

What *Valli* Did

Presenter:
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Bar Association of San Francisco
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Today's Program

A

• **Introduction**

B

• **Histories of
Two Trials**

Today's Program

C

• **Valli/
Transmutation**

D

• **Valli/
Characterization**

A

• Introduction

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Our Naming Conventions

Superseded Second DCA decision:

“valli”

Justice Kennard majority decision:

“Valli/Transmutation”

Justice Chin concurring decision:

“Valli/Characterization”

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Valli/Transmutation

Majority opinion by Justice Kennard

Family Code §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 (FC §760)

trumps

Title (EC §662)

Evidence Code section 662 plays
no role in characterizing property
in an action between spouses

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The Four T's of Characterization

- **T**ime (FC § 760)
- **T**racing (*IRMO See*)
- **T**itle (EC § 662)
- **T**ransmutation (FC § 852)

8

Adversarial Unromantic Rude Race to title



9

B

• Histories of Two Trials

10

Brooks

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"

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Brooks

- 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 disso petition seven days later
- H joined Buyer as disso party
- Trial court granted H's bifurcation motion
- Trial court conducted a bifurcated trial:
Sole issue: set aside deed to Buyer?

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Brooks

- [Trial court sympathized with Buyer's position]
- If trial court determined that H had an interest in the Residence, the *PG&E v. Minnette* (1953) "tough to be a bona fide purchaser" rule would have compelled trial court to set aside the sale
- Trial court refused to set aside the deed, determining that Buyer was a BFP, taking title free of any claim of H
- "The court did not expressly determine whether [Residence] was a community property asset."¹³

Brooks

Fourth District **AFFIRMED**:

- FC §852(a) anti-transmutation "express written declaration" protections don't apply to a spouse's initial acquisition of property from a third party
- Title (EC §662) trumps Time (FC §760)

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Brooks

On the EC §662 vs. FC §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."

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Brooks in brief (con't)

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 a wild hair to use in *Valli*

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Brooks Robinson Baltimore Orioles 1955-1977



17



Mrs. Robinson

The Seductress



Fourth District
Court of Appeal

The Seduced

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Valli

- 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**)

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Valli

- Trial court characterized the \$365k cash surrender value as CP, awarded the policy to H, and ordered H to pay W \$182,500
- Second District **REVERSED**:
 - FC §852(a) anti-transmutation “express written declaration” protections don’t apply to a spouse’s initial acquisition of property from a third party
 - Title (EC §662) trumps Time (FC §760)

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Valli/Transmutation

Majority opinion by Justice Kennard

Family Code §852(a)
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no role in characterizing property
in an action between spouses

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C

•Valli/ Transmutation

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Family Code § 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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Family Code § 852(c) “bauble exception”

“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.”

25

1. Several cases have referred to a transmutation as “an interspousal transaction.”
2. But no case has ever held that a transmutation **must be** “an interspousal transaction.”
3. Neither does FC §850 provide that a transmutation **must be** “an interspousal transaction.”

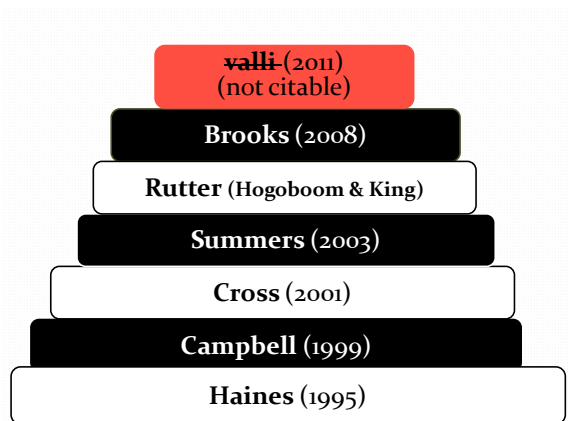
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FC §850

“ . . . 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.”

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Brooks 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 Rutter.)

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Rutter on transmutation

“[8:471.1] Initial acquisition from third party not a ‘transmutation’:
A ‘transmutation’ is an *interspousal 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 Ca Fam § 852(a) transmutation requirements.”
(Emphases 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].” (Emphases in original; citing Rutter, *Brooks* and *Summers*.)

