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Domestic Relations

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Domestic Relations

Domestic Relations; liability of marital property for debts

Civil Code §§199, 5116, 5120, 5121, 5123, 5127.5, 5127.6 (repealed); §§5120.010, 5120.020, 5120.030, 5120.040, 5120.110, 5120.120, 5120.130, 5120.140, 5120.150, 5120.160, 5120.210, 5120.310, 5120.320, 5120.330, 5121 (new); §§4452, 5122, 5132 (amended); Civil Procedure Code §706.109 (new).
AB 1460 (McAlister); 1984 STAT. Ch 1671

Under California community property law, a creditor may reach the community¹ and separate property² of the debtor spouse since each spouse has equal management and control of the community property.³ This general rule, subject to certain exceptions found in existing law, is expanded by Chapter 1671.⁴ Chapter 1671 was enacted in order to clarify and modify the laws governing the liability of marital property for debts.⁵

Liability of Community Property

Prior law implied that community property assets were liable only for the debts⁶ of the spouse having management and control.⁷ Chapter 1671 negates this implication and clarifies that the community is liable for all debts of either spouse, which are created before dissolution of the marriage, absent express statutory exception.⁸ Thus, under Chapter 1671, community property managed and controlled by one

1. CAL. CIV. CODE §§687, 5110, 5120.010 (defining community property).

2. *Id.* §§5107, 5108 (definition of separate property).

3. California Law Revision Commission, *Recommendation Relating to Liability of Marital Property for Debts*, 17 CAL. L. REVISION COMM'N REPORT 1, 10 (1983) [hereinafter referred to as *Recommendation*].

4. See Reppy, *Debt Collection from Married Californians: Problems Caused by Transmutations, Single Spouse Management, and Invalid Marriage*, 18 SAN DIEGO L. REV. 143, 168-70 (1981) (discussion of the California managerial system); *Recommendation*, *supra* note 3, at 10.

5. See *Recommendation*, *supra* note 3, at 10.

6. CAL. CIV. CODE §5120.030 (definition of debt).

7. 1974 Cal. Stat. c. 1206, §1, at 2609 (amending CAL. CIV. CODE §§5116, 5125, 5127).

8. CAL. CIV. CODE §5120.110(a); *Recommendation*, *supra* note 3, at 43, see CAL. CIV. CODE §5120.110(b) (statutory exception from liability of community property for premarital debts).

spouse,⁹ a one spouse bank account,¹⁰ or a conservatorship¹¹ is liable for the debts of either spouse.¹²

Prenuptial Debts

Prior law provided that debts contracted before marriage could not be satisfied by the non-debtor spouse's earnings after marriage.¹³ The implication, however, was that debts incurred through tort liability and other noncontractual prenuptial debts could be satisfied out of the earnings of the nondebtor spouse after marriage.¹⁴ Chapter 1671 negates this implication by extending the exemption of a spouse's post marriage earnings from liability for any debts incurred¹⁵ before marriage.¹⁶

Liability for Support Obligations

The extent to which marital property of a second marriage could be used to satisfy a child support obligation of a prior marriage was unclear under prior law.¹⁷ After the dissolution of marriage, a child support obligation could be satisfied only from the total earnings, or assets acquired therefrom, of each spouse.¹⁸ Chapter 1671 clarifies that a support obligation that arises before marriage is a prenuptial debt for the purposes of liability of marital property.¹⁹ Under Chapter 1671, the separate property of the obligated spouse and the community

9. CAL. CIV. CODE §5125(d) (provisions for the management and control of community property by one spouse).

10. CAL. FIN. CODE §851 (provisions for a one spouse bank account).

11. *Id.* §8225 (provisions relating to the power and authority of a conservator).

12. CAL. CIV. CODE §5120.110(a); *Recommendation*, *supra* note 4, at 33 (explanation of how Chapter 1671 clarifies that these forms of community property under one spouse management and control are liable for the debts of both spouses).

