**STUDENT LOANS –**

**YOURS, MINE, OR OURS**

**HONORABLE PATTI RATEKIN &**

**DENNIS TEMKO, ESQ**

**Pleading Theories for Unequal Division in Parental Loan Cases**

Note: The Power Point slide show and this document

will be available for download after today’s presentation at

DennisTemkoLaw.com🡪Articles & Lectures 🡪 Winter Seminar

1. **Family Code Section 910**

(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) “During marriage” for purposes of this section does not include the period during which the spouses are living separate and apart before a judgment of dissolution of marriage or legal separation of the parties.

1. **Family Code Section 910 case**
   1. ***Lezine v. Security Pacific Financial Services, Inc.*** [reimbursement possible for debtor spouse’s misuse of community property]

In Lezine v. Security Pacific Financial Services (1996) 14 Cal.App.4th 56 Husband transferred a security interest in community, real property (Halm Avenue) to Security Pacific without Wife's consent in violation of Family Code section 1102. The trial court set aside the transfer but awarded a money judgment to Security Pacific against Husband. (Id. at p. 59.) Security Pacific then recorded an abstract of judgment.

Three months later, Halm Avenue was awarded to Wife in the couple's marital dissolution proceeding. (*Id.* at p. 62.)When she learned of the lien, she moved the trial court for clarification of the effect of the lien, and the trial court ruled that the abstract of judgment did not constitute a lien on Halm Avenue. (Id. at 59.) Security Pacific appealed, and the Court of Appeal reversed the trial court. The Supreme Court affirmed the Court of Appeal's reversal. (Id. at pp. 63, 75.)

The issue on review was whether the invalidity of Husband's initial encumbrance of the property without Wife's consent rendered the property free from Security Pacific's judgment lien. After it reviewed judgment lien and property division law the Supreme Court explained that under

“Family Code section 916 the allocation of the community real property non-debtor spouse in the property division did not affect enforceability of any liens that previously attached to that real property, even if the underlying debt is assigned exclusively to the debtor spouse. The community real property awarded to the non-debtor spouse remains liable for satisfaction of existing liens, and the non-debtor spouse may seek reimbursement against the debtor spouse to the extent the property is applied in satisfaction of the liens.” (*Id.* at pp. 73-74 [internal citations omitted].)

However the non-debtor spouse was not without recourse. “[A] spouse may be required to reimburse the community for the misuse of community assets (see, e.g., Fam.Code §§ 1101, 2602; *In re Marriage of Czapar* (1991) 232 Cal.App.3d 1308, 1318; *In re Marriage of Lister* (1984) 152 Cal.App.3d 411, 418-419.)[.]”

1. **Family Code Section 2602**

**§ 2602. Additional award or offset against existing property; award of amount determined to have been misappropriated**

As an additional award or offset against existing property, the court may award, from a party's share, the amount the court determines to have been deliberately misappropriated by the party to the exclusion of the interest of the other party in the community estate.

* 1. **Family Code Section 2602 cases**
     1. ***In re Marriage of Schultz*** [mere negligence is insufficient]

In *In re Marriage of Schultz* (1980) 105 Cal.App.3d 846, Carol and Alvin Schultz accumulated over $20,000 in debt while married. The parties in the dissolution proceedings agreed to sell their house to pay their community debts. (*Id.* at p. 850.) The community owed one such debt to a creditor by the name of Conrad Blasco. The community incurred the debt when Alvin failed to appear in Municipal court and Blasco obtained a default judgment. Alvin failed to give the Municipal court his proper address. The trial court allocated most of the debt to Alvin as it found his conduct amounted to deliberate misappropriation. (*Id.* at p. 854.)

The Court of Appeal found Alvin’s conduct did not amount to deliberate misappropriation and reversed. Deliberate misappropriation was synonymous with “calculated thievery.” Alvin’s conduct was mere negligence or the mishandling of assets, not calculated thievery. The penalty was unwarranted for the mere misdirection of a notice of trial and there was no equitable basis for the trial court’s ruling. (*Id.* at p. 854-855.)

