

Northern California Chapter  
AAML 2018 Symposium

**Fresh approach to  
*Moore/Marsden***

Ronald S. Granberg  
CFLS, AAML, IAFL

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**Let's begin by  
recalling the basics:**

***Moore/Marsden,  
Grinius,  
Branco***

## the *Moore/Marsden* two-step

### Step I:

The Community is reimbursed, dollar-for-dollar, its mortgage principal payments.

### Step II: (CP "pro tanto" share)

The Community receives a pro tanto portion of Blackacre's during-marriage appreciation, calculated with the **CP pro tanto fraction**:

**Numerator:** Community's mortgage principal payments (*i.e.*, Step I).

**Denominator: BLACKACRE'S PURCHASE PRICE** (down payment *plus* mortgage).

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*Community's  
pro tanto  
fraction:*

**Princ. Pmts.**

---

**Purch. Price**

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*Separatizer's  
pro tanto  
fraction:*

**All Else**

---

**Purch. Price**

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*Separatizer's  
pro tanto  
fraction:*

All Else  
Purch. Price



Down payment  
Pre-DOM princ. pmts.  
DOM mortgage balance

# OUR WORLD-FAMOUS PRO TANTO FRACTIONS!

*Separatizer's  
pro tanto  
fraction:*

**All Else**

---

**Purch. Price**

*Community's  
pro tanto  
fraction:*

**Princ. Pmts.**

---

**Purch. Price**

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## *Grinius, Branco*

***Grinius***

**"Intent of the lender doctrine":**

a refi during marriage (*almost always*)  
re-characterizes the mortgage from SP to CP.

***Branco***

A *Grinius* refi **BENEFITS THE COMMUNITY**  
in *M/M* by **MIGRATING THE MORTGAGE:**

from the numerator of the  
**Separatizer's pro tanto fraction . . .**

. . . to the numerator of the  
**Community's pro tanto fraction.**

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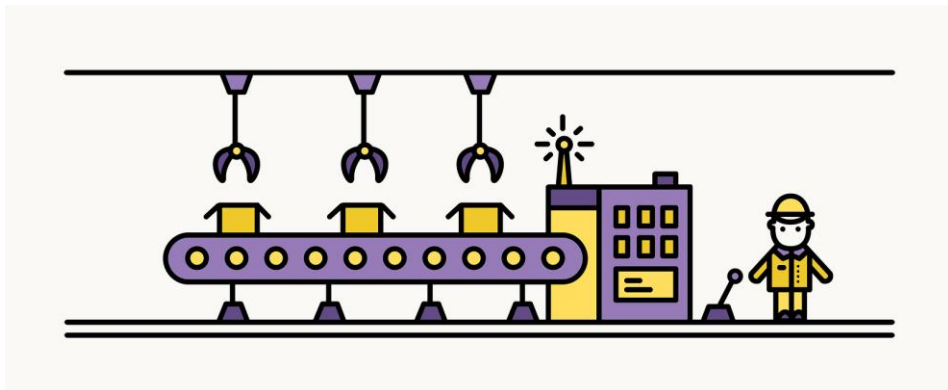
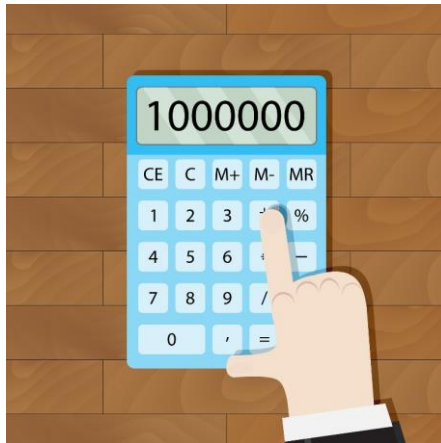


**A Grinius refi  
benefits the Community with the  
"Branco Bump"**



After our decades  
of drinking the  
*Moore/Marsden* Kool-  
Aid, we've acquired a  
taste for the doctrine,  
**which we've learned  
to apply mechanically.**





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but today let's take a peek under the hood



maybe it's time for a modern *Moore/Marsden*

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**This program contends that  
the existing *Moore/Marsden*  
pro tanto fractions  
are illogical in two ways:**

**"P-P-P"**

**"M-M-M"**

**This program contends that  
the existing *Moore/Marsden*  
pro tanto fractions  
are illogical in two ways:**

**"Purchase Price Problem"**

**"Mortgage Matters Mistake"**

## Purchase Price Problem

Existing pro tanto fractions use Blackacre's  
**PURCHASE PRICE**  
(*IRMO Marsden*)

The fractions should instead use Blackacre's  
**DOM VALUE**  
(*Bono v. Clark*)

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## **Mortgage Matters Mistake**

Existing pro tanto fractions use Blackacre's  
**EQUITY** and **MORTGAGE**  
(through analogies with *Lucas* and *Aufmuth*)

The fractions should instead use Blackacre's  
**EQUITY ONLY**  
(*Good Business Sense*)

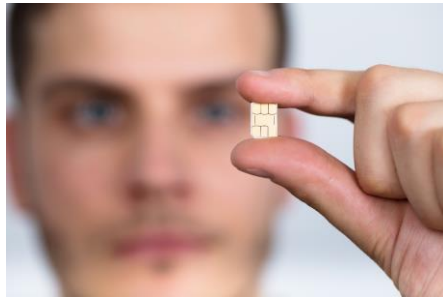
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## Let's talk business sense . . .