13. 1973 Cal. Stat. c. 987, §9, at 19800 (amending CAL. CIV. CODE §5120).

14. *Recommendation*, *supra* note 4, at 17-18.

15. CAL. CIV. CODE §5120.040 (definition of debts incurred).

16. *Id.* §5120.110. *see* CAL. CIV. PROC. CODE §706.109 (an earnings withholding order may not be issued against the earnings of the spouse of a judgment debtor except upon court order). Chapter 1460 codifies the rule in *Pfunder v. Goodwin*, 83 Cal. App. 551, 554, 257 P. 119, 120 (1927), establishing that earnings may not be traced through changes in form. CAL. CIV. CODE §5120.110(b). *See* CAL. CIV. PROC. CODE §703.080 (earnings may be traced only in the same manner as funds exempt from enforcement of judgment).

17. *Recommendation*, *supra* note 4, at 18.

18. 1979 Cal. Stat. c. 1030, §1, at 3547 (amending CAL. CIV. CODE §19). *But see* CAL. CIV. CODE §4807; 1971 Cal. Stat. c. 578, §8.6, at 1137 (adding CAL. CIV. CODE §5127.5); 1979 Cal. Stat. c. 1170, §2, at 4561 (adding CAL. CIV. CODE §5127.6) (appearing to create exceptions to Civil Code section 199 by subjecting community property to a child support obligation in certain factual situations).

19. CAL. CIV. CODE §5120.150.

property can be used to satisfy the support obligation, exempting, however, earnings of the nonobligated spouse.²⁰

Chapter 1671 codified the rule in *Weinberg v. Weinberg*,²¹ providing that when community property assets are applied to a premarital support obligation of one of the spouses, the community property is entitled to reimbursement to the extent that the amount of community property used is disproportionate to the amount of separate property of the obligated spouse that is available but not used to satisfy the obligation.²² Chapter 1671 also codifies existing case law²³ by providing that, despite the general rule that earnings of the nonobligated spouse cannot be employed to satisfy the support obligation, the earnings may be taken into consideration by the court in settling the amount of the support obligation.²⁴

Division of Property

Existing law provides that upon legal separation or dissolution of marriage, the community property, quasi-community property, and debts are to be divided between the spouses.²⁵ Under prior law, the court had the discretion to apportion community liabilities equitably if they exceeded the community assets.²⁶ Chapter 1671, however, revises prior law by specifying that upon division of the community property, community debts must be divided so that the totals of the assets after deduction of the obligations are equal.²⁷

Liability of Quasi-Community Property

Prior law specifying property liable for debts incurred by one or both spouses referred only to community and separate property and not to quasi-community property.²⁸ Thus, under prior law, liability of quasi-community property for debts was governed by the rules that

20. *Id.*; *id.* §5120.110 (liability of community property).

21. 67 Cal. 2d 557, 432 P.2d 709, 63 Cal. Rptr. 13 (1967).

22. CAL. CIV. CODE §5120.150(b).

23. *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 178 Cal. Rptr. 477 (1981).

24. CAL. CIV. CODE §5120.150(c).

25. *Id.* §4800.

26. *In re Marriage of Eastis*, 47 Cal. App. 3d 459, 464, 120 Cal. Rptr. 861, 864 (1975) (unequal division in bankrupt family situation).

27. CAL. CIV. CODE §4800(4); *see also In re Marriage of Fonstein*, 17 Cal. 3d 738, 748-49, 552 P.2d 1169, 1175-77, 131 Cal. Rptr. 873, 879-80 (1976) (unequal division required).