* + 1. ***In re Marriage of Moore*** [misappropriation finding reversed for insufficient evidence]

In *In re Marriage of Moore* (1980) 28 Cal.3d 366, the trial court found Husband deliberately misappropriated community property. (*Id.* at pp. 369.) Husband disposed the community property without valuable consideration and without consent in order to purchase alcoholic beverages. (*Id.* at p. 374.) On that point, the Supreme Court reversed. Wife at trial believed Husband sold the items (for an unknown price) to *purchase* booze. The Court reasoned Husband would not have been able to purchase alcoholic beverages in the first place if he did not receive some form of consideration from the assets sale. Therefore, the trial court’s finding Husband did not receive valuable consideration was not supported by substantial evidence. (*Id.* at p. 375.)

The important takeaway from this case is that the court never reached the question whether the purchase of alcohol with community assets was a deliberate misappropriation. It very well could have been. The error stemmed instead from the unsupported finding Husband did not receive valuable consideration for the community property.

* + 1. ***In re Marriage of Partridge*** [mismanaging tax liability is insufficient to constitute misappropriation]

In *In re Marriage of Partridge* (1990) 226 Cal.App.3d 120, William Partridge owned his own contracting firm. Rebecca Partridge helped him with the books. In 1986, the company was not profitable enough to support the community. With Rebecca’s knowledge, William did not pay quarterly estimated taxes. The parties then separated. William wanted to ignore the tax problem when it came time for the parties to pay their taxes and did not hand over tax information. (*Id.* at p. 123.) The trial court held William responsible for the tax liability. His actions forced Rebecca to file separately to the community’s disadvantage. (*Id.* at p. 124.)

William appealed. Rebecca sought to affirm the trial court’s ruling under the theory William’s obstruction amounted to gross mismanagement and a deliberate misappropriation. (*Id* at p. 125.) The Court of Appeal was unpersuaded and reversed. William’s actions did not fall within the ambit of deliberate misappropriation under former Civil Code section 4800 subd. (b.) That statute referred to” calculated thievery” by a spouse, not mishandling assets. Here, William tried to *benefit* the community by impermissibly augmenting income. (*Id.* at p. 126.) Nor was Rebecca harmed. In fact, “she received a refund!” (*Id.* at p. 127.) Finally, the court noted that under *Hirsch* “so long as the community received *some* benefit from a spouse’s actions, it was properly charged with liabilities arising from those actions. . .” (*Id.* at p. 126; italics in original.)

* + 1. ***In re Marriage of Economou*** [when there is misappropriation, equal division is not required]

In *In re Marriage of Economou* (1990) 224 Cal.App.3d 1466, the trial court was faced with a husband who did everything he could to frustrate an equitable division. The “couple’s marriage involved a truly staggering amount of community property.” Husband held assets in California, Georgia, and his native Greece. (*Id* at p. 1471.) Husband refused to provide information on those assets despite repeated court orders to respond to discovery. (*Id.* at p. 1472.) Husband disobeyed many court orders including that he return $1.8 million he absconded to Europe when he relocated to Greece before trial. (*Id* at p. 1472, 1474 at fn. 3.) When Husband still failed to comply, the court issued an order entering Husband’s default on all issues in the proceedings except dissolution, child custody, and visitation. The court found Husband misappropriated over $6 million. Husband appealed.

Husband argued at length in his opening brief there was insufficient evidence to support the court’s finding that Husband misappropriated $6 million in assets. (*Id.* at p. 1482.) The evidence was sufficient to uphold the trial court’s ruling. Multiple experts reconstructed Husband’s assets despite his “obfuscations and evasions.” (*Id.* at pp. 1479, 1482.) The reconstruction was aided by a private investigator, attorneys, accountants, and Husband’s former associates. (*Id.* at p. 1474.) At Husband’s insistence the trial court’s award double charged him, the appellate court directed Husband to Civil Code section 4800 subd. (b)(2.) Therein, “courts are *not* always required to divide the community equally.” (*Id.* at p. 1483, italics in original.) Husband’s deliberate misappropriation did not entitle him to an equal division.

