

II. PROPERTY

A. Five Types:

1. Separate property: All property owned before marriage and that acquired afterwards by gift, bequest, devise or descent, together with the rents, issues, and profits thereof
2. Community property: All property, real or personal, wherever situated, acquired by a married person during marriage while domiciled in CA
3. Quasi-community property: All property acquired by either spouse while domiciled outside California which would have been community property if the spouse who acquired the property had been domiciled in California at the time of its acquisition. Also, in exchange for real or personal property, wherever situated, which would have been community property, if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition
 - a. Source is Separate but treated like Community for certain purposes
 - b. Where **dissolution** involved, Quasi-C/P is treated exactly like C/P involving all property both real and personal wherever situated
 - c. Where **death** involved, Quasi-C/P involves all personal property wherever located but only real property situated in California
 - 1) If **non-owner spouse** dies first, no vested interest exists, property remains separate property of owner spouse
 - 2) If **owner spouse** dies first, Quasi-C/P treated like C/P, 1/2 interest exists for non-owner spouse
 - d. Election: Where one spouse's will makes an express testamentary disposition to devise the entire interest in quasi-community property (and not just one-half), the surviving spouse is put to an election. The spouse may take under the will. If this is done, the spouse relinquishes one-half quasi-community interest in the assets disposed of by the will. However, the surviving spouse may elect to take against the will and claim the one-half quasi-community to which the spouse is entitled. If this is done, the spouse relinquishes all interests devised by the decedent's will
4. Quasi-marital property: All property acquired during a void or voidable marriage, in which one or both parties has the status of a putative spouse, which would have been community property or quasi-community property if the marriage had not been void or voidable
 - a. Termination of putative marriage
 - 1) Innocent spouse protected, 1/2 vested interest in quasi-marital property acquired during putative marriage
 - 2) It is not clear whether the bad-faith spouse may make any claim to quasi-marital property accumulated by the good-faith spouse. The California Supreme Court has specifically left this question open, but has suggested that it might treat the spouses equally:
 - a) Family Code section 2550 (the equal division statute) directs the court to equally divide acquisitions by the good faith spouse as well
 - b) It should be noted that the "bad faith" non-putative spouse normally does not benefit from equal division (Family Code section 2551). Under this section, if the **marriage is annulled** all of good-faith