute creates exception to **Fam C 852(a)** (transmutation of real or personal property must be in writing) for gifts between spouses "of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage."



IRMO Buie & Neighbors (cont'd)

- Here
 - There was no writing
 - Court found that the Porsche was not substantial in value under circumstances
- But
 - That, *an automobile is not an article of a personal nature within the meaning of the statute*





Agreements and Transmutations

Validity of Marital Agreements

88

In re Marriage of Starkman

(2005) 129 Cal.App.4th 659 (CA-2(6))

- H and W established revocable trust as part of estate planning
- A provision of the Trust stated that “Settlers agree that any property transferred by either of them to the Trust . . . is the community property of both of them unless such property is identified as the separate property of either Settlor.”
- In addition to the Trust, H and W executed a “General Assignment” which conveyed “any asset, whether real, personal, or mixed . . . [they] now own or which [they] may own in the future” to Trust

Gilbert/San Luis Obispo/Woodport 1 of 3 89

IRMO Starkman (cont'd)

- H conveyed various SP assets to the Trust, however, he did not identify any of the assets as SP
- This language was not sufficient to establish that H had effected a change in ownership in the Trust assets

Gilbert/San Luis Obispo/Woodport 2 of 3 90

IRMO Starkman (cont'd)

- Although agreement stated that any property transferred to the Trust was CP, it did not expressly state that characterization or ownership was being changed and did not sufficiently identify subject property
- CA-2(6), however, noted that the Trust could have stated that H was "transmuting the entirety of his separate estate to community property" and this would have been sufficient to satisfy **MacDonald** test



Gibson/San Luis Obispo/Woodport

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91

In re Marriage of Holtemann

(2008, on reh'g) 166 Cal.App.4th 1166 (CA-2(6))

- H and W executed a "Spousal Property Transmutation Agreement" and "Holtemann Community Property Trust" as part of their estate plan
- Introductory paragraph of the "Transmutation Agreement" stated that it was "not made in contemplation of a separation or marital dissolution and is made solely for the purpose of interpreting how property shall be disposed of on the deaths of the parties."



Perrin/San Luis Obispo/Perry

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IRMO Holtemann (cont'd)

- CA-2(6) said it was "not aware of any authority for the proposition that a transmutation ... can be ... conditional or temporary" and gave effect to the transmutation disregarding the conditional language
- In other words, you can't eat it too. . .



Perrin/San Luis Obispo/Perry

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93

In re Marriage of Lund

(2009) 174 Cal.App.4th 40 (CA-4(3))

- H made express declaration in writing of his intent to transmute all of his SP to CP “for estate planning purposes”
- Transmutation agreement executed simultaneously with a Trust which provided: “Upon the filing of a petition for the dissolution of the marriage and/or separation by either Settlor, this Agreement is automatically terminated without further notice to third parties and either Trustee shall return to each Settlor the [SP] they contributed to this Agreement not previously disposed of, together with each Settlor’s share of the Trust Estate which is community property.”



Notis/Orange/Miller

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94

IRMO Lund (cont’d)

- T/Ct had found because transmutation agreement stated it was for estate planning purposes only (and when read in conjunction with the trust could most plausibly be read as intending to change SP to CP only if they were married when one spouse died)
- The transmutation was ambiguous and thus failed the **MacDonald** test



Notis/Orange/Miller

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IRMO Lund (cont’d)

- CA-4(3) relied on **IRMO Holtemann** for the proposition that parties may not execute a “conditional” transmutation
- However, instead of finding this conditional transmutation invalid the Court ignored this conditional language and upheld the agreement as valid



Notis/Orange/Miller

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Public Policy Restraints

- Marital agreements historically have been subject to several public policy restraints
 - The agreement is unenforceable to the extent it “promotes dissolution”
 - Waives or limits CS or SS
 - Impinges on Court’s exercise of jurisdiction to adjudicate CS or child custody
 - “Alters legal relations” incident to marriage, or
 - Provides for “fault” based penalties at marriage dissolution



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Public Policy Restraints (cont'd)

- See generally, **Fam C 1620**
 - ***Pereira v. Pereira*** (1909) 156 Cal. 1
 - ***Diosdado v. Diosdado*** (2002) 97 Cal.App.4th 470
 - ***IRMO Mehren & Dargan*** (2004) 118 Cal.App.4th 1167



