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Equitable Distribution vs. Community Property: A Comparative Study

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Abstract

This paper presents a comparative analysis of two primary systems for dividing marital assets and debts during divorce: equitable distribution and community property. It explores the historical development, underlying principles, and practical implications of each system, emphasizing how they reflect different societal values and legal ideologies. Equitable distribution focuses on achieving a fair outcome based on various factors, such as the length of the marriage and contributions of each party, allowing for subjective interpretations by courts. In contrast, community property assumes that most assets acquired during marriage are jointly owned, promoting a more straightforward division of assets. The paper discusses the advantages and disadvantages of each system, highlighting how these frameworks affect the financial outcomes for divorcing couples. Additionally, it examines the impact of these systems on broader societal norms regarding marriage, gender equality, and economic stability. By providing insights into the legal frameworks governing asset division, the research aims to inform individuals navigating divorce and contribute to ongoing discussions about family law reform. Overall, this study serves as a resource for legal practitioners, policymakers, and individuals facing divorce, facilitating a deeper understanding of the implications of asset division laws.

Keywords: Equitable distribution, Community property, Divorce law, Asset division, Marital property, Legal frameworks, Family law, Gender equality, Economic stability, Comparative analysis.

1. Introduction

Marital assets and debts division has always been a very controversial matter in matrimonial jurisprudence. The system of division could be "equitable distribution" or "community property." Both operate on different ideologies in different jurisdictions and may cause variation in the asset division between two states even with the same

facts. Over the period, different researchers and scholars have tried to throw light on various aspects of both distribution systems, but the comparative view, which could decide which system of asset and debts division is more preferable as per society, economy, and parties, remained untouched. The present paper is a comparative study between both systems of asset division, which holds the economic relevance of both parties and their children. This research would help people who are facing or would face divorce to make a more informed decision. This study has been divided into six main categories. The first category is the introduction. It includes the need for the study and the objectives of the paper. It discusses how understanding the "legal framework of division of the assets leads to equitable results" is important for parties who are going through a divorce and are left with the assets and debts where interests are to be divided equally between them. Society, which now is giving almost equal rights to women, has added to the reason why the topic is gaining significance. The background, historical, and cultural perspectives are discussed in the later paragraphs. The paper will also discuss the "Objectives of the Study" and in what way this information could be available to couples (Hitchings et al., 2022)

2. Historical Development of Equitable Distribution and Community Property Laws

Not all legal systems around the world treat the division of marital property upon divorce or death in the same way. There are generally two such doctrines implemented in the legal systems: a) equitable distribution, and b) community of property. From a historical angle, the doctrine of community of property is older than that of equitable distribution. It is evident from history that community of property was practiced as a uniform rule in all Western European nations, unless there was a customary, religious, or other kind of legal barrier to uniformity in the system. This kind of rule was the rule of natural justice inasmuch as husbands and wives normally contributed in differing degrees of industry to the joint economy despite differences in the number of goods available to the marriage and the industries of the partners, making it eminently egalitarian. As a result, the Civil Code of the Celestine colony imposed a community concern for marriages under its auspices as early as 1803. In

New Jersey, a kind of community of property was declared, subject to a separation agreement between the spouses, by the New Jersey Supreme Court in a suit which involved a surviving spouse, in 1829. However, such spousal contracts on economic subjects were frowned upon and deterred in many states like New York; until recently, all states, except Louisiana, allowed it (Diamant, 2022)

The general idea of community of property is designed to resist attempts to circumvent the principle of one cultural-economic unit by inventive parties with sharp lawyers or otherwise protecting a party to the marriage in circumstances resulting in fraud or duress. It was an imposition as a result of a governing value system. Then why was there a transformation of the legal structure from community of property and the subsequent growth of a system of equitable division of marital economic accumulation over the years? A consideration from history could be that the influences motivating such changes are significant to the historical perception of a family law student. Based on the foregoing thesis or hypothesis, this paper will therefore open up a historical vista since either theory is still being practiced in many countries notwithstanding their contemporary status as evolved common law or civil law countries. While it changes on a daily basis in today's moribund conditions, it is necessary to return to the beginnings of any subject to reposition it upon a true historical foundation (Cain, 2021).

