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Other things I hope you remember

When we talk about the "character" of property, we mean whether the property is separate or community property.  
Mixing community and separate property is called "commingling".  
Liabilities (debts) are property; the same characterizations apply.

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And the one thing I really, really hope you remember?

See next slide ... it builds suspense.

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IF YOU CAN'T PROVE IT...

It is community property.

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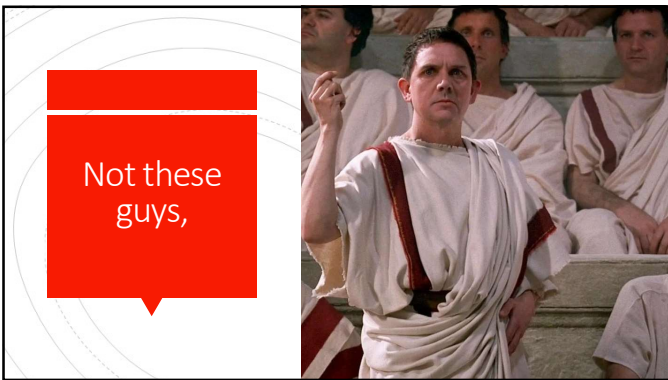
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These guys.

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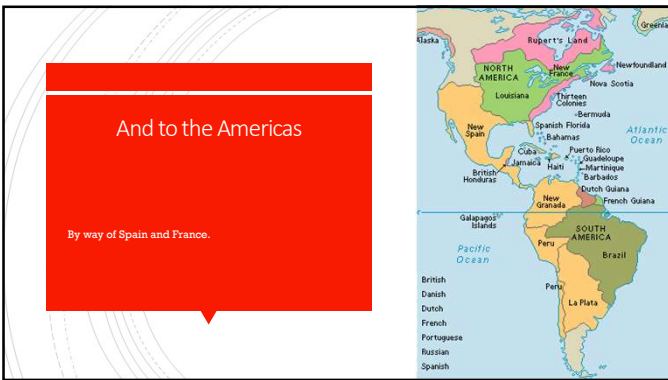
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And to the Americas

By way of Spain and France.

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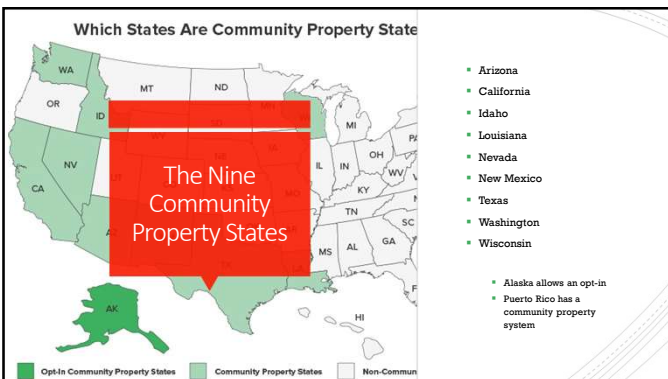
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The Nine Community Property States

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin

- Alaska allows an opt-in
- Puerto Rico has a community property system

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**COMMUNITY PROPERTY JURISDICTIONS**

- During marriage, spouses each have an undivided one-half interest in community property
  - Both spouses own the property

**COMMON LAW PROPERTY JURISDICTIONS**

- During marriage, the property of each spouse belongs to that spouse
  - One spouse owns the property

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**Nevada adopts a community property system upon statehood in 1865**

**Nev. Const., art. 4, sec. 31 (1865):**

"All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation, as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property." *Available at* <https://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/1864Constitution.pdf>.

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**So, What is Community Property?**

Community property is "All property, other than that stated in [NRS 123.120](#), acquired after marriage by either spouse or both spouses, or community property unless otherwise provided by:

- An agreement in writing between the spouses.
- A decree of separate maintenance issued by a court of competent jurisdiction.
- [NRS 123.121](#).
- A decree issued or agreement in writing entered pursuant to [NRS 123.122](#).

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That wasn't helpful! What is Separate Property?

- Separate property is "All property of a spouse owned by him or her before marriage, and that was acquired by him or her afterwards by gift, bequest, devise, descent or by an award for personal injury damages, with the rents, issues and profits thereof, is his or her separate property."

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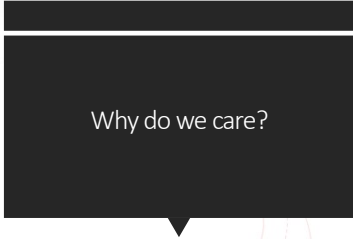
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Why do we care?

