

presentation of his case."²⁰ Reading this book will give one a good opportunity to make this thoughtful study; the results should be beneficial both to lawyers and to appellate courts.

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MARITAL PROPERTY IN CONFLICT OF LAWS. By Harold Marsh, Jr. Seattle: University of Washington Press, 1952. Pp. xi, 263. \$4.50.

A not-inconsiderable segment of the subject matter of conflict of laws which has hitherto received scant attention from writers in the field and all too frequently has been well-nigh ignored by members of the bar in handling the preparation and trial of a variety of cases is put under the searching examination of Mr. Marsh in his new work *Marital Property in Conflict of Laws*.

Mr. Marsh has succeeded in keeping his work in a physically manageable form, holding down the size of his treatise to what for a law book is a scant 250 pages, but due to his almost epigrammatic style and very careful groundwork in spelling out the precise scope of the work, and in carefully defining the terms he uses throughout the book, he has succeeded in producing a volume which succeeds not only in reviewing the status quo of the laws bearing on marital property in both the common law and community property states, but also in delineating the choice of law rules used in fact, and available in theory, in courts of the several states. Nor has the author settled for a mere recitation of black-letter law, which parenthetically would be welcome in many a law office beset with some of the more vexatious problems in the field, but on the contrary, he has supplied his reader with a critical analysis of the three major nuances of the choice of law problem.

It is not the intent of this reviewer to agree or disagree with Mr. Marsh's conclusions on the merits of the choice of law rules that he advocates; time and the courts will pass that judgment. Rather I should like to call attention to what I consider to be an extremely valuable contribution made by the author to the literature in this field, namely his accurate definitions of the various concepts which are to be discussed throughout his treatise. The clarity of Mr. Marsh's classification of the various types of legally recognized and legally protected rights and interests is a good example of the lucidity of thought and expression which alone would make the reading of his work a rewarding experience. It is fairly safe to say that hitherto courts have lumped together such a variety of rights, interests, privileges and/or immunities which belonged or appertained to one or both spouses, that the term "marital property" has almost degenerated into an amorphous concept roughly connoting anything owned by a married person. This lack of precise definition and lack of incisive separation of the various types of marital property

20. p. iii.

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has contributed greatly to the mishandling of many matters by the courts.

Mr. Marsh defines marital property as:

... [A]ny interest (right, power, privilege or immunity) or aggregate of interests which *arise* in one spouse, with respect to things owned or acquired by the other spouse, solely by virtue of the existence of the marital relation, but excluding from it the "bare expectancy" of inheriting upon the death intestate of the other.¹

He greatly increases the workability of this concept of marital property by classifying the spouses as the "acquiring" and "non-acquiring" spouse and proceeds to make clear that the interest of the "acquiring spouse" in the object of value acquired is *not* a marital property interest under his definition, but that the interest, if any, created by law in the "non-acquiring" spouse is a marital property interest.

The author repeatedly rejects overworked tags or labels, or, if you will, legal clichés such as "the wife's separate property," and for example points out the fact that this label in fact has been applied to at least three different subject matters.² A deliberate and highly successful attempt is made by Mr. Marsh to escape the "tyranny of labels" castigated by the late Justice Cardozo, or "epithetical jurisprudence" as Mr. Marsh himself brands the indiscriminate use of colorless generalities.³

The volume takes on added value when we pause to summarize the many pragmatic considerations of each type of ownership under both community property and common law to which Mr. Marsh subjects his definitions as he works them out; he puts each system of common law and community property rule through the following series of tests, further subdivided both as to real and personal property:⁴ (a) liability of the property for the post-nuptial obligations of the wife, other than contracts for necessities; (b) immunity of the wife from having her interests extinguished on execution sale by a post-nuptial obligee of the husband; (c) immunity of the wife from having her interests extinguished by a sole inter vivos transfer for value by the husband; (d) immunity of the wife to have her interests extinguished by a sole gratuitous transfer by the husband; (e) power of the wife to extinguish the husband's interests by a sole inter vivos transfer; (f) privilege of the wife to exercise the rights of possession; (g) power of the wife to secure partition during wedlock; (h) power of the wife to secure partition after divorce when the decree is silent as to property; (i) immunity of the wife to have her interests extinguished by the will of the husband (fraction of the property to which such immunity extends); (j) power of the wife to extinguish the husband's interest by will (fraction of the property to which such power extends).

The result of this analytical series of tests is a very concise and accurate summary of the status quo of the laws on the numbered questions in each of the United States due to the fact that the author has copiously annotated this section of his work with statutory citations.⁵

1. p. 11 (Italics supplied).

2. pp. 15-17.

3. p. 67.

4. pp. 60-75.

5. pp. 30-67.

The author has by the foregoing processes carefully summarized his concepts and the widely variegated rules obtaining in the several states and then addressed himself to the principal task of his treatise, namely, faced with a multi-state litigation involving marital property contacts with two or more jurisdictions, how should the trial court handle the case and what considerations should it entertain in working out a just solution to the instant case consistent with the objectives of a correct decision on the merits, *stare decisis*, and the systematizing of the choice of law rules.

At this point Mr. Marsh's scholarship reflects itself in a detailed analysis of the choice of law problem which he subdivides into three separate problems: (1) characterization or conflict of analytical categories (or, more generally, what kind of a problem have we, succession to property, marital property, contract law, tort, etc.);⁶ (2) selection, that is to what contacts and considerations of policy should the court give most weight in deciding what is the connecting factor between this case and the law of some particular jurisdiction;⁷ and, (3) application of the law chosen under the results worked out to the first two problems, which latter section largely deals with "renvoi" and conflicting definitions and/or choice of law rules.⁸

The author devotes the final three chapters of his valuable text to the three topics just enumerated, characterization, selection, and application and in substance reviews almost all cases decided by courts of the several states of the United States. He adds his critique of both the approach of the court and the result reached, suggests hypothetical cases which tend to prove his criticisms, and also suggests changes he would urge upon the courts, stating the reasons for his viewpoint throughout. It might be noted in passing that the material on distribution on death,⁹ and the material on division on divorce,¹⁰ are properly handled by Mr. Marsh without any reference to possible impact the former would have on federal gift and estate tax liability of the spouses or their heirs and/or devisees, and the latter on federal income tax liability; but his material at this point could be made the starting point for a hitherto unwritten federal tax paper. Mr. Marsh has filled one void in the ever-increasing field of conflict of laws and his excellent book should be welcomed by practitioners and students alike in the property, domestic relations and conflicts fields.

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6. pp. 75-92.

7. pp. 92-110.

8. pp. 110-125.

9. pp. 226-233.

10. pp. 233-237.

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