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BOOK REVIEW

Principles of Community Property

By
WILLIAM Q. de FUNIAK
and
MICHAEL J. VAUGHN

Tuscon: University of Arizona Press Second Edition. 1971.
Pp. 556, \$28.50.

Community Property law is important to lawyers and judges of all fifty states. As Professor Million points out in his preface to Brockelbank¹ the eight community property states now include five of the seven largest in population, and one-third of the land area of conterminous United States. Furthermore, because of greater mobility, persons in the other 42 states find themselves increasingly affected by community property law. Lawyers and judges in the non-community property states are increasingly involved in conflicts of law and other problems involving community property. A good treatise is needed. I am not sure that *Principles of Community Property* qualifies.

This one volume work is the joint product of William Q. de Funiak and Michael J. Vaughn. De Funiak for many years taught at the University of San Francisco School of Law. Vaughn is a private practitioner in Waco, Texas. It is the second edition of a 1943 work by de Funiak.²

The first four chapters, about one-fifth of the book, contain useful historical materials. There are chapters on the origin and extent of the community property system, the Spanish laws and their historical background, and the establishment of the community property system in the United States. With rare exceptions this material including footnotes has been lifted bodily from the first edition.³ The original edition had two volumes. Volume II was largely made up of appendices setting forth translations of the community property laws of Spain, commentaries of Spanish jurisconsults, and constitutional provisions and statutes of the community property states.

1. Brockelbank, *The Community Property Law of Idaho* (1962).

2. The first edition was reviewed only once in a short review that was descriptive rather than critical. Suits, *Book Review*, 16 Okla. S. Bar J. 1131 (1945).

3. One such exception is a brief section (at 89-91) discussing attempts by a number of states during the period following 1939 to obtain tax advantages for their citizens. The Federal Revenue Act of 1948 removed the tax advantages and these statutes were speedily repealed.

This material is omitted from the new edition, although it is incorporated by reference (p. 14).

The main part of the book consists of seven chapters on various aspects of the community property system:

- V. Initiation and Existence of Marital Community
- VI. Community and Separate Property
- VII. Ownership and Management
- VIII. Rights, Duties, Agreements and Transactions Between Spouses
- IX. Debts, Obligations and Liabilities of Spouses
- X. Dissolution of Marital Community
- XI. Taxation

The treatment is comparative. The Spanish law is compared to the law as it has developed in the community property states. Occasionally a separate section is devoted to a particular state. More usually the comparative discussion is mixed into one section. Thus if one wanted to find out the treatment of insurance policies in a particular state, he would have to comb through footnotes looking for citations from that state. He could also use the index which cites both to states and to subject matter. The authors warn that their treatment has been selective (p. 13). No attempt is made to cover all of the decisions.

As a California lawyer, I naturally checked the coverage of our new Family Law Act which became effective January 1, 1970.⁴ I was handicapped by the lack of a table of statutes but did the best I could. Civil Code Section 4452 which attempts to codify some earlier decisions relative to the division of the marital property of the putative spouse (now called quasi-marital property) apparently is not mentioned. Section 4800 which provides for equal division upon divorce under normal circumstances is cited without discussion. Section 4800.5 which provides for division of community real property located in another state seemingly is not discussed. The problem of the nature of recovery for personal injuries to a spouse where the other spouse is contributorily negligent is alluded to but not adequately discussed (pp. 208-209).

Chapter XI, Taxation, purports only to outline the major taxation problems. It consists of 4½ pages. The authors note that there are many competent and excellent works available on taxation. Unfortunately, they cite only two.⁵

4. The Family Law Act Cal. Civil Code §§ 4000-5138 (1969).

5. A new book which I have found useful is, *Community Property and Federal Taxation*, First Annual Institute on Family Law, published by Practising Law Institute. Institute of Family Law, Community Property and Federal Taxation (1971).

It seems to me that the book should have included a selected bibliography of works on community property, for example:

- Armstrong, *California Family Law* (2 vol. w/pocket parts) (1953).
- Brockelbank, *The Community Property Law of Idaho* (with comparisons with the law of other states) (1962).
- Cal. Cont. Ed. Bar, *The California Family Lawyer* (2 vol. 1961).
- Clark, *Community of Property and the Family in New Mexico* (1956).
- Keddie, *Community Property Law in Arizona* (1950).
- Scoville, *Community Property Rights in Life Insurance* (1969).
- Wood, *The Community Property Law of New Mexico, A Report to the Senate Interim Committee on Community Property Pursuant to Senate Resolution No. 3, 21st Leg.* (1954).

I find no citations to most of these, although I may have overlooked them as would a lawyer or judge looking for such citations. Thus Brockelbank, which the authors refer to as an excellent work, is cited under a discussion of the putative spouse, but not under fruits of separate property, leases, or intestate succession.

I found no reference to Clark. While this is less a treatise than Brockelbank, it still must be useful in New Mexico. Incidentally, Clark divides the cited decisions between those of New Mexico and those from elsewhere and manages to find the principal California decisions to the date of his monograph. He also has a list of authorities and periodicals cited.

There are numerous articles and comments in legal periodicals which also could have been included in a selected bibliography.

There is no table of cases or statutes. I realize that such tables add to the cost of a book. Yet they are important in a work of this type.

The first edition included a flap or pocket for pocket parts. Our library copies' flaps have never been disturbed. I can find nothing in our catalog to suggest that there have been pocket parts. Knowing the propensities of law librarians, I conclude that no pocket parts were published during the 28 years of the first edition. The second edition omits the pretence of a pocket part flap. I cannot deny that developments in the law of community property come slowly. However, there are a few significant decisions and statutory changes each year. A textbook on the subject should include up to date developments. Pocket parts at least every 4 years are essential.

To whom will this book be useful? It will be of little use to lawyers and judges in community property states as is admitted by the authors (p.13). It is too complex for laymen. No doubt law librarians will buy it, especially if they are as rich as Croesus or as indiscriminating as Harvard. It will be used by law professors who

need to refer to historical materials and mention solutions of problems in other states. I doubt if California law students will find it useful. They will be better off using either the Armstrong or CEB books cited earlier. Foreign lawyers or academicians who condescend to study American law will find it of interest. It may be of utility to a lawyer or judge, especially in a non-community property state, faced with a conflict of law problem involving community property law.

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