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Summers on transmutation

- H and W bought Blackacre as joint tenants
- W filed Chapter 7
- W’s trustee contended that Blackacre was community property, and therefore an asset of the W’s bankruptcy estate (11 USC 541(a)(2))
- Trustee claimed H and W had “transmuted” Blackacre from JT to CP (FC 2581 inapplicable)
- The bankruptcy court rejected Trustee’s claim
- **BAP AFFIRMED**

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Summers ➡ **Cross** ➡ **Campbell**

The Ninth Circuit AFFIRMED

The Ninth Circuit stated that *Cross* (2001) had referred to a transmutation as “an interspousal transaction”

Cross had quoted from *Campbell* (1999):

“A transmutation is an interspousal transaction ... that works a change in the character of the property. In order for a transmutation of property to occur, statutory formalities must be met.”

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Campbell ➡ Haines

Campbell had quoted from Haines (1995):
“A transmutation is an interspousal transaction . . . that works a change in the character of the property. * * * In order for a transmutation of property to occur, statutory formalities must be met.”

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When analyzed under principles of Categorical Logic . . .

. . . the statement
“A transmutation is an interspousal transaction”
as used in *Haines, Campbell, Cross, Summers, Brooks and Wall* is a
“Particular Statement”
not a
“Universal Statement”

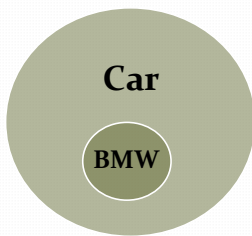
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Q: Is a BMW a car?

A: Yes.



36



“a BMW is a car”
used as a Universal Statement:
“ALL BMW’s are cars”

37

Q: Does the assertion “a BMW is a car”
seem **TRUER** the more often it is stated?

A: I don’t know. Let’s try it and see.

A BMW is a car. A BMW is a car. A BMW is a car.
A BMW is a car. A BMW is a car. A BMW is a car.
A BMW is a car. A BMW is a car. A BMW is a car.
A BMW is a car. A BMW is a car. A BMW is a car.
A BMW is a car. A BMW is a car. A BMW is a car.
A BMW is a car. A BMW is a car. A BMW is a car.

Yeah, I guess it does.

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Q: Is a BMW a car?

A: Except when it’s not.



39

Q: Is a BMW a car?

A: Except when it's not.



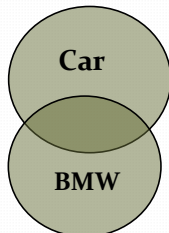
40

Q: Is a BMW a car?

A: Except when it's not.



41



"a BMW is a car"
used as a Particular Statement:
"SOME BMW's are cars"

42

categorical statement: universal

| | |
|------------|-------|
| quantifier | ALL |
| subject | BMW's |
| copula | are |
| predicate | cars |

43

categorical statement: particular

| | |
|------------|-------|
| quantifier | SOME |
| subject | BMW's |
| copula | are |
| predicate | cars |

44

categorical statement: ambiguous

| | |
|------------|-------|
| quantifier | A |
| subject | BMW |
| copula | is |
| predicate | a car |

45

*categorical statement: **ambiguous***

quantifier

A

subject

transmutation

copula

is

predicate

an interspousal
transfer

46

**Universal
Statement:**

“All BMW’s are cars”



“All transmutations are
interspousal transactions”

**Particular
Statement:**

“The BMW now parked in
your driveway is a car”



“The transmutation under
consideration here is an
interspousal transaction”

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**Ambiguous
Statement:**

“A BMW is a car”



“A transmutation is an
interspousal transaction”

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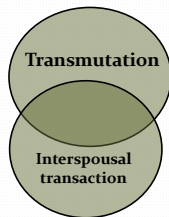
Q:

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.”

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“A transmutation is an interspousal transaction”
used as a Particular Statement:
“**SOME** transmutations are interspousal transactions”

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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.’”

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“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.**”

“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.”

“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.”

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* Evidence Code section 662.

Brooks & Robinson quiz (con't)

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.

[illegible]

Brooks & Robinson quiz (con't)

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

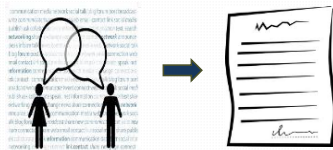
A: Not according to *Koester* (1999).

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

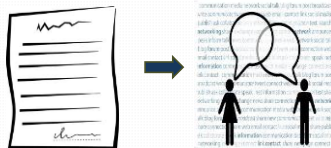
A: Golly, I always thought so.

[illegible]

FC 852,
MacDonald:



Brooks,
valli:



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Transmutation protections apply

Agreed by All:

“The Section 852 transmutation protections apply when a spouse purports to change the character of an asset the spouses already own.”

True. Here's an example:

H and W own \$80,000 BMW.
H changes the BMW title into his sole name.