Begin by disregarding what you've learned about *Moore/Marsden*



Remove your *Moore/Marsden* chip



Imagine that you're writing a  
partnership financial arrangement  
for your business professor

You and I were college  
drinking buddies



Years after graduation, we run into each other  
in a bar (go figure) and talk investments

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**You let me invest \$50k cash  
into your Blackacre business**

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	FMV	Mort.	Equity
<b>Purch</b>	\$500k	\$400k	\$100k
<b>DOP</b>	\$900k	\$350k	\$550k



our deal – using your  
**"Business Sense Approach"**

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You say my \$50k bought a **1/12 interest**

- You contribute Blackacre's **\$550k equity**  
(The fact that Blackacre's original equity was only \$100K is irrelevant. It could have been \$10K – wouldn't matter.)
- I contribute **\$50k** (paid against the mortgage)
- Partnership now worth **(\$550k + \$50k =) \$600k**
- I own a **(\$50k/\$600k =) 1/12** interest
- You retain an (\$550k/\$600k =) 11/12 interest

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## **My benefits from my 1/12 interest:**

If Blackacre generates a positive cashflow of \$12k per month:

- **I receive  $(1/12 \times \$12k =) \$1k$  per month**
- You receive  $(11/12 \times \$12k =) \$11k$  per month

If some day we sell Blackacre, netting \$1,200,000:

- **I receive  $(1/12 \times \$1,200,000 =) \$100,000$**
- You receive  $(11/12 \times \$1,200,000 =) \$1,100,000$

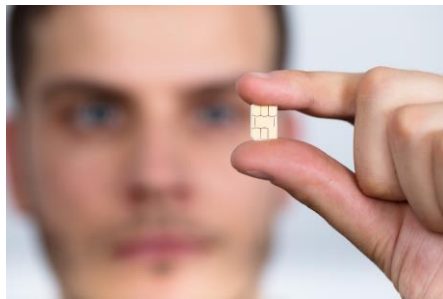
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Your professor gives you high marks . . .  
. . . because your partnership  
arrangement is financially sound

Now let's recall what we were  
taught about *Moore/Marsden*



We'll re-install our *Moore/Marsden* chip

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**We'll prepare for  
Revisionist History . . .**



**. . . and for *Marsden* magic!**

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## I am a law student

Last night Professor Disso explained  
*Moore/Marsden* to my CP class.

Now I understand the *Marsden* approach to  
crediting a new \$50k mortgage principal  
payment toward a previously-existing investment.

The approach is to use **Blackacre's Purchase  
Value** in the pro tanto fraction denominators.

*Here, let me explain it to you . . .*



our deal – using my  
**"*Marsden Approach*"**

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*Marsden* says my \$50k bought a **1/3 interest**

- You contribute Blackacre's **original \$100k equity**

(The denominators of *Marsden's* pro tanto fractions are Blackacre's purchase price, NOT its "date of partnership" or "DOM" FMV.)

- I contribute **\$50k** (paid against the mortgage)
- Partnership now worth **(\$100k + \$50k =) \$150k**
- I own a **(\$50k/\$150k =) 1/3** interest
- You retain an (\$100k/\$150k =) 2/3 interest

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## My benefits from my 1/3 interest:

If Blackacre generates a positive cashflow of \$12k per month :

- **I receive  $(1/3 \times \$12k =) \$4k$  per month**
- You receive  $(2/3 \times \$12k =) \$8k$  per month

If some day we sell Blackacre, netting \$1,200,000:

- **I receive  $(1/3 \times \$1,200,000 =) \$400,000$**
- You receive  $(2/3 \times \$1,200,000 =) \$800,000$

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## I love this *Marsden* approach

Your Business Sense Approach  
measures my present \$50k  
contribution against Blackacre's  
**present value**

My *Marsden* Approach instead measures my  
\$50k present contribution against Blackacre's  
**purchase value**

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## I appreciate your appreciation

By using your  $1/12$  pro tanto fraction, the \$450k in **Pre-Partnership Appreciation benefits YOU.**

It's fair, since you brought the \$450k to the table  
(in addition to your \$100k cash down payment)

But using my  $1/3$  pro tanto fraction, the \$450k in **Pre-Partnership Appreciation benefits ME.**

## *Bono v Clark*

(First Spoiler Alert: *Bono* is valid California  
*Moore/Marsden* precedent that  
**credits the Separatizer with**  
**Blackacre's pre-marital appreciation)**



Sixth DCA Justice  
William Wunderlich  
(up-stream  
swimming jurist)



**Revisionist historians rejoice!**  
**You have just watched**  
***Marsden's* magic wand . . .**



**. . . turn back time!**

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## Whose denominator makes sense?