28. 1973 Cal. Stat. c. 987 §§9, at 1900 (amending CAL. CIV. CODE §5120), 12, at 1900 (amending CAL. CIV. CODE §5123); 1982 Cal. Stat. c. 497, §22, at 2149 (amending CAL. CIV. CODE §5121). *But see* 1973 Cal. Stat. c. 987, §17, at 1902 (amending CAL. CIV. CODE §5132 (support obligation)); CAL. CIV. CODE §4803 (definition of quasi-community property).

applied to separate property.²⁹ Chapter 1671, however, provides that quasi-community property is treated like community property for the purpose of liability for debts,³⁰ and can be used to satisfy the claims of creditors to the same extent as community property.³¹

Liability for Necessities

Under prior law, the separate property of a spouse could not be used to satisfy the debts of the other spouse except if the separate property were required for necessities of life contracted by either spouse while living together.³² Under Chapter 1671, however, the implication that the necessities must have been contracted³³ for is eliminated and a spouse's separate property is liable for all debts incurred in the pursuit or purchase of necessities.³⁴

Existing law provides that a spouse is not liable for the support of the other spouse after a separation by agreement unless the support is stipulated in the separation agreement.³⁵ With the enactment of Chapter 1671, a married person's separate property may be applied to satisfy, subject to reimbursement, the debts arising out of the common necessities³⁶ of life while the spouses are living separately, unless the spouses are living apart with an agreement for support.³⁷

Liability after Division of Property

Prior to the enactment of Chapter 1671, case law held that a creditor could seek enforcement of a money judgment against the former community property of a nondebtor spouse after dissolution of marriage.³⁸ Chapter 1671 nullifies this case law by providing that after

29. *Recommendation*, *supra* note 4, at 22.

30. CAL. CIV. CODE §5120.020; *Recommendation*, *supra* note 4, at 12-13. A court that has personal jurisdiction of the parties can make appropriate orders for conveyance of the property to satisfy claims of creditors. CAL. CIV. PROC. CODE §708.205.

31. CAL. CIV. CODE §5120.120. This rule is consistent with the public policy of California that the marital unit share its assets and its liabilities. *Recommendation*, *supra* note 4, at 12.

32. 1982 Cal. Stat. c. 497, §22, at 2149 (amending CAL. CIV. CODE §5121).

33. *See, e.g.*, Credit Bureau of San Diego v. Johnson, 61 Cal. App. 2d 834, 336-37, 142 P.2d. 963, 964-65 (1943) (medical care not contracted for by either spouse).

34. CAL. CIV. CODE §5120.140(a).

35. *Id.* §5131.

36. Ratzlaff v. Portillo, 14 Cal. App. 3d 1013, 1015, 92 Cal. Rptr. 722, 723 (1971) (a common necessity is necessary to sustain life). *Cf.* CAL. CIV. PROC. CODE §706.051 (common necessities exception to wage exemption).

37. CAL. CIV. CODE §5120.140(a)(2). If, pursuant to this section, the separate property of a married person is applied to the satisfaction of a debt of the other spouse at a time when the nonexempt community property or separate property of the other spouse is available but not applied to satisfy the debt, the married person is entitled to reimbursement to the extent the property was available in accordance with Civil Code section 5120.210. *Id.* §5120.140(b).

38. *See, e.g.*, Bank of America N.T. & S.A. v. Mantz, 4 Cal. 2d 322, 323-29, 49 P.2d

division of community property, a person's separate and apportioned share of community property cannot be used to satisfy a debt of the former spouse unless the debt were assigned for payment by that person in the division of the property.³⁹ If a judgment on the debt is entered after division of the property and the debts, the judgment is not enforceable against the nondebtor spouse to whom the debt is assigned unless the nondebtor spouse is made a party to the action.⁴⁰ In addition, Chapter 1671 expressly allows a nondebtor spouse who has satisfied a money judgment for a debt assigned to the person's spouse, a right of reimbursement with interest and a right to recover reasonable attorney's fees incurred in enforcing that right.⁴¹

