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# Community Property—Community Property Agreement—Private Pension Fund—Designated Beneficiary Other Than Surviving Spouse

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exception would seem to hinder employment of federal savings bonds with their survivorship provisions as "a convenient method of avoiding complicated probate proceedings."[16]

**Community Property Agreement—Private Pension Fund—Designated Beneficiary Other Than Surviving Spouse.** The conflict in the Washington Supreme Court as to priority between contract law and community property law, which resulted in a 5-4 decision in *Occidental Life Ins. Co. v. Powers*,[1] is still present after 27 years. The contract at issue in the principal case was the General Electric Pension Trust, to which decedent had contributed premiums for 13½ years. During that time decedent had been married three times and divorced twice. Neither divorce decree had disposed of the pension funds, and decedent's second wife was the designated beneficiary at his death. During his third marriage, decedent and his third wife, the plaintiff, entered into a statutory community property agreement[2] which provided that the separate property of each was converted into community property and the survivor would hold title to all community property upon the death of either party.

Upon the husband's death, the Pension Board paid into court a lump sum in the amount of decedent's contributions, plus accrued interest, and sought judicial determination of the proper recipient under the Declaratory Judgments Act.[3] Decedent's three former wives stipulated that the first two wives were entitled to one-half of the funds contributed during the period of their respective marriages,[4] and that plaintiff was entitled to all of the funds contributed during the period of her marriage. The only contested fund was the former separate property

[16] Free v. Bland, 369 U.S. 663, 669 (1962). "The success of the management of the national debt was deemed to depend upon the successful sale of the savings bonds, one of the inducements to purchasers being survivorship provisions." Yiatchos v. Yiatchos, 376 U.S. 306, 307 (1964).

[1] 192 Wash. 475, 74 P.2d 27 (1937).

[2] WASH. REV. CODE § 26.16.120 (1958): "Agreements as to status. Nothing contained in any of the provisions of this chapter or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property then owned by them or afterwards to be acquired, to take effect upon the death of either...." See Brachtenbach, *Community Property Agreements—Many Questions, Few Answers*, 37 WASH. L. REV. 469 (1962); Comment, *The Community Property Agreement Statute*, 25 WASH. L. REV. 165 (1950).

[3] WASH. REV. CODE ch. 7.24 (1956).

[4] Failure of a divorce decree to dispose of community property results in the former spouses holding thereafter as tenants in common. Ambrose v. Moore, 46 Wash. 463, 90 Pac. 588 (1907). The stipulation in the principal case merely effected partition of the tenancy, and payment of her one-half to each former wife.

of decedent, *i.e.*, those funds contributed while decedent was single and one-half of his contributions during his first two marriages. While plaintiff's claim was predicated upon the community property terms of the agreement relating to the property belonging to plaintiff and decedent, the second wife claimed the pension funds as the designated beneficiary. Judgment granted plaintiff was affirmed on appeal. *Held:* Effectuation of the policy goals of the statutory community property agreement requires that such an agreement, disposing of community property which had been the spouse's separate property in an industrial pension plan fund, extinguish the existing contractual rights of a former wife as prior designated beneficiary of the fund, despite noncompliance with the pension plan's provisions for change of beneficiary. *Neeley v. Lockton,* 63 Wn.2d 929, 389 P.2d 909 (1964).

The pension plan provided for changes of beneficiary as follows:

> An employee, before or after his retirement, may from time to time change the beneficiary designated by him . . . , without the consent of any such beneficiary, by filing written notice thereof with the Pension Board in a manner prescribed by the rules of the Pension Board as from time to time in effect. . . .[5]

The court characterized the pension fund as a contract, with the designated beneficiary possessing the rights of a third party beneficiary which, though vested, were subject to divestment by change of beneficiary. The court impliedly treated the Pension Board rules as the exclusive method for such change.

Further, the court accepted plaintiff's contention that the community property agreement executed by decedent and plaintiff had the dual effect of converting the separate property of each spouse into community property and providing that the surviving spouse take all. Consequently, the court found a direct conflict between the contractual rights of the second wife as the designated beneficiary of the pension fund and the property rights of plaintiff as defined by the community property agreement.

The majority's[6] finding of a conflict between contract and community property law seems forced, for the pension plan's provisions for change of beneficiary need not have been construed as the exclusive method

[5] 63 Wn.2d at 930, 389 P.2d at 910.