Your Business Sense Denominator: my  $\frac{\$50k}{\$600k} = \frac{1}{12}$   
\$50k plus your **\$550k NOW equity** =

My *Marsden* Denominator: my  $\frac{\$50k}{\$150k} = \frac{1}{3}$   
plus **\$100k PURCHASE DATE equity** =

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## Your denominator makes sense!

Your Business Sense Denominator: my  
\$50k plus your **\$550k NOW equity** =

$\frac{\$50k}{\$600k} = \frac{1}{12}$

~~My *Marsden* Denominator: my \$50k  
plus ~~\$100k PURCHASE DATE equity~~ =~~

~~$\frac{\$50k}{\$150k} = \frac{1}{3}$~~

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Have you ever become so upset trying to understand "**the Purchase Price Denominator Theory**" . . .



. . . that you feared you were going **crazy**?



**Well, I have some good news for you.**

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it's not **you**  
that's crazy . . .

. . . it's:



**"the Purchase Price  
Denominator Theory"**

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If I had proposed my  
*Marsden* Purchase Date  
Denominator to your  
business professor . . .

*Marsden* Purchase Price Denominator:  $\frac{\$50k}{\$150k} = \frac{1}{3}$   
\$50k plus \$100k PURCHASE DATE equity =



... she would likely have gently steered me toward an alternate career path



**But the Purchase Price Denominator is THE LAW according to *Marsden*!**



**All of our treatises direct use of Purchase Price pro tanto denominators pursuant to *Marsden***

- **Matthew Bender's *California Family Law Practice & Procedure*** (at §21.03 and §21.81 Worksheet)
- **Matthew Bender's *Complex Issues in California Family Law*** (at §E6.04[4])
- **Rutter Group's *Family Law*** (at §§8:295, 8:307)
- **Rutter Group's *Propertizer*** (at "*Marsden* Worksheet")
- **Attorney's Briefcase** (at "Summary of Law, Application of *Moore/Marsden* formula")

*Moore/Marsden*  
Kool-Aid:  
"YUM, YUM"!



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**NOTE:**  
the preceding discussion of the

## **Purchase Price Problem**

didn't analyze Blackacre's  
past and present **FMVs** . . .

. . . it instead analyzed Blackacre's  
past and present **EQUITIES**.

**Which happens to  
smoothly segue us into  
today's second topic:**

**Mortgage Matters Mistake**

## **Mortgage Matters Mistake**

Existing pro tanto fractions use Blackacre's  
**EQUITY** and **MORTGAGE**  
(through analogies with *Lucas* and *Aufmuth*)

The fractions should instead use Blackacre's  
**EQUITY ONLY**  
(*Good Business Sense*)



Let's view both the

**Purchase Price Problem**

and the

**Mortgage Matters Mistake**

in context of our  
Blackacre numbers

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		FMV	Mort.	Equity
? →	Purch	\$500k	\$400k	\$100k
? →	DOM	\$900k	\$350k	\$550k


## Purchase Price Problem

		FMV	Mort.	Equity
<b><i>Marsden</i></b> (illogical) →	<b>Purch</b>	\$500k	\$400k	\$100k
<b><i>Bono</i></b> (logical) →	<b>DOM</b>	\$900k	\$350k	\$550k

## Purchase Price Problem

	FMV	Mort.	Equity
Purch	\$500k	\$400k	\$100k
DOM	\$900k	\$350k	\$550k

  
**?**

  
**?**

**Mortgage Matters Mistake**

	FMV	Mort.	Equity
Purch	\$500k	\$400k	\$100k
DOM	\$900k	\$350k	\$550k

↑  
existing

↑  
"better"

**Mortgage Matters Mistake**

***Marsden***  
(illogical)



	FMV	Mort.	Equity
Purch	\$500k	\$400k	\$100k
DOM	\$900k	\$350k	\$550k



**existing**

**Customary practice:  
both “mistakes” made**

**Bono**  
(logical) →

	FMV	Mort.	Equity
Purch	\$500k	\$400k	\$100k
DOM	\$900k	\$350k	<b>\$550k</b>

↑  
**“better”**

**Granberg's pitch:  
neither “mistake” made**

	FMV	Mort.	Equity
<b>Purch</b>	\$500k	\$400k	\$100k
<b>Bono</b> (logical) → <b>DOM</b>	\$900k	\$350k	<b>\$550k</b>

↑  
"better"

Recall that this “Business Sense Approach” made sense to you – and to your MBA professor!