Reimbursement

California case law relating to reimbursement for the payment of a spouse's debts has been criticized by commentators as being inconsistent and uncertain.⁴² Prior law permitted a right of reimbursement when community property was used to satisfy a spouse's separate debt only when the expenditure (1) benefited the separate property of the debtor spouse, (2) was for a prenuptial child or spousal support obligation, or (3) was made within a short period of time before dissolution.⁴³ Chapter 1671 provides that the rights of reimbursement⁴⁴ arise regardless of (1) which spouse applies the property to the satisfaction of the debt, (2) whether the property is applied to the satisfaction of the debt voluntarily or involuntary, and (3) whether the debt to which the property is applied is satisfied in whole or part.⁴⁵

In contrast to prior case law rulings,⁴⁶ Chapter 1671 strictly limits

279, 279-282 (1935) (creditor enforcing money judgment against the former community property of the nonobligor spouse).

39. CAL. CIV. CODE §5120.160.

40. *Id.* This preserves the due process rights of the nondebtor spouse by providing the nondebtor spouse with the opportunity to contest the validity of the debt, raise defenses, and take other necessary action. *Recommendation, supra* note 4, at 24. CAL. CIV. CODE §5120.160(a)(2) does not affect the enforcement of liens on the property. *Recommendation, supra* note 4, at 38.

41. CAL. CIV. CODE §5120.160(b). *See also id.* §5120.210 (general provisions governing reimbursement).

42. *Recommendation, supra* note 4, at 15.

43. *Id.*

44. *See* CAL. CIV. CODE §§5120.140 (reimbursement for necessities), 5120.150 (reimbursement for support), 5120.160 (reimbursement after division).

45. *Id.* §5120.210(a). The right is subject, however, to an express waiver of the right by the spouse in whose favor the right arises. *Id. Cf. In re Marriage of Smaltz*, 82 Cal. App. 3d 568, 570-572, 147 Cal. Rptr. 154, 154-56 (1978) (no right of reimbursement when the community property is available to make payments and no separate property is available to make payments).

46. *Weinberg v. Weinberg*, 67 Cal. 2d 557, 563-64, 432 P.2d 709, 716-17, 63 Cal. Rptr.

reimbursement rights to a three year enforceability period, or less if dissolution in proceedings for division of community property or quasi-community property occurs within the three year period.⁴⁷

Existing law prescribes an order to satisfy a debt against community and separate property in a tort judgment, and requires a determination that the tort judgment arose out of an activity that benefited the community.⁴⁸ If the liability of the married person is based upon an act or omission that occurred during the performance of an activity benefiting the community, the judgment must be satisfied first out of the community property and then out of the separate property of the tortfeasor.⁴⁹ If the liability of the married person is based upon an act or omission which occurred during the performance of an activity that did *not* benefit the community then the judgment must be satisfied first out of the separate property of the tortfeasor and then out of the community property.⁵⁰

Chapter 1671 provides that the liability of a married person for death or injury is applicable only to the extent such liability is not satisfied out of insurance proceeds.⁵¹ Furthermore, Chapter 1671 prohibits the right to reimbursement for the payment of a debt arising out of a tort judgment from community property after seven years from the time the spouse in whose favor the right arises has actual knowledge of the application of the property to the satisfaction of the debt.⁵²

Liability After Judgment of Nullity

Under prior law, the rules relating to creditor's rights against the property of former spouses whose marriage had been annulled as void or voidable was unclear.⁵³ Chapter 1671 clarifies the law regarding

13, 20-21 (1967) (community property applied to support payments entitled to reimbursement at dissolution); *In re Marriage of Walter*, 57 Cal. App. 3d 802, 806-07, 129 Cal. Rptr. 351, 353 (1976) (community property applied to separate tax and mortgage debts entitled to reimbursement at dissolution).

47. CAL. CIV. CODE §5120.210(c).

48. *Id.* §5122(b).

49. *Id.* §5122(b)(1).

50. *Id.* §5122(b)(2).

51. *Id.* §5122(c).