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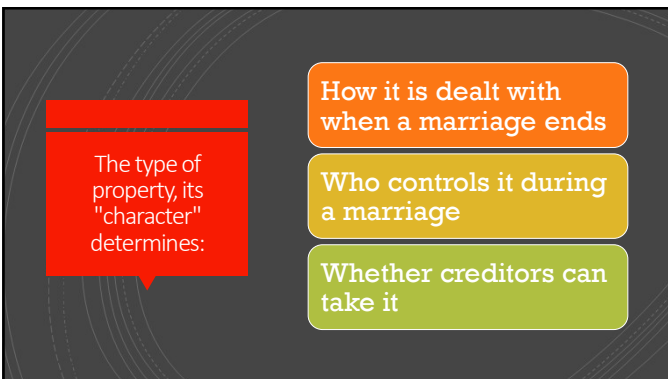
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The type of property, its "character" determines:

- How it is dealt with when a marriage ends
- Who controls it during a marriage
- Whether creditors can take it

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**When a marriage ends**

**DIVORCE**

- Community property is presumptively divided equally on divorce
- Separate property is confirmed to the owner

**DEATH**

- The deceased may pass 1/2 of the community property and all of their separate property
  - If a person dies intestate, their share of the community property passes to their spouse.
- The remaining community property passes automatically to the surviving spouse

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**During a marriage**

- Separate property is under the sole control of the owner
- Community property is under either party's control, but some unilateral actions are prohibited, e.g. leveraging or transferring real property
- A significant difference between joint tenancy and community property is the ability to secretly transfer away an interest.

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**Creditors**

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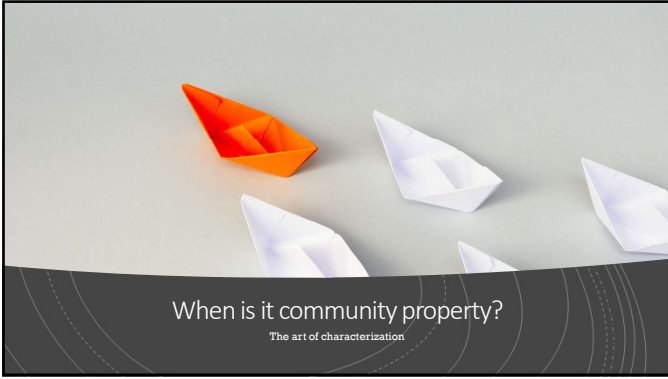
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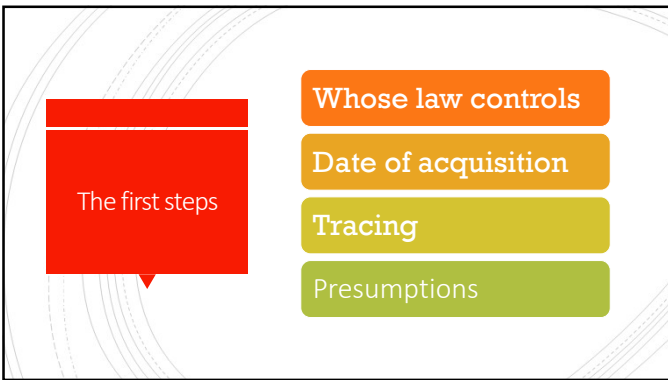
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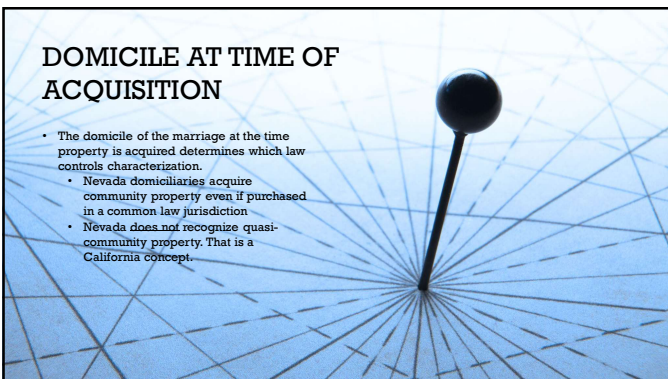
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**Date of Acquisition**

The inception of title doctrine  
 Property is acquired on the first date a person has a right to claim ownership  
 For example, an option to purchase property is acquired when the option is granted

In the beginning...

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**Tracing**



- The process of following property from its first acquisition to its current form
  - Art buff? Think of the progeny of a painting

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**Presumptions**  
 And counter-presumptions

- Burdens of production and burdens of proof
  - The person making a separate property claim bears the burden of producing evidence of the time and manner of acquisition.
  - In the absence of evidence, ALL property owned by a married person will be treated as community property.
  - Property acquired during marriage is presumed to be community property UNLESS acquired by gift, devise, or descent.
  - Each type of property is presumed to keep its character
    - But wait ...!

