CA Probate Code 240 & 246 Memo

<u>CA Probate Code 240</u>

1) Applies to Per Capita
2) The property shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then living, each living member of the nearest generation of issue then living receiving one share and the share of each deceased member of that generation who leaves issue then living being divided in the same manner among his or her then living issue.
3) In layman terms – the assets are divided in equal shares to the heirs who are living at the death of the testator.
4) Ex) A has 3 children: B, C, and D. A decides to leave her estate "to her descendants, per capita." B, C, and D all survive A.
   a) B, C, and D would each inherit ⅓ of A's estate
5) Ex) A has 3 children: B, C, and D. A has 2 grandchildren: E and F. A decides to leave her estate "to her descendants, per capita." B, C, D, E, and F all survive A.
   a) B, C, D, E, and F would each inherit ⅕ of A's estate

<u>CA Probate Code 246</u>

1) Applies to the Right of Representation
2) 246(a) – Where a will, trust, or other instrument calls for property to be distributed or taken "in the manner provided in Section 246 of the Probate Code," the property to be distributed shall be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave issue then living. Each living child of the designated ancestor is allocated one share, and the share of each deceased child who leaves issue then living is divided in the same manner.
3) Ex) A has 3 children: B, C, and D. A decides to leave her estate "to her descendants, by right of representation." B, C, and D all survive A.
   a) B, C, and D would each inherit ⅓ of A's estate
4) Ex) A has 3 children: B, C, and D. A decides to leave her estate "to her descendants, by right of representation." Only B and C survive A. D does not survive A, and also has no living issue.
   a) B and C would each inherit ½ of A's estate
5) Ex) A has 3 children: B, C, and D. A decides to leave her estate "to her descendants, by right of representation." Only B and C survive A. D does not survive A, but he has two children (E and F) who survive A.
   a) B would inherit ⅓ of A's estate
   b) C would inherit ⅓ of A's estate

c) E and F would each inherit ⅙ of A's estate (splitting D's original ⅓ share)