52. *Id.* Chapter 1671 is operative as of January 1, 1985. *Id.* §5120.310. The provisions of Chapter 1671 govern the liability of separate and community property for a debt enforced on or after the operative date. *Id.* §5120.320(a). Any reimbursement right provided by Chapter 1671 that must be exercised within the three year period provided by section 5120.210(c)(1) of the Civil Code, but expire before, on, or within one year after the operative date of Chapter 1671 pursuant to section 5120.210(c)(1) of the Civil Code is extended one year after the operative date of Chapter 1671. *Id.* §5120.330.

53. 1970 Cal. Stat. c. 962, §2, at 1725 (amending CAL. CIV. CODE §4452); Reppy, *supra* note 4, 213-18; *Recommendation*, *supra* note 3, 24.

quasi-marital⁵⁴ property by providing that the property be treated the same as community property for the purpose of creditor's remedies.⁵⁵

54. CAL. CIV. CODE §4452 (definition of quasi-marital property).

55. *Id.*; see also *id.* §5120.160 (liability of property after division).

Domestic Relations; community property—education

Civil Code §4800.3 (new); §§4800, 4801 (amended).

AB 3000 (Harris); 1984 STAT. Ch 1661

In judgments of dissolution of marriage¹ or legal separation,² existing law requires a court, with certain specified exceptions,³ to divide equally the community property⁴ and quasi-community property⁵ of the parties.⁶ For purposes of division, the court determines the value of the assets and liabilities of the parties.⁷ Existing law requires that educational loans, however, are not divided, but rather are assigned to the spouse receiving the education in the absence of extraordinary circumstances rendering the assignment unjust.⁸

Chapter 1661 requires the community to be reimbursed⁹ for any community contribution to the education¹⁰ of one party that increases the earning capacity of that party.¹¹ The reimbursement required by

1. CAL. CIV. CODE §4350 (definition of dissolution of marriage).

2. See *id.* §4506 (grounds for legal separation).

3. See *id.* §4800(b) (circumstances excusing equal division).

4. *Id.* §687 (definition of community property).

5. *Id.* §4803 (definition of quasi-community property).

6. *Id.* §4800(a). In a vacated opinion by the Court of Appeals, *In re Marriage of Sullivan*, the court held that education acquired during marriage is neither community nor separate property because education does not have the attributes of property in that education is susceptible to ownership in common, transfer, or survival. 134 Cal. App. 3d 634, 641-42, 184 Cal. Rptr. 796, 800, *rehg. granted* Oct. 28, 1982.

7. CAL. CIV. CODE §4800(a).

8. 1978 Cal. Stat. c. 1323, §2, at 4324 (amending CAL. CIV. CODE §4800).

9. The amount to be reimbursed is calculated with interest at the legal rate, accruing from the end of the calendar year in which the contributions were made. CAL. CIV. CODE §4800.3(b)(1).

10. Community contributions to education are payments made with community property for education or training or for the repayment of a loan incurred for education or training. *Id.* §4800.3(a).

11. *Id.* §4800.3(b)(1). Chapter 1661 is enacted, however, subject to an express written agreement to the contrary. *Id.* §4800.3(e). Moreover, Chapter 1661 applies to all proceedings where the divisions of property are not yet finalized by January 1, 1985. 1984 Cal. Stat. c. 1661, §4, at ____ (enacting CAL. CIV. CODE §4800.3).

Chapter 1661 can be reduced or modified by the court to the extent that existing circumstances render the division unjust.¹² Specific examples of applicable circumstances include, but are not limited to, instances when (1) the community has benefited from the education, training, or loan incurred;¹³ (2) the education received by the party is offset by the education received by the other party for which the community contributions have been made;¹⁴ or (3) the education enables the party receiving the education to engage in gainful employment that substantially reduced the need of the party for support that otherwise would be required.¹⁵ Reimbursement for community contributions and assignment of loans under Chapter 1661 is the exclusive remedy of the community.¹⁶ Chapter 1661 establishes a rebuttable presumption that a community has not benefited substantially from the education of one party less than ten years before commencement of the proceeding,¹⁷ and that the community has benefited from community contributions made more than ten years before commencement.¹⁸

12. CAL. CIV. CODE §4800.3(c).

13. *Id.* §4800.3(c)(1).