98

Diosdado v. Diosdado

(2002) 97 Cal.App.4th 470 (CA-2(4))

- The Court held that liquidated damages clause in postnup agreement as penalty for sexual infidelity was unenforceable
- As contrary to the public policy underlying no-fault dissolutions



99

Diosdado (cont'd)

- H and W entered into postnup after W learned of husband's affair
- When H again had an affair, W divorced him
- After divorcing him, W brought action for breach of contract, seeking to enforce \$50K liquidated damages clause

- Spouses may not impose a premium for "emotional angst"



Epstein/Los Angeles/Torrillo

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100

In re Marriage of Mehren & Dargan

(2004) 118 Cal.App.4th 1167 (CA-4(3))

- The Court held that postnup where H promised to grant W his CP if he used drugs violated public policy of no-fault divorce and was unenforceable



Epstein/Los Angeles/Torrillo

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IRMO Mehren & Dargan (cont'd)

- H and W had separated after H repeatedly suffered cocaine addiction problems
- Months later, W agreed to resume the marriage in exchange for H's agreement to the postnup
- When H again started using drugs, W filed for divorce and asked that the CP property in the postnup be confirmed as her SP



Epstein/Los Angeles/Torrillo

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In re Marriage of Benson

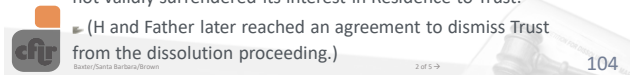
(2005) 36 Cal.4th 1096 (CASCT)

- The California Supreme Court held
 - **Fam C 852** is not subject to traditional statute of fraud exceptions
 - Partial performance of an interspousal agreement is not an adequate substitute for the required **MacDonald** express declaration of transmutation



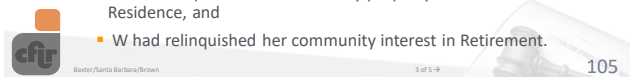
IRMO Benson (cont'd)

- W was beneficiary of irrevocable Trust – her Father was Trustee.
- During marriage, Father gifted Residence to H & W.
- Later, at Father's request, H & W deeded Residence to Trust.
- After W filed dissolution petition, H joined Father (as Trustee) as a party to the proceeding, claiming that the community had not validly surrendered its interest in Residence to Trust.
- (H and Father later reached an agreement to dismiss Trust from the dissolution proceeding.)



IRMO Benson (cont'd)

- At trial, H contended that when he signed the deed transferring Residence to Trust, W had orally agreed to transmute her community property interest in H's Retirement to his separate property.
- W denied having so agreed.
- T/Ct found that:
 - H had relinquished his community property interest in Residence, and
 - W had relinquished her community interest in Retirement.



IRMO Benson (cont'd)

- T/Ct held that section 852(a)'s writing requirement is subject to implied exceptions that had been applied in other statutory contexts.
- T/Ct enforced W's oral Retirement transmutation against her, holding that H's act of deeding Residence to Trust had satisfied a "part performance" exception to section 852(a)'s writing requirement.
- CA-2(6) **AFFIRMS.**
- CASCT **REVERSES.**



Baird/Santa Barbara/Brown

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IRMO Benson (cont'd)

- CASCT saw no evidence that the Legislature had intended to incorporate traditional exceptions to the statute of frauds into section 852.
- Section 852 was enacted to increase certainty as to whether a transmutation had in fact occurred, and to overrule previous case law insofar as it did not require a transmutation to be both written and express.



Baird/Santa Barbara/Brown

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Principles of Contract Law

- Subject to certain exceptions and special considerations, general principles of contract law apply to make any marital contract voidable for
 - Fraud
 - Duress
 - Undue influence, or
 - Otherwise lacking the minimum requirements for a valid contract



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Principles of Contract Law (cont'd)

- As contracts, enforceable premarital, marital, and marital settlement agreements must comply with general principles of contract law
 - (a) "Contractual capacity"
 - (b) Valid consent
 - (c) A "lawful object," and
 - (d) Subject to specified exceptions, a proper "consideration"

■ See generally **CC 1550**



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Principles of Contract Law (cont'd)

- An agreement lacks valid consent where one party uses confidence or authority over the other to procure an unfair advantage, or takes unfair advantage of other party's weakness of mind or distress
- As in cases of "menace" or "duress," the exertion of such "undue influence" deprives the other party of the ability to exercise "free will"