## **Mortgage Matters Mistake**

The pro tanto fractions use Blackacre's  
**EQUITY** and **MORTGAGE**  
(through analogies with *Aufmuth* and *Lucas*)

The fractions should instead use Blackacre's  
**EQUITY ONLY**  
(*Good Business Sense*)

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Is it logical for *Moore/Marsden's* pro tanto fractions to consider both:

- Blackacre's **equity**, and
- Blackacre's **mortgage**?

(Another Spoiler Alert: if we **ignore the mortgages** when performing our *Moore/Marsden* calculations, those **annoying Branco Bumps** will never again darken our doors!)

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**A Grinius refi  
benefits the Community with the  
"Branco Bump"**



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**Husbands and wives, step right up  
and try your luck at winning . . .**



**. . . 400,000 *Moore/Marsden* Bucks!**

## What accomplishment should win a spouse 400,000 *Moore/Marsden* Bucks?

Non-Separatizer Nelda guesses:

**"EARNING \$400,000?"**



Separatizer Sam guesses:

**"OWING \$400,000?"**



Who is right?

*M/M* rules: "Sam is right!"

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Non-Separatizer  
Nelda proudly tells Judge  
Wise: "Look what I did!"



- "I worked at my job for four years, **earning** a total of \$400,000 –
- thus receiving \$300,000 after tax –
- which I used to pay \$300,000 PITI –
- thereby **paying \$50,000 in principal!**"

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Impressive  
accomplishment!

The  
Community  
clearly  
deserves . . .



**Judge Wise**

**. . . 50,000 *Moore/Marsden* Bucks!**



Non-Separatizer Nelda  
asks Judge Wise:

"Really?

That's all?

Earning \$400,000 at my job  
wins me only 50,000  
*Moore/Marsden* Bucks?"

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You misheard  
me, Ma'am.

I said "**the  
Community**  
clearly  
deserves . . .



**Judge Wise**

**. . . 50,000 *Moore/Marsden* Bucks!"**

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Since Separatizer  
Sam is **half** of the  
Community . . .

**you** clearly  
deserve . . .



**Judge Wise**

**. . . 25,000 *Moore/Marsden* Bucks!**



*"Moore/  
Marsden  
stinks!"*



Separatizer  
Sam proudly tells  
Judge Wise:  
"Look what I did."



**I borrowed \$400,000!**  
(and haven't repaid a dime)

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Very impressive  
accomplishment!

Separatizer  
Sam clearly  
deserves . . .



**Judge Wise**

**. . . 400,000 *Moore/Marsden* Bucks!**

Because Separatizer Sam borrowed \$400,000, his pro tanto numerator wins 400,000 *Moore/Marsden* Bucks (16 times the 25,000 *Moore/Marsden* Bucks that Non-Separatizer Nelda won with her four years of work)

**RESULT:** the Separatizer-slanted pro tanto fractions award Sam almost all of the marital appreciation

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*"Moore/  
Marsden  
rocks!"*

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# *A Grinius* refi turns the tables



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**A Grinius refi  
benefits the Community with the  
"Branco Bump"**



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Separatizer Sam's 400,000 *Moore/Marsden*  
bucks **migrate** from his **HSP** pro tanto  
numerator to the **Community's**  
pro tanto numerator.

Now the **Community** wins nearly  
all of the marital appreciation!

**Nelda's and Sam's Reactions:**

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*"Moore/  
Marsden  
rocks!"*



*"Moore/  
Marsden  
stinks!"*

## Efforts with their *Moore/Marsden* Benefits

	<i>Effort</i>	<i>Benefit</i>
Nelda earned \$400k		
Sam borrowed \$400k (no pmts)		
\$400k <i>Grinius</i> refi (no pmts)		

Efforts with their *Moore/Marsden* Benefits

	<i>Effort</i>	<i>Benefit</i>
<b>Nelda earned \$400k</b>	<b>Major effort by Nelda</b>	<b>Minor benefit to Nelda</b>

## Efforts with their *Moore/Marsden* Benefits

	<i>Effort</i>	<i>Benefit</i>
<b>Sam borrowed \$400k (no pmts)</b>	Non-recourse loan (CCP§580(b))	<b>Major</b> benefit for Sam

## Efforts with their *Moore/Marsden* Benefits

	<i>Effort</i>	<i>Benefit</i>
<b>\$400k <i>Grinius</i> refi (no pmts)</b>	Non-recourse loan (CCP§580(b))	<b>Major</b> benefit for Nelda



**"Well,  
that's  
Goofy!"**



## Bad Ron!

You've complained  
about "P-P-P" and  
"M-M-M," but  
have proposed  
no solutions

There's a name  
for that:

It's called  
"WHINING"!