[6] The court split three ways. A majority of five subscribed to the *Occidental Life* analogy. One judge concurred in the result, but would have overruled *Occidental Life* and succeeding cases. Three judges dissented, subscribing to the *Occidental Life* decisions but declining to extend their rationale to the principal case.

for such change. These provisions were general, as contrasted with the specificity required in insurance contracts. By liberal construction, even the "tight" language of insurance provisions for change of beneficiary has been avoided by the court in prior decisions.[7]

Community property rights were not involved in the only prior Washington decision dealing with a private industrial pension plan.[8] In both the earlier case and the principal case, however, the court sought guidance in life insurance law. In the principal case the court was guided by the line of cases[9] which began with *Occidental Life Ins. Co. v. Powers*. These cases had established priority of the spouse's rights to that portion of the life insurance proceeds allocable to premiums paid from community funds over those of the designated beneficiary. The decision in the principal case to extend community property rights, acquired by means of a community property agreement, to funds originally allocable only to decedent's *separate* property was clearly a policy choice by the court. The court stated that its decision would give "reasonable legal amplitude, scope and effect to the community property device," and give effect to "the reasonable expectations of the parties entering such an agreement"—a choice between "a vital element of the structure of community property law"[10] and "far lesser interests."[11]

The court's adoption of the life insurance analogy should have resulted in the opposite conclusion to that reached by the court. The contrary result was only avoided because the insurance law adopted by the Washington court in *Occidental Life* is contrary to the position of most states regarding the effect of a divorce decree on designation of a former spouse as beneficiary.[12] *Occidental Life* failed to distinguish between the rights of ownership of a policy and rights of a beneficiary to the proceeds of a policy. Rights of ownership, including borrowing against the policy, assignment, and change of beneficiary if allowed, are

[7] See, *e.g.*, Sun Life Assur. Co. v. Sutter, 1 Wn.2d 285, 95 P.2d 1014 (1939), and cases cited therein.

[8] Richardson v. Pacific Power & Light Co., 11 Wn.2d 288, 118 P.2d 985 (1941), not cited by the court in the principal case. The plan there before the court was characterized as a "contractual obligation ... analogous to a situation where ... beneficiary is entitled to recover upon a personal insurance policy. ..." *Id.* at 320, 118 P.2d at 999.

[9] *E.g., In re* Leuthold's Estate, 52 Wn.2d 299, 324 P.2d 1103 (1958); Northwestern Life Ins. Co. v. Perrigo, 47 Wn.2d 291, 287 P.2d 334 (1955); United Benefit Ins. Co. v. Price, 46 Wn.2d 587, 283 P.2d 119 (1955). See Cross, *The Community Property Law in Washington*, 15 LA. L. REV. 640, 646-47 (1955).

[10] 63 Wn.2d at 934, 389 P.2d at 912.

[11] *Id.* at 935, 389 P.2d at 913.

[12] See 31 WASH. L. REV. 146 (1955).

present and vested. On the other hand, a beneficiary has no such rights; his rights are limited to the policy proceeds, and do not vest until death of the insured. By this analysis, decedent had only the rights of ownership to the pension fund, and did not possess the rights of his beneficiary to the proceeds. Hence he could not transfer his beneficiary's rights to the marital community when he executed the community property agreement with plaintiff. However, nullification of the beneficiary's rights would still result if Washington's community property law requires that the rights of the beneficiary be dependent upon either the separate character of the property source or concurrent designation as beneficiary by both spouses.

The appropriateness of the analogy between life insurance and the General Electric Pension Trust is subject to question. No direct relationship exists between life insurance premiums and proceeds; the beneficiary is entitled to proceeds in the face amount of the policy regardless of the amount of premiums paid by the insured. The proceeds of the Pension Trust, however, are directly related to, and determined by, the amount of the employee's contributions. While the distinction between rights of ownership and beneficiary rights has this conceptual support in insurance law, the conceptual distinction did not exist under the terms of the Pension Trust.[13]

Although the *Occidental Life* doctrine may be justified by considerations of community property policy, extension of its rationale to pension plans only exaggerates Washington's deviation from the position of most other community property states. Such an extension is also unfortunate in that pension plans are a rapidly expanding innovation;[14] it seems likely that litigation of pension rights will increase in the future, and the unwarranted—even if convenient—analogy to insurance law may limit relief sought, and afforded, to that traditionally available in insurance cases.

**Torts—Liability of Community for Tortious Act of Public Officer.** Washington marital communities have been immune since 1890 from liability for tortious acts committed by a public officer in performance

[13] California has expressly rejected the application of insurance concepts to public pension plans. Benson v. City of Los Angeles, 60 Cal.2d 355, 384 P.2d 649, 33 Cal. Rptr. 257 (1963). Two courts have adopted the insurance analogy, without discussion or citation of authority, in litigation involving private pension plans under community property systems. Boyd v. Curran, 166 F. Supp. 193 (S.D. N.Y. 1958) (California); Succession of Rockvoan, 141 So.2d 438 (La. 1962).

[14] See Goldworn, *Pension Plans: Their Background, Current Trends, and an Agenda for Industry*, 25 OHIO ST. L.J. 234 (1964).