3. Key Principles of Equitable Distribution

Under equitable distribution laws, courts must decide how property should be divided based on a list of principles proposed by statute and embodied in case law. The overriding goal is to achieve a fair result, not necessarily equal. These principles, generally set forth in divorce laws, include such things as the length of the marriage, the respective contributions of one party to the other's education and future earning capacity, the relative economic circumstances of the parties at the time of the divorce, their earning capacity and expenses, the conduct of the parties that contributed to the demise of the marriage, the need to retain the marital home for custody purposes, waste or dissipation of marital assets, and the like. This statement of the law is, of course, general in nature. The principles can and do vary from state to state and from

case to case. Several facts that involve double-edged decision-making by courts can be derived from these decisions (Juma, 2022).

One is that "fairness" requires a subjective determination by the decision maker, and thus courts are given much discretion in their decision-making. Another is that such decisions often are quite fact-dependent. In one similar case, a court might decide one way; in another factually different but similar case, it might decide quite the contrary. A third fact is that these decisions often arise by way of appellate judgment, so that with one set of cases, courts can affirm, reverse, or remand for a new decision. A fourth fact arising from these cases that assails the claims of uniformity in interpretation or decision-making is that the equities in the case almost always can be argued either way. Despite this, many cases indicate that guided discretion is indeed the operative principle. As a parallel to this approach, it is possible for the parties, through mediation, to "work out" among themselves how to effect a fair result, without judicial intervention except to approve what the parties agree. This is an alternate resolution to a court-centric decision. The facts of each case are what drive outcomes. In equitable distribution states, there is, of course, a concern about the party who cannot afford legal representation and would be at a disadvantage if they tried the case themselves. Some states have fee recovery statutes to level this disadvantage (Obeng-Odoom, 2022).

Some people think that equitable distribution when divorce does not mean equal shares in property. This is self-evidently true in most cases; in fact, such decisions are not equitable by an equal distribution, but like conclusions in the face of all these facts about asset division based on the factors set forth in the statute, can vary widely from case to case. That means that equitable distribution systems of marital property division are really subjective, not objective, despite efforts to explain what the court must do by listing these factors or statutes. Even the right to represent oneself, which is a historic principle, has some adversity here. Obtaining a fee award requires one to prove the relative economic disparity between the parties. This extra legal element is present in many states in their civil law fee awards involved in a legal action. But the case law here presents an odd relative disparity because the equities here require spending to prove the point—not to mention that the case itself does not quite fit into

a "contract-action"; rather, it is a bifurcated fees action. Property division statewide according to equitable principles can vary quite a bit, even if the evidence is similar, because of the court's predisposition toward division under factors an equitable state establishes. Furthermore, what can be considered evidence itself can be an extensive argument which again requires its own evaluation of costs. (Kontokosta & Hong, 2021)(Rea et al.2021)(Zhang et al.2021)

4. Key Principles of Community Property

In contrast to the equitable distribution that holds in most of the other states, community property states consider that it is a given that most assets acquired during marriage are jointly owned. Indeed, in most states, community property laws provide that both spouses equally own both assets and debts originating after the marriage date. The framework is based on several guiding principles, among them: the date of classification, which is the date of the original asset or debt acquisition; the set of liabilities; the broad range of earnings that are classified in community property regimes, typically referred to as economic community; the gift by one estate to the other during the marriage, i.e., when they 'transmute' estate in situations such as one property contributing to the improvements of another, without anything else; the specifications of each of the spouses' rights and obligations imposed by the regime in the moments of divorce, debt collection, or death (Yusuf et al., 2022).