■ **CC 1575**; see *IRMO Saslow*



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Principles of Contract Law (cont'd)

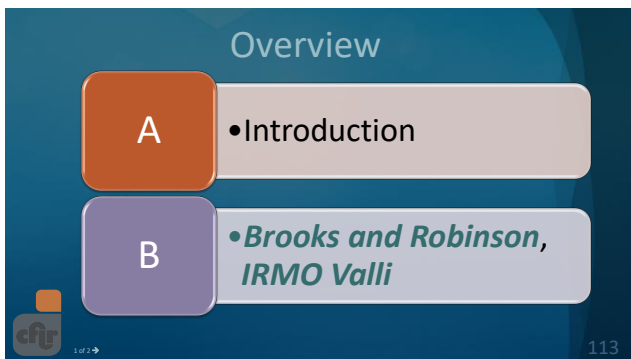
- Mere existence of a marriage relationship does not itself create a presumption that a marital contract was procured by undue influence [*Snyder v. Snyder* (1951) 102 Cal.App.2d 489]
- However, to extent a marital agreement provides one spouse with an advantage over the other, it is presumptively product of undue influence and inadequate consideration [*IRMO Burkle* (2006) 139 Cal.App.4th 712; *IRMO Balcof*]

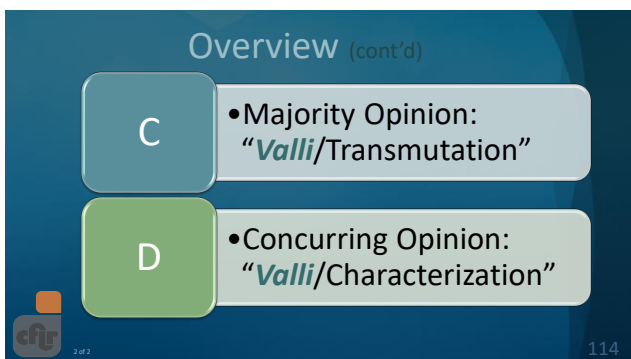


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A. Introduction

IRMO Valli

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Naming Conventions

Superseded CA-2(5) decision	" <i>Valli</i> "
Justice Kennard majority decision	" <i>Valli</i> /Transmutation"
Justice Chin concurring decision	" <i>Valli</i> /Characterization"

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Valli/Transmutation

- Majority opinion by Justice Kennard
 - Fam C 852(a)**
 - Anti-transmutation "express written declaration" protections
 - Apply to a spouse's initial acquisition of property from a third party

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Valli/Characterization

- Concurring opinion by Justice Chin
 - Time [Fam C 760]
 - Trumps title [Ev C 662]
- Ev C 662 plays no role in characterizing property in an action between spouses



The Four T's of Characterization

- | | |
|-----------------------|-----------------------------------|
| T ime | • Fam C 760 |
| T racing | • See v. See (1966) 64 Cal.2d 778 |
| T itle | • Ev C 662 |
| T ransmutation | • Fam C 852 |



B. Brooks and Robinson, IRMO Valli

Agreements and Transmutations



In re Marriage of Brooks & Robinson

(2008) 169 Cal.App.4th 176 (CA-4(2))

- Parties purchased Residence:
 - During marriage (Time = CP)
 - With CP (Tracing = CP)
 - In W's sole name (Title = WSP)
 - Because real estate agent recommended "it would be easier to obtain financing"
 - H "agreed"
 - W took title as "a single woman"



King/San Bernardino/Route

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IRMO Brooks & Robinson (cont'd)

- Residence went into foreclosure
- Executive Capital Group ("Buyer") was in the business of purchasing distressed properties
- W sold residence to Buyer, netting \$42,000
- H filed dispo petition seven days later
- H joined Buyer as dispo party

► T/Ct granted H's bifurcation motion

► T/Ct conducted a bifurcated trial

Sole issue

Set aside deed to Buyer?



King/San Bernardino/Route

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IRMO Brooks & Robinson (cont'd)

- T/Ct sympathized with Buyer's position
- If T/Ct determined that H had an interest in the residence, the ***Pacific Gas & Elec. Co. v. Minnette*** (1953) 115 Cal.App.2d 698 "tough to be a bona fide purchaser" rule would have compelled T/Ct to set aside the sale
- T/Ct refused to set aside the deed, determining that Buyer was a bona fide purchaser (BFP), taking title free of any claim of H
- "The court did not expressly determine whether [residence] was a community property asset."