14. *Id.* §4800.3(c)(2).

15. *Id.* §4800.3(c)(3).

16. *Id.* §4800.3(d).

17. *Id.* §4800.3(c)(1).

18. *Id.*

Domestic Relations; community property

Civil Code §§5110.710, 5110.720, 5110.730, 5110.740 (new).
AB 2274 (McAlister); 1984 STAT. CH 1733

California case law has recognized a spouse's ability to change the character of property from separate¹ to community² and from community to separate by oral agreement or as implied by conduct.³ Chapter 1733 codifies⁴ this case law and further provides that separate

1. CAL. CIV. CODE §§5107 (definition of wife's separate property), 5108 (definition of husband's separate property). *See also* CAL. CONST. art. I, §21 (definition of separate property).

2. CAL. CIV. CODE §687 (definition of community property).

3. *See Woods v. Security First National Bank*, 46 Cal. 2d 697, 701, 299 P.2d 657, 659 (1956).

4. Chapter 1733 only applies to property transmuted after January 1, 1985. CAL. CIV.

property of one spouse may be transmuted to separate property of the other spouse.⁵ Chapter 1733 restricts the manner in which a transmutation may take place by providing that a transmutation is not valid unless it is made in writing and is expressly joined in, consented to, or accepted by the spouse whose interest is adversely affected.⁶ In addition, Chapter 1733 states that absent recordation or notice, a transmutation is not effective as to third parties.⁷ Chapter 1733 does not apply to a gift⁸ that is used solely by one spouse and is not of substantial value.⁹

Chapter 1733 specifically provides that transmutations are subject to the laws governing fraudulent conveyances¹⁰ and the laws regulating the commingling of separate with community property.¹¹ Finally, Chapter 1733 specifies that a will may not be introduced prior to a spouse's death as evidence of a transmutation.¹²

CODE §5110.730(e). Prior transmutations follow *Woods*, 46 Cal. 2d at 701, 299 P.2d at 659.

5. CAL. CIV. CODE §5110.710(c).

6. *Id.* §5110.730(a).

7. *Id.* §5110.730(b). See also *id.* §1217 (validity of unrecorded instruments).

8. CAL. CIV. CODE §5110.730(c) (specifically defining gift as clothing, wearing apparel, jewelry, or other tangible articles).

9. *Id.* §5110.730(c).

10. *Id.* §5110.720. For laws governing fraudulent transfers, see *id.* §§3439-3442. A transfer is fraudulent as to creditors and may be avoided by them when there is no immediate delivery of the property followed by a continued change of possession. *Id.* §3440. See also *id.* §§1227, 1228 (transfers void except as to bona fide purchasers when made with the intent to defraud).

11. *Id.* §5110.730(d). Separate property commingled but ascertainable as separate property remains separate. See, e.g., *Miller v. Brode*, 186 Cal. 409, 413, 199 P. 531, 533 (1921). For presumptions when separate property is not ascertainable, see CAL. CIV. CODE §5110. See also 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §§33-39 (8th ed. 1974) (effect of commingling separate and community property).

12. CAL. CIV. CODE §5110.740. But see CAL. EVID. CODE §1330 (evidence of a statement in a will affecting a property interest is not inadmissible under certain conditions).

Domestic Relations; dissolution of marriage—juvenile courts

Welfare and Institutions Code §362.3 (new).