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Transmutation protections should apply

Brooks holds:

“The Section 852 transmutation protections **don't apply** when a spouse acquires an asset from a third party.”

Brooks is wrong. Here's an example:

H withdraws \$80,000 from a community property bank account and purchases a BMW, taking title in his sole name.

The **\$80,000** turned into a **BMW!**

60

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)

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.”

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Under either scenario, H could testify that he and W had orally:

- Decided to buy the necklace as an 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

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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

66

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.”

“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 . . .

“ . . . 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.

“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. ”

D

• Valli/
Characterization

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The Four T's of Characterization

- **T**ime (FC § 760)
- **T**racing (*IRMO See*)
- **T**itle (EC § 662)
- **T**ransmutation (FC § 852)

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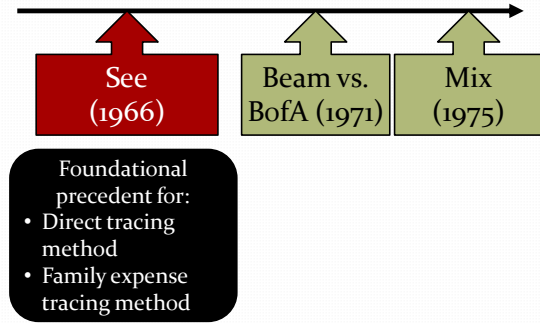
TIME: Family Code § 760

“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
Ettefagh (2007)

75

TRACING: *IRMO See*



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TITLE: *Evidence Code § 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)

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TRANSMUTATION: *Family Code § 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.”

Effective 1/1/85

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The Four T's of Characterization

- T**ime (FC § 760)
- T**racing (*IRMO See*)
- T**itle (EC § 662)
- T**ransmutation (FC § 852)

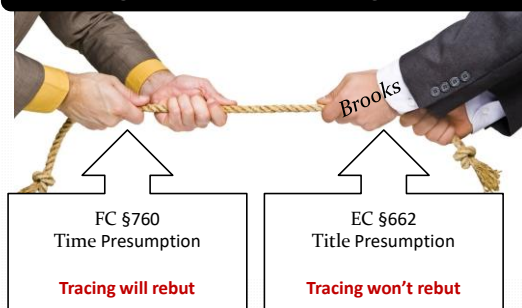
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Battle between two T's

- T**ime (FC § 760) 🇪🇸
- ↕ **Brooks and valli**
- T**itle (EC § 662) 🇬🇧

80

Tracing vs. Time Tracing vs. Title



81

Common Law
(Title)?



– OR –



Civil Law
(Time)?

82

English Title or Spanish Time?

The **Title Doctrine** of English common law:

Husband and wife were One . . .
. . . and husband was the One!
Because only the husband could hold title . . .
. . . if the **Title Doctrine** won, the husband won!

The **Time Doctrine** of Spanish civil law:

Property acquired during marriage (**Time Doctrine**) was owned equally by spouses.

83

Gothic Law

- The Visigoths sacked Rome in 410 AD
- Then settled in Hispania
- Published the Visigothic Code in 642 AD
- *Wikipedia*: “One of the greatest contributions of the Visigoths to family law was their protection of the property rights of married women, which was continued by Spanish law and ultimately evolved into the community property system now in force in part of the United States.”
- Hispania/Spain ➡ Mexico ➡ California₈₄

Civil Code section 22.2

“The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.”

85

“Ye Good Olde Days”?

Dowagers ‘R Us

Blackstone’s *Commentaries*

Penal Code section 191:

“The rules of the common law distinguishing the **killing** of a master by his servant, and **of a husband by his wife**, as petit treason, are abolished, and these offenses are **homicides . . .**”

86

1849 Constitutional Debates

Proposed California Constitution
Article 11, Section 13:

“All property, both real and personal, of the wife, **owned** or claimed by her **before marriage**, and that **acquired** afterwards by **gift, devise, or descent**, shall be her **separate property**.”

87

Family Code Section 770:

“**Separate property** of a married person includes all of the following:

- (1) All property **owned by the person before marriage.**
- (2) All property **acquired** by the person after marriage **by gift, BEQUEST, devise, or descent.”**

88

Constitutional Debates

- **Mr. Tefft** speaks for the Civil Law
- **Mr. Lippitt** speaks for the Common Law
- **Mr. Norton** speaks for the Civil Law
- **Mr. Botts** speaks for the Common Law
- **Mr. Jones** speaks for the Civil Law
- **Mr. Halleck** speaks for the Civil Law . . .
. . . and rich single women

89

valli (2011)
(not citable)

Brooks (2008)

Lucas (1980)

Frapwell (1975)

90

The transmutation
rules were born . . .