King/San Bernardino/Route

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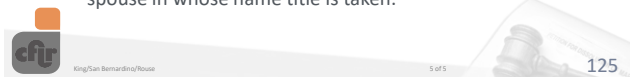
IRMO Brooks & Robinson (cont'd)

- CA-4(2): **AFFIRMS**
- Fam C 852(a)** anti-transmutation "express written declaration" protections don't apply to a spouse's initial acquisition of property from a third party
- Title (**Ev C 662**) trumps time (**Fam C 760**)



IRMO Brooks & Robinson (cont'd)

- On the **Ev C 662** vs. **Fam C 760** issue
- "...the act of taking title to property in the name of one spouse during marriage with the consent of the other spouse effectively removes that property from the general community property presumption. In that situation, the property is presumably the separate property of the spouse in whose name title is taken."



In Brief: *IRMO Brooks & Robinson*

Good result for Buyer

H had no interest in Residence

Therefore, Buyer was a BFP

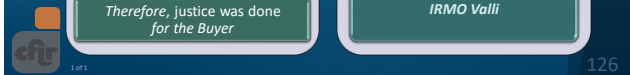
Therefore, the sale to Buyer wasn't set aside

Therefore, justice was done for the Buyer

Bad result for family law (ACFLS' depublication request was denied):

Decades of reliable precedent was unsettled

Gave Second District fodder for *IRMO Valli*



In re Marriage of Valli

(2014) 58 Cal.4th 1396 (CASCT)

- H & W discussed buying an insurance policy on H's life while H was hospitalized with heart problems
- The purpose of the policy was to prepare for the future and take care of the family
- Parties purchased a \$3.75 M whole life insurance policy during marriage (Time = CP)
- CP paid premiums (Tracing = CP)
- Policy ownership was in W's sole name (Title = WSP)



Kennard; Chen, sep conc/Los Angeles/Juhas

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IRMO Valli (cont'd)

- T/Ct characterized the \$365K cash surrender value as CP, awarded the policy to H, and ordered H to pay W \$182,500
- CA-2(5) reversed
 - **Fam C 852(a)** anti-transmutation "express written declaration" protections don't apply to a spouse's initial acquisition of property from a third party
 - Title (**Ev C 662**) trumps time (**Fam C 760**)



Kennard; Chen, sep conc/Los Angeles/Juhas

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Valli/Transmutation

Majority opinion by Justice Kennard

Fam C 852(a)

Anti-transmutation
"express written
declaration"
protections

Apply to a
spouse's initial
acquisition of
property from a
third party



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Valli/Characterization

Concurring opinion by Justice Chin	
Time (Fam C 760) trumps title (Ev C 662)	Ev C 662 plays no role in characterizing property in an action between spouses

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C. Valli / Transmutation

Agreements and Transmutation

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Fam C 852(a) “Express Declaration”

“A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.”

Effective 1/1/85

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May Be an Interspousal Transaction

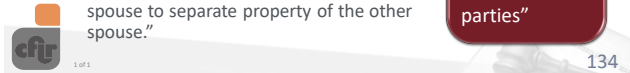
- Several cases have referred to a transmutation as “an interspousal transaction”
- But no case has ever held that a transmutation must be “an interspousal transaction”
- Neither does **Fam C 850** provide that a transmutation must be “an interspousal transaction”



Fam C 850

- “...married persons may by agreement or transfer....:
 - (a) Transmute community property to separate property of either spouse.
 - (b) Transmute separate property of either spouse to community property.
 - (c) Transmute separate property of one spouse to separate property of the other spouse.”

NOTE: The statute does **not** limit the transaction to one made “between the parties”



IRMO Brooks & Robinson on Transmutation

- “[H] contends that [there was an illegal] transmutation of community property to [W's] separate property.”**

*** The argument is misplaced because [there was no] transmutation.... A ‘transmutation’ is an *interspousal* transaction... that works to change the character of property the parties’ [sic] *already own*. [An] *initial acquisition* of property from a third person does not constitute a transmutation and thus is not subject to [transmutation requirements].” [Emphases in original; citing *Hogoboom & King, Cal. Practice Family Law (The Rutter Group)*]



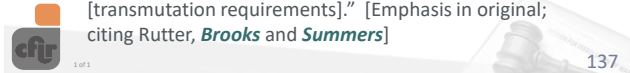
Hogoboom & King on Transmutation

- “[8:471.1] Initial acquisition from third party not a ‘transmutation’:
- A ‘transmutation’ is an *inter-spousal* transaction . . . that works to change the character of property the parties *already own*. By contrast, the *initial acquisition* of property from a third person does *not* constitute a transmutation and thus is not subject to the Fam C §852(a) transmutation requirements.” [Emphasis in original; citing *Summers* and *Haines*.]