AB 3107 (Stirling); 1984 STAT. CH 813

Under existing law, in a proceeding for the nullification or dissolution of a marriage, the superior court may issue ex parte orders including, but not limited to, enjoining any party from contacting, physically abusing, or disturbing the peace of the other party or any other family or household members, excluding one party from the

home, and determining the temporary custody of any minor children.¹ When a minor child of parents, who are involved in a pending proceeding in superior court for the nullification or dissolution of their marriage, has been adjudged a dependent child² of the juvenile court in the same county, Chapter 813 authorizes the juvenile court to issue ex parte orders at the time the court terminates jurisdiction over the minor³ (1) enjoining either parent from contacting, physically abusing, or disturbing the peace of the other parent or any other family or household member;⁴ (2) excluding either parent from the family dwelling;⁵ or (3) determining the custody of or visitation with the child.⁶ Any order issued by the juvenile court under Chapter 813 is filed in the superior court and becomes part of the pending proceeding for nullity or dissolution of the marriage of the minor's parents.⁷ The order of the juvenile court is effective until modified or terminated by a subsequent order of the superior court.⁸

1. CAL. CIV. CODE §4359(a).

2. See CAL. WELF. & INST. CODE §300 (persons subject to the jurisdiction of the juvenile court).

3. CAL. WELF. & INST. CODE §362.3. See also *id.* §366.4(c) (grounds for termination of supervision by juvenile court).

4. See CAL. CIV. CODE §4359(a)(2) (conduct that may be enjoined by the court specified).

5. See *id.* §4359(a)(3) (superior court authorized to exclude one party to dissolution or nullification action from family dwelling).

6. CAL. WELF. & INST. CODE §362.3.

7. *Id.*

8. *Id.*

Domestic Relations; spousal support

Civil Code §4370 (amended).

AB 2458 (Waters); 1984 STAT. Ch 359

Existing case law permits, at the discretion of the court,¹ the award of attorney's fees in an action to enforce an existing spousal support order if (1) the requesting spouse shows a need for the award, and (2) the paying spouse has the ability to pay the fees.² Chapter 359 eliminates the requirement that the requesting spouse show need for

1. See *In re Marriage of Jacobs*, 128 Cal. App. 3d. 273, 288, 180 Cal. Rptr. 234, 242-43 (1982) (stating that an award of fees and costs are within the discretion of the trial court).

2. See *In re Marriage of Davis*, 141 Cal. App. 3d. 71, 78, 190 Cal. Rptr. 104, 109 (1983) (stating conditions that must be met for the requesting spouse to receive attorney's fees).

attorney's fees in an action to enforce an existing spousal support order.³ Under Chapter 359, the court must make an award of reasonable attorney's fees in any action to enforce an existing order for spousal support upon a finding that the defendant is able to pay, and absent good cause for denying attorney's fees.⁴

3. Compare CAL. CIV. CODE §4370(d) with 1981 Cal. Stat. c. 715, §1, at 2815 (amending CAL. CIV. CODE §4370).

4. *Id.* §4370(d). Existing law uses identical language in determining whether attorney's fees should be awarded in an action to enforce an existing child support order. *Id.* §4370(c).

Domestic Relations; child support

Civil Code §§4750, 4751 (new); Welfare and Institutions Code §§15200.1, 15200.2 (amended).
AB 3123 (Wright); 1984 STAT. Ch 1702

Existing law imposes an equal duty on divorced parents to contribute to the support of their child.¹ The court has authority to order either or both parents to pay any amount necessary for the support, maintenance and education of the child.² To assure that all children in the United States receive necessary assistance in securing financial support from their parents, the United States Congress has enacted the Child Support Enforcement Amendments of 1984 (hereinafter referred to as the Amendments).³ The Amendments require each state to adopt procedures to simplify the reporting and collection of past-due support payments.⁴ In compliance with the Amendments,⁵ the California Legislature has enacted Chapter 1702, the Child Support Delinquency Reporting Act of 1984.⁶

Chapter 1702 requires the State Department of Social Services to implement procedures⁷ for reporting delinquent child support payments⁸

1. CAL. CIV. CODE §§196, 242; see *In re Marriage of Havens*, 125 Cal. App. 3d 1012, 1014-15, 178 Cal. Rptr. 477, 478-79 (1981). CAL. CIV. CODE §241(d) (definition of child).