1. **Family Code Section 2625**

**§ 2625. Separate debts incurred before date of separation; confirmation**

Notwithstanding Sections 2620 to 2624, inclusive, all separate debts, including those debts incurred by a spouse during marriage and before the date of separation that were not incurred for the benefit of the community, shall be confirmed without offset to the spouse who incurred the debt.

* 1. **California Family Code Section 2625 cases**
     1. ***In re Marriage of Mahone*** [debt associated with airplane purchase was in anticipation of separation and Husband’s debt]

In *In re Marriage of Mahone* (1981) 123 Cal.App.3d 17, Husband and Wife married in 1961. Husband was a major in the United States Air Force at the time of marriage. He later retired from the Air Force and worked for the County of Los Angles. The parties had a joint savings account at Glendale Federal Savings which was opened in 1971 with a $10,000 deposit. The deposit was a gift from Wife’s father. Husband in 1976, just prior to the parties’ separation, desired to purchase an airplane. The Glendale account was pledged as collateral for a loan. Wife signed the loan, rode in the airplane, and did not otherwise object to the airplane purchase. (Id. at p. 25.) After separation Husband defaulted on the loan and $5,467 was charged against the account to pay off the balance.

The trial court found Husband purchased the plane “*in anticipation of separation.*” In light of the temporal nature of the purchase, the trial court also found that the entire $5,467 debt was Husband’s separate obligation. Husband was obliged to the community for the full amount of the debt. The Court of Appeal affirmed in light of substantial evidence in support of the trial court’s findings. (*Id.* at p. 25.)

* + 1. ***In re Marriage of Stitt*** [community did not benefit from wife’s embezzlement and she is liable for fees in defense]

In In re Marriage of Stitt (1983) 147 Cal.App.3d 579, Wife incurred attorney's fees in defending against civil and criminal charges of embezzlement from her employer. Wife settled the civil action and was convicted in the criminal action. Wife's separate property was sold to raise funds to pay the $15,000 in restitution to her former employer that was required as a condition of Wife's probation following her conviction. (*Id***.** at p. 584.)

In a subsequent dissolution proceeding, Wife argued the attorney's fees should be regarded as a community obligation because they were incurred during marriage. Husband conceded the community was responsible to the attorneys for the obligation, but contended that as part of the dissolution action, the court could properly assign that obligation to Wife as her separate debt. The trial court found the obligations for attorney fees were incurred during the marriage and were attributable to Wife’s defense in the civil and criminal actions. It further found the obligations to the law firms were Wife’s *separate obligations*. (*Id* at pp. 584, 586-587.) Wife appealed.

The Court of Appeal agreed with the trial court. “Because husband did not participate in Wife's embezzlement and no benefit to the community was shown, . . . [¶ ] . . . in the settlement of marital rights the court could seek an *equitable result* because of the separate nature of the obligation. In this instance the court found it appropriate to assign the full financial responsibility for Wife's embezzlement to Wife, preventing her assertion of ‘community debt’ from diminishing the husband's share of the community property. This was consistent with the general principle found in [Civil Code] section 1714 *that the actor is solely responsible for willful and negligent acts unless shared*, mitigated or excused because of other principles of law.” (Id. at pp. 587–588, italics added.)

* + 1. ***In re Marriage of Munguia*** [costs incurred after child removal are unrelated to the community and should be borne by the parent who

removed the children]

In *In re Marriage of Munguia* (1983) 146 Cal.App.3d853, 195 Cal.Rptr 199, Ingeburg Munguia and John Munguia married in 1966 and had two children. (*Id.* at p. 201.) Ingeburg visited her sick mother in Germany in September 1979. She met and fell in love with a man while her own marriage was headed toward divorce. Ingeburg returned home but then left for Germany again on November 8, 1979. She left a note stating she would be back in a few days to finalize the divorce. (*Id.* at p. 203.) She also took the children with her. November 8th was later determined to be the parties’ date of separation. (*Id.* at p. 201.)

