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***Community Property Law in the United States*, by W.S. McClanahan (1982) and *Community Property in the United States*, by William A. Reppy, Jr. and Cynthia A. Samuel (1982)**

Harry M. Cross
University of Washington School of Law

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BOOK REVIEW

COMMUNITY PROPERTY LAW IN THE UNITED STATES

By W. S. McClanahan. Rochester: The Lawyers Co-operative Publishing Co., San Francisco: Bancroft-Whitney Co., 1982.
Pp. xix, 703. \$64.50.

COMMUNITY PROPERTY IN THE UNITED STATES

By William A. Reppy, Jr. and Cynthia A. Samuel. Charlottesville: The Michie Co., 1982.
Pp. xxvii, 415.

Reviewed by Harry M. Cross*

These two books with almost identical titles serve similar purposes for two different audiences—the McClanahan treatise for the practicing lawyer, the Reppy and Samuel casebook for the law student (and professor). Both books present the current community property law of the several American states, and in both the coverage of the principles of community property law as that law has developed in the United States will facilitate comparative analysis. This coverage may also minimize the apparent provincialism of decisions in the several states, at least for those problems not already resolved and therefore constrained by *stare decisis*.

McClanahan's treatise also fills the need for a comprehensible explanation and summary of community property law which will be readily available to lawyers in the common law states. The underlying differences between marital property concepts and rules in common law and community property states is effectively presented in appropriate places in his book.

The treatise has a desirable potential to harmonize future development of American community property law within its civil law framework. The civil law concepts of marital property are primarily Spanish in origin and, except in Louisiana, are inserted into the general common law scheme of the other American states. How that occurred and the attendant stresses

* Professor of Law, University of Washington.

and distortions are identified by McClanahan. In McKay's treatise,¹ much of the evaluation of the case law was unfortunately based on inappropriate common law concepts, and projections were similarly based. Professor William deFuniak in his work, *Principles of Community Property*,² properly deplored the common law distortions of community property principles. Had his work (and the translations of Spanish sources in the second volume of the first edition) been available as early as McKay's, there probably would have been fewer aberrations in the developments in the community property states.

A principal weakness of deFuniak, from the standpoint of the practicing lawyer, was in the exploration of what the courts actually were deciding and where they were going. A strength of his work was in the criticism of the "American" rules from the standpoint of Spanish law, i.e., community property law, principles. McClanahan, in reasonably exhaustive summary form, does identify where the courts are in establishing American community property law principles, measures them against civil law principles, and projects potential developments of a harmonious kind. In a sense, McClanahan has combined the strengths of both McKay and deFuniak and minimized their respective weaknesses.

After an introductory chapter in McClanahan, the background of marital property law in common law and community property law jurisdictions is summarized,³ and an outline of the adoption of property law in the United States is presented.⁴ The fourth chapter presents in 105 pages all or relevant parts of most statutes important in community property matters, organized by subject matter so that the statutory differences between the states in each subject matter can easily be observed. This chapter promises to be particularly useful for the lawyer with a problem in which another state's rules are important.

The balance of the book is devoted to the "substance" of community property law,⁵ followed by a table of cases,⁶ and an excellent, detailed index.⁷

Chapter five discusses the requirements for the existence of community property, and includes a good discussion of the problems for "partners" not in a marital relationship, whether innocently or not. Successive chap-

1. G. MCKAY, A TREATISE ON THE LAW OF COMMUNITY PROPERTY (2d ed. 1925).

2. (1943); W. DEFUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY (2d ed. 1971).

3. W. McCLANAHAN, COMMUNITY PROPERTY LAW IN THE UNITED STATES ch. 2 (1982).

4. *Id.* ch. 3.

5. *Id.* chs. 5-14.

6. *Id.* at 649-64.

7. *Id.* at 665-703.

ters cover classification of property,⁸ ownership theories,⁹ spousal transactions,¹⁰ management,¹¹ creditor's rights,¹² death disposition,¹³ and disposition on dissolution of marriage.¹⁴ Two of these chapters were written by professors at the University of New Mexico School of Law¹⁵ and one by this reviewer,¹⁶ under the general editorship of McClanahan, who is the author of the book. The final two chapters cover marital property and conflict of laws,¹⁷ and the acceptance of community property principles in common law states (primarily equitable division in divorce).¹⁸

The discussion of the conflict of laws problems should be particularly helpful to lawyers in any state in light of the migratory character of the population. That migration may raise problems of the effect on property rights of change of domicile from a common law to a community property state, or vice versa. In the latter situation there have been some unfortunate, probably erroneous, decisions harmful to the property rights of spouses, both in death succession and in divorce disposition situations. It is hoped that this lucid discussion will prevent recurrence of such mistakes.

The casebook by Reppy and Samuel, as indicated above, provides material for a comparative study of the community property law in the several states, presenting cases illustrative of principles, followed by extensive notes of and citations to the law in other states. Differences and similarities in the several positions are made clear, and the editors raise many provocative questions about unresolved issues.

There is some greater detail in the casebook than in the treatise. Either will be useful to the lawyer looking for a workable solution to problems new in the jurisdiction, as well as looking for a plausible argument for change of position "at home." Neither will provide all the detail needed within the lawyer's own jurisdiction, and while a general overview of the law of a particular jurisdiction can be acquired from either book, it is probably more easily found in McClanahan's treatise. Both are organized so that relevant material on particular problems can be quickly located.

8. *Id.* ch. 6.

9. *Id.* ch. 7.

10. *Id.* ch. 8.

11. *Id.* ch. 9.

12. *Id.* ch. 10.

13. *Id.* ch. 11.

14. *Id.* ch. 12.

15. Chapter 9 was authored by Professor Pamela B. Minzner, and ch. 10 was authored by Professor Frederick M. Hart.

16. W. McCLANAHAN, *supra* note 2a, ch. 6.

17. *Id.* ch. 13.

18. *Id.* ch. 14.

McClanahan states that his purpose is to provide “a practical, working outline and analysis of the general theories, principles and concepts of community property law” in America, “to introduce the common-law lawyer to the field of community property law,” and to raise most of the questions which arise in everyday practice and provide the general answers with a starting point for necessary research.¹⁹ I believe he has achieved his purpose.

Reppy and Samuel identify the purpose of the comparative approach in the casebook:

No single state’s law can provide a student with the depth necessary to grasp all the subtleties presented by a problem and to argue, when the occasion is right, for a change in the law. Furthermore, a competent attorney must be educated in the questions likely to be posed by increasingly mobile clients who have acquired property in several community property states. The attorney must also be able to anticipate a problem not yet addressed by the courts or legislature of the attorney’s particular state.²⁰

The purpose is well served by their work.

Both the treatise and casebook are valuable additions to a working library.

19. *Id.* § 1:14, at 13–14.

20. W. REPPY, JR. & C. SAMUEL, *COMMUNITY PROPERTY IN THE UNITED STATES* vii (2d ed. 1982).