Can an advocate  
find a solution to the

**Purchase Price Problem**

and/or to the

**Mortgage Matters Mistake**

## **the Purchase Price Issue:**

Should the denominators of the pro tanto fractions be Blackacre's:

**Purchase Price**  
**(*Marsden*)**

or

**DOM FMV**  
**(*Bono*)**

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**the source of the**

**Purchase Price Problem**

***IRMO Marsden***

## ***IRMO Marsden (1982)***



First DCA Justice  
Betty Barry-Deal  
  
(longtime CEB  
Family Law Editor)



**the solution to the**

**Purchase Price Problem**

***Bono v Clark***

## ***Bono v Clark (2002)***



Sixth DCA Justice  
William Wunderlich  
  
(up-stream  
swimming jurist)



## ***IRMO Norviel (2002)***



## The difference between Purchase FMV and DOM FMV is . . . Pre-Marital Appreciation!

	FMV
Purchase	\$500k
DOM	\$900k

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## The difference between Purchase FMV and DOM FMV is . . . Pre-Marital Appreciation!

	FMV	
Purchase	\$500k	← <i>Marsden</i>
DOM	\$900k	← <i>Bono</i>

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	FMV
Purchase	\$500k
Pre-DOM appreciation	<u>+ \$400k</u>
DOM	\$900k

*Bono says*  
 **THIS**  
 must be  
 included in  
 the pro tanto  
 denominators

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## Saith *Bono*:

"There is [a] way in which our approach to pre-marital appreciation **departs from the traditional *Moore/Marsden* formula**: the point at which [premarital] appreciation is recognized in the calculation. \* \* \*

***Marsden* "did not incorporate ... premarital appreciation into" the pro tanto fraction denominators.** (p. 1426.)

Why the "***Moore/Marsden*** doctrine"?

Why not just the "***Moore*** doctrine"?

We needed *Marsden* because in  
*Moore* there was no premarital  
appreciation to apportion

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## ***Moore: no premarital appreciation***

- Separatizer purchased Blackacre for \$57k only **eight months before DOM**
- Blackacre was still worth \$57k on date of marriage
- **Premarital appreciation = 0%**

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## ***Marsden: premarital appreciation***

- Separatizer purchased Blackacre for \$38k **nine years before DOM**
- Blackacre was worth \$65k on date of marriage
- **Premarital appreciation = 71%**

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## QUESTION:

Which case requires the *Moore/Marsden* pro tanto denominators to use Blackacre's **Purchase Price – not its DOM FMV?**

- *Moore* (CSC), or
- *Marsden* (1<sup>st</sup> DCA)?

## ANSWER:

- *Marsden* (1<sup>st</sup> DCA)

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## **Saith Marsden:**

"The *Moore/Lucas/Aufmuth* formula makes no provision for prenuptial appreciation on property and therefore **offers no guidance.**" (p. 437.)

"**We [use the purchase price as denominators to]** compute the pro tanto community and separate property interests in the house." (p. 439.)

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***Marsden***  
**1<sup>st</sup> DCA**

***Bono***  
**6<sup>th</sup> DCA**

Court of appeal  
decisions ...



... merit equal  
legal dignity.

***Auto Equity Sales, Inc. v. Superior Court***

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**the source of the**

**Mortgage Matters Mistake**



**CSC Justice  
Wiley Manuel**

Hastings Law Journal Editor-in-Chief,  
1953 Graduate (Order of the Coif)

(Prosecuted William and Emily Harris  
for the Patty Hearst kidnapping)

**wrote *Lucas*  
in August 1980**

**wrote *Moore*  
in October 1980**

100

100

***Lucas'* "equal ownership" holding:**

Spouses who own their residence as joint tenants own it equally, in the absence of "an agreement or understanding to the contrary"

***Lucas'* "equitable apportionment" sub-issue:**

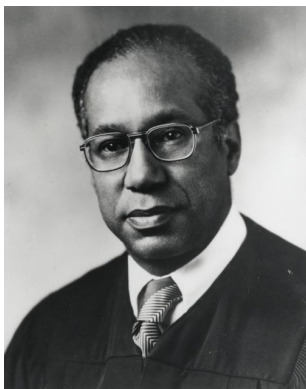
If there **IS** "an agreement or understanding to the contrary," should the pro tanto fractions:

Include the mortgage (*Aufmuth*), or

Ignore the mortgage (*Jafeman*)?

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**California  
Family Law's  
"Mortgage  
Matters  
Man"**

Justice Manuel believed that the mortgage should be credited to the Separatizer (ala *Aufmuth*), not ignored (ala *Jafeman*).

Accordingly, in *Lucas* Justice Manuel adopted the *Aufmuth* pro tanto fractions as the correct apportionment formulae.

Justice Manuel so deeply admired the way the *Aufmuth* formula worked in *Lucas*, that 82 days later he adopted a mirror-image formula in *Moore*.