John became worried and filed a missing person report. With the services of a private investigator, John located the children in Germany, removed them to France, and transported them back to the family residence. The bill for the investigator totaled $9,053.18. The trial court found the entire expense was community. The Court of Appeal reversed.

The Court of Appeal found the debt was incurred after separation **and *was unrelated to the community***. John argued on appeal the obligation existed because of Wife’s conduct. The court stated that “while we do not condone her behavior in removing the children without Husband’s knowledge or permission, neither can we agree with the trial court that this obligation constituted a community debt. (*Id.* at pp. 203-204.)

* + 1. ***In re Marriage of Bell*** [community benefited from embezzlement by spouse and liable for settlement but not for fees]

In *In re Marriage of Bell* (1966) 49 Cal.App.4th 300, Wife there worked as a ticket-taker for the Palm Springs Aerial Tramway. For five years, Wife embezzled large sums of money from her employer. (*Id.* at p. 302-303.) Wife never told her husband. Wife’s arrest was the first time he learned of the embezzlement. (*Id.* at p. 303.) The Palm Springs Aerial Tramway filed a civil suit. (*Id.* at p. 302) The parties settled the suit. (*Id*. at p. 303.)

In the dissolution proceedings, Wife sought allocation of the cost of the civil settlement to the community. (*Id.* at pp. 304–305.) Relying on *Stitt, supra,* 147 Cal.App.3d 579, the trial court found that whether the community benefited from the wife's conduct was irrelevant. (*Bell,* at pp. 305–306.) In any case, Wife’s conduct destroyed the community. The trial court determined Wife was to bear the full burden. Wife was responsible for all the attorney’s fees and the civil settlement. (*Id.* at p. 307.)

The appellate court agreed with the trial court’s result on the attorney’s fees issue. While it agreed with the result, it noted the court in *Stitt,* the case upon which the trial court relied,found there was no benefit to the community. Here the community benefited from Wife’s embezzlement. That the community received a benefit still however did not warrant the allocation of the fees to the community. Wife “knowingly accepted the risk that she would be caught and would have to face the consequences. Husband, who knew nothing of the risk and could do nothing to avoid it, ***should not in fairness*** bear the same burden once it did go wrong.” (*Id*. at p. 309.)

The Court of Appeal reached a different decision from the trial court on the civil settlement issue. The trial court erred when it allocated the entire $150,000 settlement to Wife in the distribution. It was clear the community received a “*major infusion*” of funds over the years and the community spent the funds rather than Wife separately. Finally, directing payment of the settlement by the community “would do no more than bring it back to where it had been.” (*Id.* at p. 310.)

* + 1. ***In re Marriage of Cairo*** [gambling debts, incurred over objection, assigned to spouse as separate debt ]

In[*In re Marriage of Cairo* (1988) 204 Cal.App.3d 1260,](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988123750&pubNum=227&originatingDoc=I38f856af68b811d89e58bdd1b8996ebe&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)) Lena Cairo discovered credit cards she knew nothing about and thereafter noted growing balances. She questioned her husband, Orlando, about the debt and was told that he charged gambling expenses on credit cards. He stated, “I need money for gambling. I need money.” Orlando testified at trial that, while he gambled occasionally, “he used the credit card loans to pay for the family living.” (*Id.,* at pp. 1259, 1267.) Lena testified that she only used one credit account occasionally for living expenses and that Orlando never gave her money from the credit card charges or used these charges to pay household expenses. (*Id.,,* at pp. 1259, 1267.)

The Court of Appeal acknowledged the general rule that debts incurred by either spouse after the date of marriage but prior to separation are to be divided equally, unless community debts exceed community assets. However there was an exception for debts not incurred for the benefit of the community. The Court of Appeal found that the gambling debts were properly divided by the trial court's order assigning Orlando the gambling debt as his sole obligation. (*Id.,* at p. 1267.)

1. **Family Code Section 1101**

**1101. Claim for breach of fiduciary duty; court ordered accounting; addition of name of spouse to community property; limitation of action; consent of spouse not required; remedies**

(a) A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

(b) A court may order an accounting of the property and obligations of the parties to a marriage and may determine the rights of ownership in, the beneficial enjoyment of, or access to, community property, and the classification of all property of the parties to a marriage.