Valli on Transmutation

- “. . . there was no evidence of transmutation [of the life insurance policy].
- A ‘transmutation’ is an *interspousal transaction* . . . that works to change the character of property the parties’ [sic] *already own*. By contrast, the *initial acquisition* of property from a third person does not constitute a transmutation and thus is *not* subject to [transmutation requirements].” [Emphasis in original; citing Rutter, *Brooks* and *Summers*]



Q:

- In order to be a transmutation, must an event ALSO be “an interspousal transaction”?

A:

- No. An event can be a transmutation WITHOUT ALSO being “an interspousal transaction”



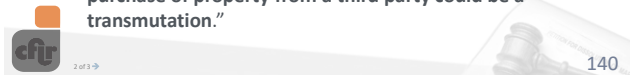
Valli/Transmutation on *Haines*, et seq.

- “The notion that third party transactions cannot be transmutations may be traced to the Court of Appeal’s 1995 decision in *In re Marriage of Haines* There, the Court of Appeal said that a transmutation is ‘an interspousal transaction or agreement which works a change in the character of the property.’”



Valli/Transmutation on *Haines* (cont'd)

- “Referring to the wife’s signing of a quitclaim deed conveying the family residence to the husband during the marriage, the court concluded that this was a transmutation subject to the statutory express declaration requirement. The **court** did not consider whether any other transaction was a transmutation, and in particular it **did not consider whether one spouse’s purchase of property from a third party could be a transmutation.**”



Valli/Transmutation on *Haines* (cont'd)

- “We recognize that some court decisions have stated that a transmutation requires an interspousal transaction and that one spouse’s acquisition of an asset from a third party is therefore exempt from the statutory transmutation restrictions. **Those decisions are unpersuasive, however.**”



IRMO Brooks & Robinson Quiz

Q: Before close of escrow, was the residence's down payment CP?

• A: Yes

Q: After close of escrow, was the residence WSP?

• A: Yes

Q: What part did W play in transmuting a CP down payment into a WSP residence?

• A: W took title to the residence in her sole name ala Ev C 662



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IRMO Brooks & Robinson Quiz (cont'd)

Q: What part did H play in transmuting a CP down payment into a WSP Residence?

• A: He orally agreed that W may take title in her sole name



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IRMO Brooks & Robinson Quiz (cont'd)

Q: Is a change in form a change in character?

• A: Not according to *IRMO Koester* (1999) 73 Cal.App.4th 1032

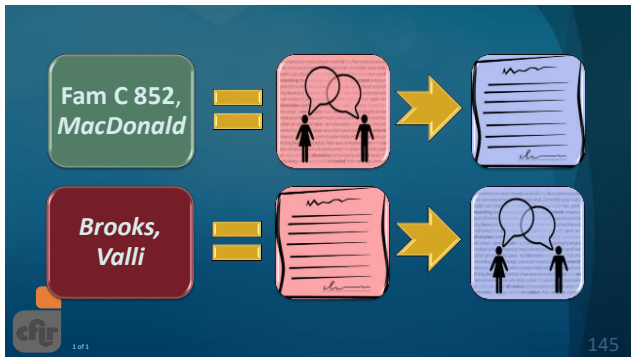
Q: Wouldn't a transmutation from CP to WSP require H to sign an express declaration

• A: Golly, I always thought so



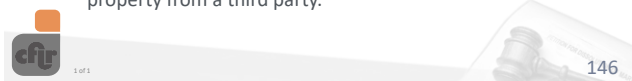
1 of 1 →

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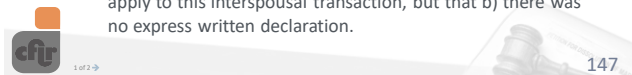
Valli/Transmutation Frames the Issue

- “Here, husband contends that because the [FC §852] express written declaration requirement was not satisfied, his act of placing the life insurance policy in wife’s name did not transmute the policy . . . into a separate property asset of wife. Wife argues that the transmutation requirements apply only to transactions between spouses, and not to one spouse’s acquisition of property from a third party.”