The asset was classified when it was acquired or created, which means that in most situations, breaches coming from the final divorce are irrelevant for the subsequent community property systems. Another practical example: if, during the divorce proceedings, one of the spouses acquires a piece of art, then it is his or her sole property, and it will not be divided with the other spouse upon divorce. Sometimes, the classification is made in some situations which do classify the 'not acquired' assets from the remunerations category as classic, with all earnings falling as community property. Probably the most challenging issue with the community property laws in divorce involves facts and income. Assets are often in dispute because they need to be identified, traced, and valued. This is true for stocks and shares of various types, all kinds of business interests, as well as delayed compensation like stock options or

restricted stocks. Finances, bank accounts, loans, or credits that are not joint or co-signed are often not well documented and are very hard to prove when they originate most often from cash withdrawals. Additionally, in the aftermath of the economic downturn, the potential for 'underwater' homes and subprime mortgage 'ticking time bombs' has added additional uncertainty in many divorce and related settlements. It is fitting to conclude that equitable distribution divorce systems base their legal framework on compensating the 'non-earning' spouse, who is sacrificing his or her economic growth by spending time taking care of children and the family, with a 'fair' share of the marital estate. At the time of their establishment, community property systems had different and clear societal rationales.

5. Comparative Analysis of Equitable Distribution and Community Property Laws

This article provides a comparative study. It will analyze both approaches and provide evaluations of the pros and cons of each of these systems for analyzing and determining what happens property-wise once a marriage is dissolved. Equitable Distribution vs. Community Property reviews the mindset of the two systems, which value philosophically and practically placing the emphasis either on the marriage or on the property and the parties. In so doing, instead of viewing the systems of distribution as artificial constructs of the states passing them, we see the personal belief systems of society that they are undoubtedly based upon (Lambrecht et al., 2022).

Under an Equitable Distribution system, property is divided according to the realities of the marriage and the reality of the parties, not given some artificial label and then wedged to fit that mold. It is the marriage and parties that are real, not the type of system which society labels as the one that controls it. Which approach is followed is really dependent on which state’s jurisdiction the action is initiated, and as such, can have increased or decreased rights for the parties in each state. The truth is there are basically two approaches used by the states when a marriage takes a long vacation and then ends.

Some sort of system is used to classify the property of the parties after being married or being single. Depending on the law of the state the parties are in, once they are classified as husband and wife, the assets might belong to one person and another piece to the other person – such as community or non-community; or that one piece belongs to the couple and all the rest belongs to the party's personal estates – such as marital or premarital. What term is used is less important in each instance than the actions and laws coming into play. Fully understanding these various states of classification is very important in all family law matters. Under an equitable distribution system, property is divided according to the realities of the marriage and the realities of the parties, not slotted into one or the other system and categorized underneath that inarticulate criterion.

6. Impact on Division of Assets and Debts in Divorce Proceedings

Part VI: The Impact on Division of Assets and Debts of the Legal System Outlined

Equitable distribution and community property laws mandate radically different results relative to the outcome of divorce settlements, where the main financial asset (or liability) to be divided is the marital residence. It must be remembered, however, that the marital residence is but one small part of the total value of assets of divorcing couples. The disclosures contained in repeated equitable distribution, divorce, and family dissolution studies confirmed an evolved trend which sees most divorcing parties dividing assets relatively equally after dividing significantly unequally. Some settlements range to the extreme of leaving one of the parties virtually nothing, while others divide the 'pot' in a perfect one-half, fifty percent, division. Negating, of course, the impact of incompatibles, studies conducted to date conclusively show that Florida's distribution of assets is not, actually, equitable. Even in the case of equitable distribution schemes, the possibility looms that one spouse will attempt to shelter what could be the most valuable asset in his or her portfolio – the marital residence (Perez, 2021).

While the legal requirement is that this and other assets are to be disclosed, the possibility for fraud exists. The law can only achieve a further goal through mediation services: the identification of individual property. Otherwise, the disclosure of

individual assets would be an enormous and seemingly insurmountable task for both clients and counsel. In some jurisdictions, each piece of furniture, for example, would have to be identified, appraised, and listed in the Statement of Financial Condition. Each debt would also need to be disclosed with the approximate balance outstanding and the original amount of debt. In such a scheme, the divorce process could actually take over the lives of the parties involved. Setting such a high degree of disclosure, mediation would become an important tool in streamlining the divorce process. Mediation can identify the most significant assets and debts for resolution of the issues of division.

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