(c) A court may order that the name of a spouse shall be added to community property held in the name of the other spouse alone or that the title of community property held in some other title form shall be reformed to reflect its community character, except with respect to any of the following:

(1) A partnership interest held by the other spouse as a general partner.

(2) An interest in a professional corporation or professional association.

(3) An asset of an unincorporated business if the other spouse is the only spouse involved in operating and managing the business.

(4) Any other property, if the revision would adversely affect the rights of a third person.

(d)(1) Except as provided in paragraph (2), any action under subdivision (a) shall be

commenced within three years of the date a petitioning spouse had actual knowledge that the transaction or event for which the remedy is being sought occurred.

(2) An action may be commenced under this section upon the death of a spouse or in conjunction with an action for legal separation, dissolution of marriage, or nullity without regard to the time limitations set forth in paragraph (1).

(3) The defense of laches may be raised in any action brought under this section.

(4) Except as to actions authorized by paragraph (2), remedies under subdivision (a) apply only to transactions or events occurring on or after July 1, 1987.

(e) In any transaction affecting community property in which the consent of both spouses is required, the court may, upon the motion of a spouse, dispense with the requirement of the other spouse's consent if both of the following requirements are met:

(1) The proposed transaction is in the best interest of the community.

(2) Consent has been arbitrarily refused or cannot be obtained due to the physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse.

(f) Any action may be brought under this section without filing an action for dissolution of marriage, legal separation, or nullity, or may be brought in conjunction with the action or upon the death of a spouse.

(g) Remedies for breach of the fiduciary duty by one spouse, including those set out in Sections 721 and 1100, shall include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs. The value of the asset shall be determined to be its highest value at the date of the breach of the fiduciary duty, the date of the sale or disposition of the asset, or the date of the award by the court

(h) Remedies for the breach of the fiduciary duty by one spouse, as set forth in Sections 721 and 1100, when the breach falls within the ambit of Section 3294 of the Civil Code shall include, but not be limited to, an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty.

1. **Family Code Section 1100 (b)**

**§ 1100. Community personal property; management and control; restrictions on disposition**

(a) Except as provided in subdivisions (b), (c), and (d) and Sections 761 and 1103, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply to gifts mutually given by both spouses to third parties and to gifts given by one spouse to the other spouse.

* 1. **Civil Code Section 14**

**§ 14. Words and phrases; construction; tense; gender; number**

Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; county includes city and county; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term “testify,” and every written one in the term “depose”; signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is by mark it must in order that the same may be acknowledged or may serve as the signature to any sworn statement be witnessed by two persons who must subscribe their own names as witnesses thereto. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word “property” includes property real and personal;

2. The words “real property” are coextensive with lands, tenements, and hereditaments;

3. The words “personal property” include money, goods, chattels, things in action, and evidences of debt; . . .

* 1. **Relevant Family Code Section 1100 (b) cases** 
     1. ***Knego v. Grover* (1962) 208 Cal.App.2d 134** [a loan constitutes personal property ]
     2. ***Marriage of Stephenson* (1984) 162 Cal.App.3d 1057** [UGMA gifts to children are not exempt from consent requirements ]

1. **Family Code section 1100 (e)**

**§ 1100. Community personal property; management and control; restrictions on disposition**

(e) Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request.

* 1. **Mismanagement Cases**

1. ***In re Marriage of Lister*** [husband’s payment of premarital debts without disclosure breached his duty of management to wife]

Husband and Wife in *In re Marriage of Lister* (1984) 152 Cal.App.3d 411, purchased a home after marriage. The parties later sold the home, but instead of receiving cash, Husband had the purchaser (his cousin) pay off $20,330 in premarital debts. Wife had no idea since Husband misrepresented the transaction to Wife. (*Id.* at p. 415-416.) The trial court found Wife did not know about or consent to the cousin’s purchase for cancellation of Husband’s premarital debts. The transfer was a breach of Husband’s fiduciary obligation to his Wife and an abuse of his power of management and control. (*Id.* at p. 416.) The obligation was Husband’s alone.