**SO THERE!** Now you know how our *Moore* formula was created – Justice Manuel copied it from *Aufmuth*!

***Lucas***

"SP contribution  
to CP" formula:

SP Principal

Payments

Purchase  
Price



***Moore***

(82 days later)

"CP contribution  
to SP" formula:

CP Principal

Payments

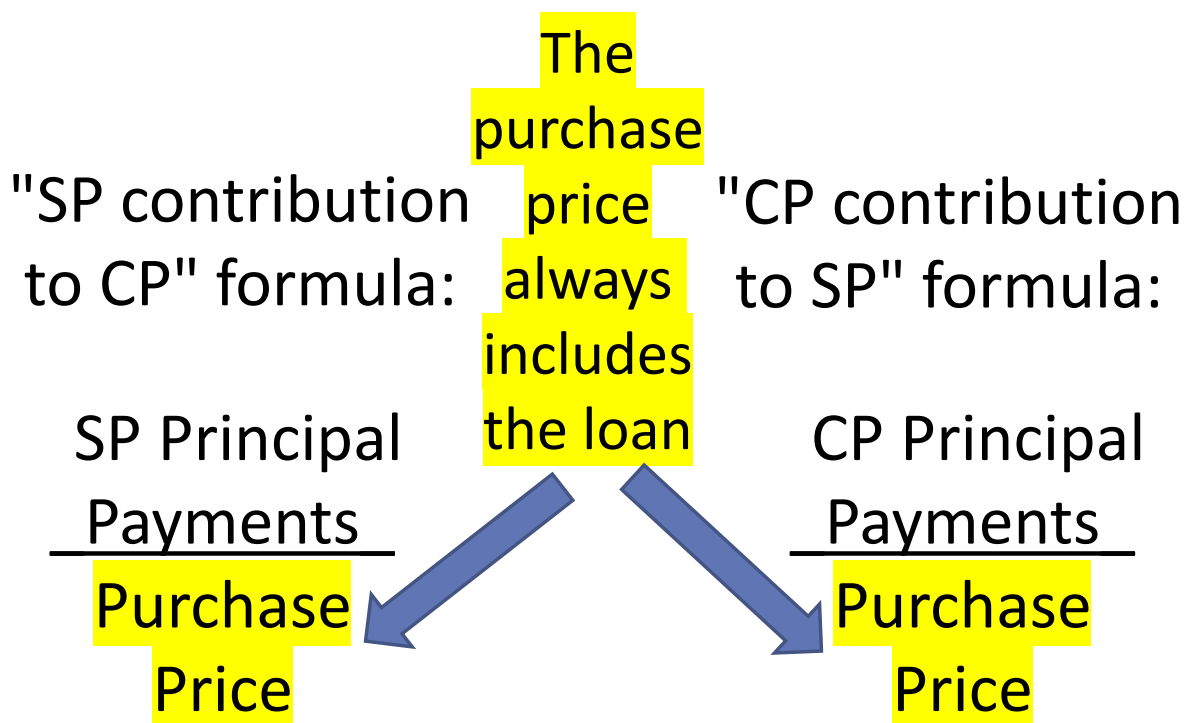
Purchase  
Price

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*Lucas*

*Moore*



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*Lucas*

*Moore*

A *Lucas* loan is

**STABLE –**

"SP contribution to CP" formula: a CP loan always to SP" formula:

remains a

CP loan

SP Principal

Payments

Purchase

Price



CP Principal

Payments

Purchase

Price

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*Lucas*

*Moore*

BUT a *Moore*

loan is

**UNSTABLE –**

a refied **SP**

loan become

a *Grinius* **CP**

loan

"SP contribution  
to CP" formula:

"CP contribution  
to SP" formula:

SP Principal

Payments

Purchase

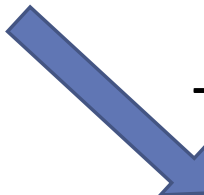
Price

CP Principal

Payments

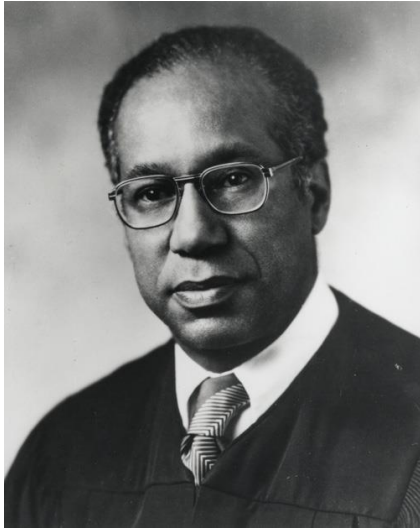
Purchase

Price



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## Mortgages Matter + *Grinius* Refis *Branco* Bumps

In 1980, Justice Manuel had no reason to  
foresee the Unstable Loan/*Branco* Bump problem

But the problem is clear now

# Bucking *Branco*



## \*ucking *Branco*



## the *Branco* passage mandating "the Bump"

"We can discern no meaningful difference, for the purposes of determining whether the community acquires an interest in real property,

between the use of community funds to make [monthly] payments on one spouse's preexisting loan

and the use of proceeds from a [*Grinius* CP refi] loan to pay off the [preexisting] separate loan." (p. 1627.)