Jewelry Two-Step (Wife’s View)

- MONDAY:** H uses CP to buy an W expensive necklace from third-party Store
 - Monday Result:** CP remains CP – No gift yet
- TUESDAY – W’S BIRTHDAY:** H gives W the necklace
 - Tuesday Result:** CP remains CP
 - W must concede that: a) anti-transmutation protections apply to this interspousal transaction, but that b) there was no express written declaration.



Jewelry One-Step (Wife's View) (cont'd)

- **TUESDAY – W'S BIRTHDAY:** H and W use CP to buy W an expensive necklace from third-party Store
- **RESULT:** CP transmuted to WSP – W contends
 - Because this isn't an interspousal transaction, anti-transmutation protections don't apply
 - Therefore, the fact that there was no express written declaration is irrelevant



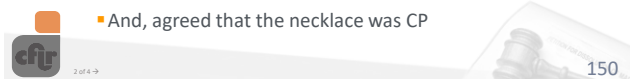
A Distinction without a Difference

- "... it is difficult to conceive any justification for treating these two hypothetical scenarios differently."



A Distinction without a Difference (cont'd)

- **Under either scenario,** H could testify that he and W had orally
 - Decided to buy the necklace as a community financial investment
 - Established that W would wear it only on special occasions (on which the parties had mutually agreed in advance)
- And, agreed that the necklace was CP



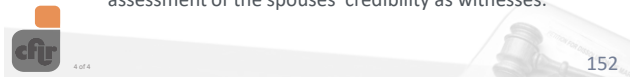
A Distinction without a Difference (cont'd)

- Under either scenario, W could
 - Deny any conversations about investing in the necklace
 - Deny any conversations about when she would wear the necklace
 - And, testify that she and H had orally agreed that the necklace was WSP



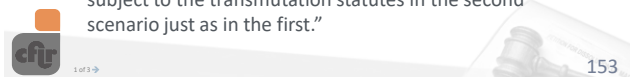
A Distinction without a Difference (cont'd)

- Under either scenario
 - "If the transmutation statutes did not apply, and in the absence of a writing expressly memorializing the parties' understanding and intent, the trial court in the dissolution proceeding would be obliged to base its decision regarding the necklace's character as community or separate property on a difficult assessment of the spouses' credibility as witnesses."



One-Step = Two-Step

- "One could argue, perhaps, that the second hypothetical scenario, like the first, can and should be viewed as **two transactions** — a purchase from a third party and an interspousal giving of a gift — that are **legally distinguishable even though they occurred simultaneously**. Adopting that approach, one would conclude that the interspousal gift transaction was subject to the transmutation statutes in the second scenario just as in the first."



One-Step = Two-Step (cont'd)

"But if the second jewelry gift scenario can be parsed into two simultaneous but legally separable transactions, then **so here could husband's purchase of the life insurance policy**, with title taken in wife's name. If, as wife here claims, the effect of the policy purchase with money from a joint bank account was to convert community property funds into her separate property asset..."



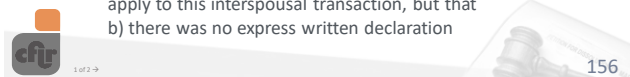
One-Step = Two-Step (cont'd)

"...then the purchase necessarily involved a gift from husband to wife because wife has never maintained that she gave husband anything in exchange for his community interest in the purchase money. If **the policy was a gift by husband to wife**, then the giving and receiving of that gift was an interspousal transaction **to which the transmutation statutes apply.**"



Insurance Policy Two-Step

- **MONDAY:** H uses CP to purchase a whole life insurance policy, naming both spouses as owners
 - Monday Result: CP remains CP
- **TUESDAY:** H makes W the policy's sole owner
 - Tuesday Result: CP remains CP
 - W must concede that a) anti-transmutation protections apply to this interspousal transaction, but that b) there was no express written declaration



Insurance Policy Two-Step (cont'd)

"Therefore, under the analysis urged here by wife, whether the transmutation statutes apply to the insurance policy depends upon the entirely fortuitous circumstance of when she acquired sole title to the insurance policy, whether during the purchase or after the purchase of the policy. We are unwilling to conclude the Legislature intended application of the transmutation statutes to turn on such fortuitous distinctions."