On review, the Court of Appeal noted from a creditor’s standpoint the community property was liable. However, the separate debts of one spouse may be excluded from the shared community obligations.

“Between the spouses, certain obligations which are properly characterized as separate may be assigned to the responsible person if unpaid or reimbursement be ordered in favor of the community if the debt was paid from community assets.” (*Id.* at p. 417.)

The Court of Appeal examined the *Stitt* case, which applied the same rule of law. The Wife there incurred attorney’s fees due to her tortious or criminal conduct. Here, although no tort occurred, Husband paid off his premarital debt without Wife’s knowledge or consent. The same equitable principles applied due to Husband’s mismanagement of the community. (*Id.* at p 416-417.) It was questionable if the note was even collectible because of inadequate consideration for the sale of the property. Husband had produced no documentary evidence of the expenditures, no receipts, canceled checks or promissory notes. The statute of limitations defense may have also been available to Wife. (*Id.* at p. 418.)

1. ***In re Marriage of Czapar*** [Husband mismanaged when he put his girlfriend on the payroll and bought a new car]

In *In re Marriage of Cazpar* (1991) 232 Cal.App.3d 1308, Husband had post-separation control a community property manufacturing company. The trial court found the company paid for many of Husband’s personal expenses including meals, personal estate planning and accounting services, personal insurance premiums and other entertainment items. (*Id* at p. 1317.) Company expenses included a Porsche for Husband, a donation to Husband’s alma mater, and monies paid to Husband’s girlfriend in her role as a marketing director for the company. (*Id.* at pp. 1317-1318.) Husband’s girlfriend had no prior experience, possessed a home economics degree, and her efforts lead to virtually no sales. The court found that a manager would not have hired or paid for the girlfriend in a “non-amorous relationship.” (*Id.* at p. 1318.) Husband was ordered to pay Wife $27,494, which was half the amount the company improperly spent. (*Id.* at p. 1317.)

Husband appealed and argued the car, charitable contribution, and his girlfriend’s services were all legitimate expenses. (*Id.* at p. 1317.) The Court of Appeal affirmed. Reimbursement of the community was allowed where a spouse abused his or her management and control. Substantial evidence existed to support the trial court’s findings Husband mismanaged the community. The gift to the alma matter was personal property gifted without Wife’s consent. Husband already had a company car before the company bought him a Porsche. Finally, the payment to Husband’s girlfriend was improper. (*Id.* at p. 1318.)

1. **Liability Upon Debt Assignment**
   1. **Family Code section 916**

**§ 916. Division of property; subsequent liability; right of reimbursement, interest and attorney's fees**

(a) Notwithstanding any other provision of this chapter, after division of community and quasi-community property pursuant to Division 7 (commencing with Section 2500):

(1) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person before or during marriage and the person is personally liable for the debt, whether or not the debt was assigned for payment by the person's spouse in the division.

(2) The separate property owned by a married person at the time of the division and the property received by the person in the division is not liable for a debt incurred by the person's spouse before or during marriage, and the person is not personally liable for the debt, unless the debt was assigned for payment by the person in the division of the property. Nothing in this paragraph affects the liability of property for the satisfaction of a lien on the property.

(3) The separate property owned by a married person at the time of the division and the property received by the person in the division is liable for a debt incurred by the person's spouse before or during marriage, and the person is personally liable for the debt, if the debt was assigned for payment by the person in the division of the property. If a money judgment for the debt is entered after the division, the property is not subject to enforcement of the judgment and the judgment may not be enforced against the married person, unless the person is made a party to the judgment for the purpose of this paragraph.

(b) If property of a married person is applied to the satisfaction of a money judgment pursuant to subdivision (a) for a debt incurred by the person that is assigned for payment by the person's spouse, the person has a right of reimbursement from the person's spouse to the extent of the property applied, with interest at the legal rate, and may recover reasonable attorney's fees incurred in enforcing the right of reimbursement.