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## the *Branco* passage mandating “the Bump”

"... the **community property interest** in the home [is] computed by dividing the community's contribution to the purchase price of the home (payments reducing principal made with community funds on the original loan ... **plus the principal balance of the loan paid off** with proceeds of the [*Grinius* refi]) by the purchase price." (p. 1629.)

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111

**A Grinius refi  
benefits the Community with the  
"Branco Bump"**



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***Branco's* trial and appellate courts both considered "the Bump" unfair, but REQUIRED**

"The trial court's finding [i.e., that the *Grinius* refi **shouldn't migrate** the loan balance from the Separatizer's numerator to the Community's numerator], while doubtless **the equitable approach** ... **[is] inconsistent with** the clear holding of ***Moore***." (p. 1627.)

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## **Law Should Evolve**

### **Mistakes Should Be Corrected**

... legal doctrine evolves over time, and **appellate courts have the capability and the responsibility to recognize and explain such changes when they occur.**

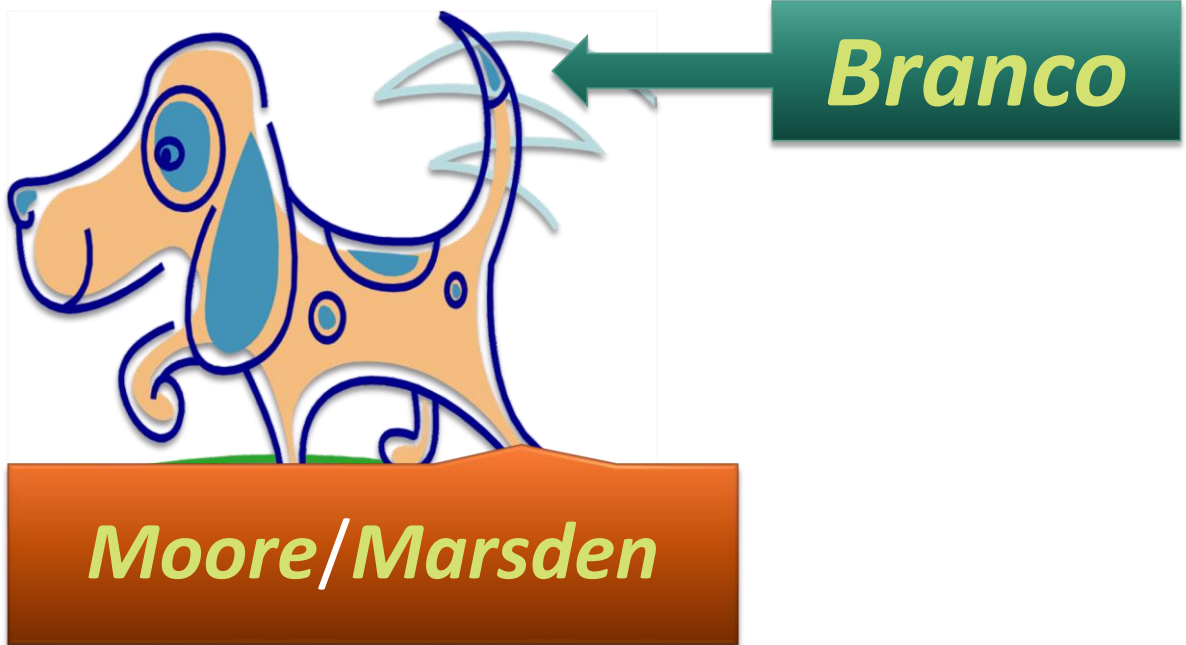
*(K.R. v. Superior Court (2017) 3 Cal.5th 295, 308-309.)*

"...no rule of law becomes sacrosanct by virtue of its duration...."