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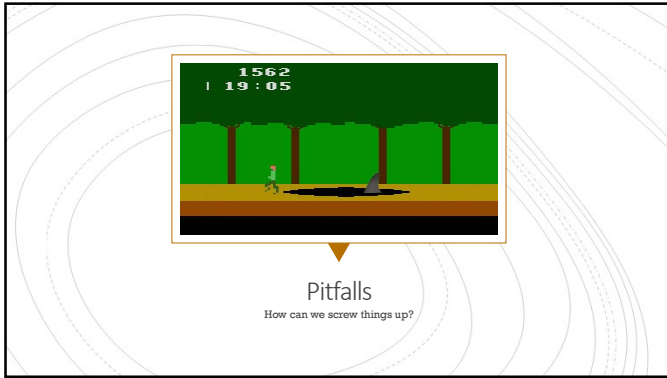
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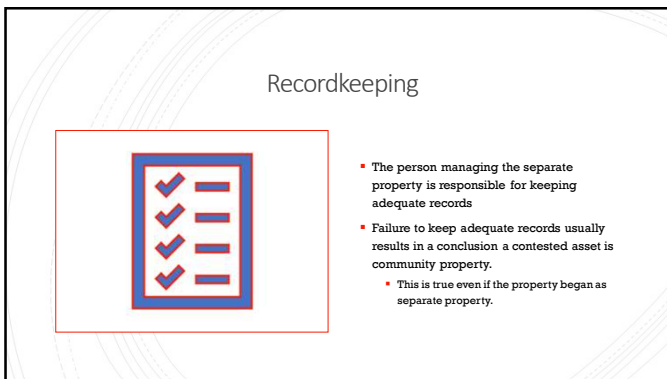
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- The mixing of community and separate property in a single asset
- When commingling becomes so complete the separate property cannot be identified, the entire asset becomes community property
  - There may be an exception if the community share is *de minimus*

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- Retirement assets**
  - Defined contribution plans
  - Defined benefit plans
- Businesses**
  - *Perena and Van Camp approaches*
- Life Insurance**
- Stock Options**
  - Time rule
- Real Property**
  - Malmquist
- Personal Efforts**

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### Implied Gifts

- The law creates gifts, usually from separate property to community
  - Sometimes from separate to separate
  - Use of separate property to pay community expenses is presumed a gift
  - Transfer of separate property of one spouse to the separate property of the other is presumed a gift
  - Use of separate property to acquire property in joint name is presumed a gift
- The law no longer presumes gifts from community property to separate property.

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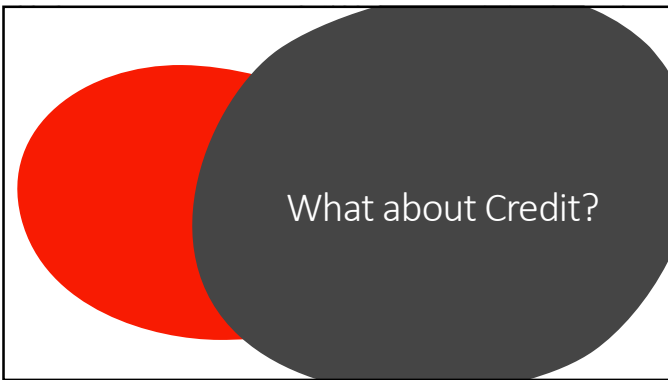
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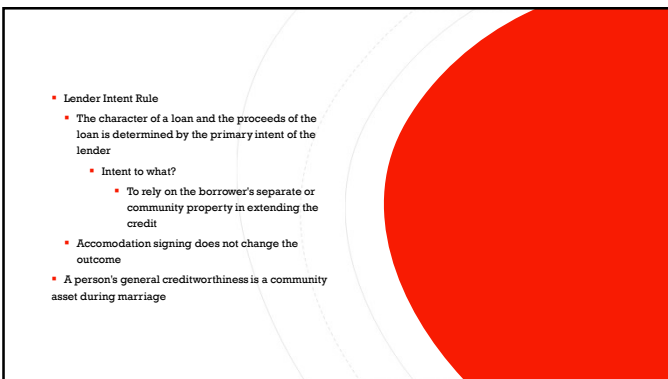
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Title Presumptions and the Uninformed

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Is it joint tenancy or community property

**JOINT TENANCY**

- Older case law states a presumption that joint tenancy title is correct and intended to not be community property

**COMMUNITY PROPERTY**

- Newer case law states a presumption that when separate property is used to acquire property then held jointly by the spouses is a gift to the community

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Changing the Rules? You bet!

- Premarital agreements
- Post-marital agreements
- Deeds and express gift language

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