. . . between Lucas
and Brooks

91

valli (2011)
(not citable)

Brooks (2008)

Transmutation Rules
FC §852 (1985)

Lucas (1980)

Frapwell (1975)

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Four Cases: Characterized Assets

Valli whole life insurance policy

Brooks residence

Lucas mini-motorhome

Frapwell automobile



93

The Four Cases meet the Four T's:

Time would indicate CP



Tracing would indicate CP



(Exception: Lucas purchase price traced to WSP/CP mix)

Title would indicate WSP



Transmutation (post-852)

would indicate CP



94

Parade of Pronouns

Personal: he she it

Possessive: his her its

Demonstrative: this that

95

Demonstrative without an antecedent:

“**THIS evidence** constitutes substantial support for the trial court's conclusion that the mini motorhome was Wife's separate property.”

Demonstrative with an antecedent”

“Wife paid over 75% of the mini motorhome's purchase price with her separate property.

THIS evidence constitutes substantial support for the trial court's conclusion that the mini motorhome was Wife's separate property.”

96

Lucas: facts

"[H] challenges the trial court's determination that a 1976 Harvest Mini-Motorhome . . . was [W's] separate property.

A community property vehicle was traded in on the purchase for an allowance of \$2,567. [CP 1]

An additional cash payment of \$100 was made on the purchase from community funds. [CP 2]

The community contributed 24.6 percent of the cost and [W] contributed 75.4 percent of the cost of the vehicle. [WSP 1]

97

Lucas: more facts

"The purchase contract was made out in the name of [H] alone [HSP 1],

but title [WSP 2] and registration [WSP 3] were taken in [W's] name only.

[W] wished to have title in her name alone and [H] did not object. [WSP 4]

The motorhome was purchased for family use [CP 3] and

was referred to and used by the parties as a "family vehicle." [CP 4]

98

Lucas: more facts, AFFIRMANCE

"The trial court confirmed the motorhome to [W] as her separate property. Contrary to [H's] contention, the trial court's determination that he made a gift of his interest is supported by **SUBSTANTIAL EVIDENCE**. Title was taken in [W's] name alone. [H] was aware of this and did not object. **THIS EVIDENCE** constitutes substantial support for the trial court's conclusion that [H] was making a gift to [W] of his community property interest in the motorhome."

[Affirmed factual finding – a snore.]

99

NOT the antecedent of “THIS EVIDENCE”

“ . . . Title was taken in [W’s] name alone. [H] was aware of this and did not object.”

THIS

EVIDENCE constitutes substantial support for the trial court’s conclusion that [H] was making a gift to [W] of his community property interest in the motorhome. (See *In re Marriage of Frapwell*.)”

1000

The antecedent of “THIS EVIDENCE”

“The trial court confirmed the motorhome to [W] as her separate property. Contrary to [H’s] contention, the trial court’s determination that he made a gift of his interest is supported by [all aforementioned] **SUBSTANTIAL EVIDENCE.**

THIS EVIDENCE

constitutes substantial support for the trial court’s conclusion that [H] was making a gift to [W] of his community property interest in the motorhome.”

1001

Watch Brooks misquote Lucas!

“In *Lucas*, a motor home was paid for with both community funds and [W’s] separate funds. * * * [W] ‘wished to have title in her name alone, and [H] did not object. The motorhome was purchased for family use and was referred to and used by the parties as a “family vehicle.” * * *

The Supreme Court upheld the trial court’s determination that the motor home was the [W’s] separate property **BECAUSE “[t]itle was taken in [W’s] name alone. [H] was aware of this and did not object.”**

1002

Watch *Brooks* outrageously expand *Lucas*!

“Thus, the mere fact that property was acquired during marriage does not, as [H] argues, rebut the form of title presumption; **to the contrary, 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.**”

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Watch ~~valli~~ follow *Brooks* to Hell

“ . . . the mere fact that property was acquired during marriage does not ... rebut the form of title presumption; **to the contrary, 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.** [Citing *Brooks*.]”

104

Diana Richmond, Friend of the Court



105

Valli/Transmutation quote:

“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.”

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Valli/Characterization quote:

“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 —

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Valli/Characterization quote:

“ . . . 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.”

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Valli/Transmutation quote (footnote 2):

In “[i]n 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.”

Valli/Characterization quote:

“*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.”

Valli/Characterization quote:

“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.**”