Valli / Characterization

Agreements and Transmutation



The Four T's of Characterization

Time

• Fam C 760

Tracing

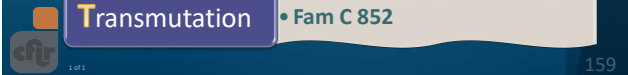
• See v. See (1966) 64 Cal.2d 778

Title

• Ev C 662

Transmutation

• Fam C 852



Time: Fam C 760

- “Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.”
- Rebuttable by proof to a preponderance [*IRMO Ettefagh* (2007) 150 Cal.App.4th 1578]



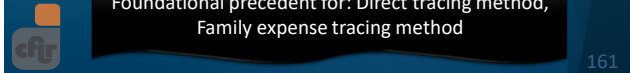
Tracing: *See v. See*

See v. See (1966) 64 Cal.2d 778

Beam v. Bank of America (1971) 6 Cal.3d 12

IRMO Mix (1975) 14 Cal.3d 604

Foundational precedent for: Direct tracing method,
Family expense tracing method



Title: Ev C 662

- “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.”
- Effective 1/1/67 (restated existing law)



The Four T's of Characterization

T ime	• Fam C 760
T racing	• <i>See v. See</i> (1966) 64 Cal.2d 778
T itle	• Ev C 662
T ransmutation	• Fam C 852


cfir 1 of 1 163

Battle Between Two Ts


IRMO Brooks & Robinson, IRMO Valli
 Title: Ev C 662

Time: Fam C 760


cfir 1 of 1 164



IRMO Brooks & Robinson

Tracing vs. Time		Tracing vs. Title	
Fam C 760 time presumption	Tracing will rebut	Ev C 662 title presumption	Tracing won't rebut

cfir 1 of 1 165

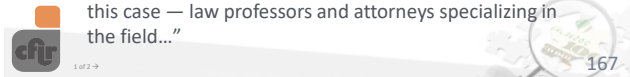
Quote from *Valli*/Transmutation

- “We need not and do not decide here whether Evidence Code section 662’s form of title presumption ever applies in marital dissolution proceedings. Assuming for the sake of argument that the title presumption may sometimes apply, it does not apply when it conflicts with the transmutation statutes.”



Quote from *Valli*/Characterization

- “Obviously, both presumptions cannot be given effect. The life insurance policy cannot both be presumed to be community property (because acquired during the marriage) and to be wife’s separate property (because placed in her name). One statutory presumption must yield to the other.
- In my view, as in the view of all amici curiae to appear in this case — law professors and attorneys specializing in the field...”



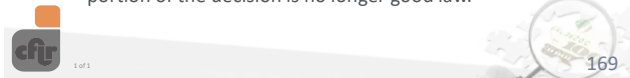
Quote from *Valli*/Characterization (cont’d)

“...the section 760 presumption controls in characterizing property acquired during the marriage in an action between the spouses. Section 662 plays no role in such an action. The detailed community property statutes found in the Family Code, including section 760, are self-contained and are not affected by a statute found in the Evidence Code.”



Quote from *Valli/Transmutation* (Fn. 2)

- In "*Iijn re Marriage of Lucas* . . . this court upheld a trial court's characterization of a motor home acquired during a marriage as entirely the wife's separate property. From the husband's failure to object when title was taken in the wife's name alone the trial court inferred that the husband had made a gift to the wife of his interest in community funds used to purchase the motor home. * * * That portion of the decision is no longer good law."



Quote from *Valli/Characterization*

- "*Brooks* might have been correct to apply section 662 to an action between one of the spouses and a third party bona fide purchaser. That question is not implicated here, and I express no opinion on it. To the extent *Brooks* said anything suggesting section 662 would apply to an action between the spouses, it mistakenly relied on *Lucas* . . . and is, accordingly, unpersuasive."



Quote from *Valli/Characterization* (cont'd)

- "Evidence Code section 662's common law presumption does not nullify the community property statutes. All property acquired during the marriage is presumed to be community property. . . . **Future courts resolving disputes over how to characterize property acquired during the marriage in an action between the spouses should apply the community property statutes found in the Family Code and not section 662.**"