*(Borelli v. Brusseau (1993) 12 Cal.App.4th 647, 654.)*

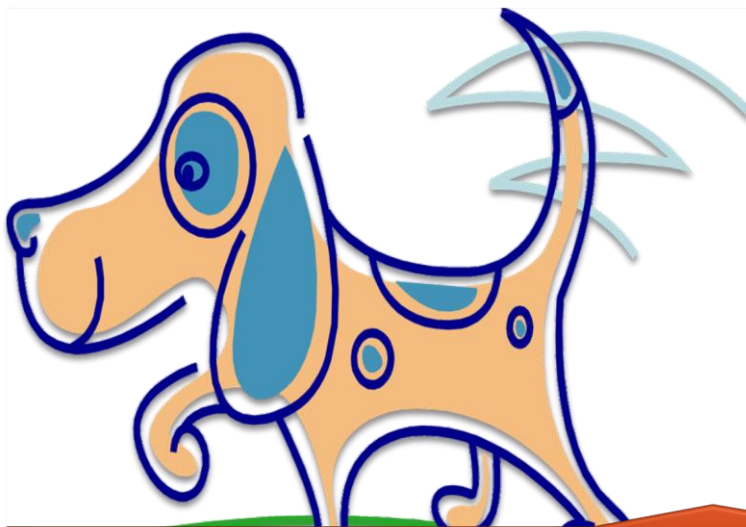
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**If the mortgage is ignored, the  
*Branco* problem disappears!**

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Have you ever become so upset trying to understand the *Branco Bump* . . .



. . . that you feared you were going **crazy**?



**Well, I have some good news for you.**

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It's not **you**  
that's crazy...

...it's:



the  
***Branco Bump***

**is there a solution to the**

**Mortgage Matters Mistake?**

**Q:** Aren't California's courts bound by the CSC's "Mortgages Matter" statement in *Moore*?

**A: NO!**

Because Lydie Moore didn't appeal . . .  
. . . there was no reason for the *Moore* CSC to address the Great Mortgage Debate (*Aufmuth v. Jafeman*) that Lydie lost in the trial court!

*Moore's* "Mortgages Matter"  
statement is **dicta**!



**Moore CSC made two pro tanto fraction statements: one non-dicta, one dicta**

**Non-Dicta Statement:** A Community doesn't receive pro tanto fraction credit for paying carrying costs.

**Note:** This statement was essential to the CSC's ruling on David's appeal of the "carrying costs" holding.

**Dicta Statement:** A Separatizer receives pro tanto fraction credit for the mortgage. ("Mortgages Matter.")

**Note:** This statement was unrelated to any issue before the Court. Lydie lost the issue at trial, but (unfortunately for Justice Manuel) she filed no appeal!

## ***Moore's* Dicta "Mortgages Matter" Statement**

**A Separatizer should receive pro tanto fraction credit for the mortgage. ("Mortgages Matter.")**

As Separatizer, Lydie wanted her pro tanto numerator beefed up with the mortgage.

As Non-Separatizer, David wanted the mortgage excluded from Lydie's numerator.

The trial court handed David the win, citing *Jafeman* for its proposition that "Mortgages Don't Matter."

**But Lydie didn't appeal!**



Let's eavesdrop on Justice Manuel's conversation with his research attorney. Remember that Justice Manuel is "California's Mortgages Matter Man." (Imagine his hostility toward *Jafeman's* "Mortgages Don't Matter" assertion!)

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## Supreme Court chambers conversation

**Justice Manuel** "The trial court cheated Lydie Moore out of lawful Separatizer entitlements by applying *Jafeman's* wrong-headed "Mortgages Don't Matter" holding.  
Of course Mortgages Matter! Lydie should have been credited with her mortgage!"

**Research Attorney** "We can't reverse the trial court error to help Lydie – because she didn't appeal! Unfortunately, we have no excuse to preach our well-rehearsed 'Mortgages Matter' sermon. It would be pure dicta."

## Supreme Court chambers conversation

**Justice Manuel** "Why didn't that woman appeal? She would have tripled her recovery and given me the bully pulpit I need!"  
I want to obliterate *Jafeman*. I want to champion *Aufmuth's* "Mortgages Matter"!

**Research Attorney** "But you don't believe in stating dicta."

**Justice Manuel** "We'll make an exception just this once."

### **Saith Moore:**

"...under the *Lucas/Aufmuth* formula the proceeds of the loan must be treated as a separate property contribution." (p. 373.)

"In this case the trial court used a different formula ... based upon a statement in *In re Marriage of Jafeman* ... that the interests are to be determined according to the proportionate equity contributions only, with no credit given for the loan contribution." (p. 374.)

**Saith *Moore*:**

"Although the trial court erred in determining the parties' interests in the residence, the error was in David's favor. **Since he was not prejudiced by the error and Lydie did not appeal, reversal of this portion of the judgment is unwarranted.**" (p. 374.)

## ***Moore* isn't authority for "Mortgages Matter"**

"Language used in any opinion is of course to be understood in the light of . . . the issue then before the court . . . ."

*Ginns v. Savage* (1964) 61 Cal.2d 520

"Dictum, of course, is not controlling authority even when it emanates from the Supreme Court. (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 287.)

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**This program contends that  
the existing *Moore/Marsden*  
pro tanto fractions  
are illogical in two ways:**

**Purchase Price Problem**

**Mortgage Matters Mistake**

**Hopefully, it has  
provided some food  
for thought.**



THE  
END