2. CAL. CIV. CODE §4700(a). Amounts to be awarded for care, support, and education of child are determined by the discretion of the court. See *In re Marriage of Muldrow*, 61 Cal. App. 3d 327, 332-33, 132 Cal. Rptr. 48, 51-52 (1976).

3. Pub. L. No. 98-378, 98 Stat. ____ (1984).

4. *Id.* §3, 98 Stat. ____ (1984) (enacting section 466(a)(7) of the Social Security Act, 42 U.S.C. §666(a)(7)).

5. See CAL. CIV. CODE §4751.

6. 1984 Cal. Stat. c. 1702, at ____ (enacting CAL. CIV. CODE §4750) (title of act).

7. CAL. CIV. CODE §4751.

8. *Id.* Only non-custodial parents who reside in California are subject to report. *Id.*

to consumer reporting agencies.⁹ If the amount of past-due support involved is less than \$1,000, the information regarding the amount will be released at the option of the Department of Social Services.¹⁰ Furthermore, before any information can be released, the delinquent parent must be notified and given reasonable opportunity to contest the accuracy of the information.¹¹

9. *Id.* The information is available to credit agencies upon request of the agencies. *Id.* 15 U.S.C. §1681a(f). Chapter 1702 defines "consumer reporting agency" according to 15 U.S.C. §1681a(f). CAL. CIV. CODE §4751.

10. CAL. CIV. CODE §4751(a).

11. *Id.* §4751(b). In addition, information can be released only after full compliance with all procedural due process requirements contained in the laws of California. *Id.*

Domestic Relations; restraining orders—custody

Civil Code §7020 (amended). Code of Civil Procedure
§547 (amended).

AB 3320 (Bates); 1984 STAT. CH 439

Under the Uniform Parentage Act,¹ a natural parent, who has care, custody, and control of a minor² child may seek a restraining order enjoining the minor's other natural parent from behavior determined by the court to be harmful³ to the child or custodial parent.⁴ Pending any final decision, the court may issue various ex parte orders under existing law.⁵ Under Chapter 439, the court may issue an ex parte order determining the temporary custody of any minor who is the subject of the proceeding and the conditions under which the non-custodial parent may visit the minor.⁶

Under existing law, during the pendency of the proceeding in which a restraining order is sought, an ex parte order may be issued excluding one party from the dwelling of the party who has care, custody, and control of a minor upon a showing that (1) the party to be excluded has assaulted or threatens to assault the other party or the minor, *and* (2) physical or emotional harm would otherwise result to the party

1. CAL. CIV. CODE §§7000-7021.

2. Minors are all persons under 18 years of age. *Id.* §25.

3. *Id.* §7020(a)(1)-(2) (harmful behavior specified).

4. *Id.* §7020(a).

5. *Id.* §7020(a)(1)-(3) (types of ex parte orders which the court may issue). *See also* CAL. CIV. PROC. CODE §§527, 547 (procedures for issuing restraining orders); CAL. CIV. CODE §4359 (ex parte orders directed to family and household members).

6. CAL. CIV. CODE §7020(a)(4).

or the minor.⁷ Under Chapter 439, upon notice and a hearing⁸ to determine whether an ex parte order should be issued, assault or threats of assault need not be shown for the court to issue an ex parte order excluding one party from the common dwelling of both parties or from the dwelling of the party who has care, custody, and control of the minor.⁹ The party seeking the order need only show that physical or emotional harm otherwise would result to the party or the minor.¹⁰

7. *Id.* §7020(a)(2).

8. *Id.* Any restraining order following notice and hearing is not to exceed one year, but the court has discretion to terminate or extend the order.

9. *Id.* See CAL. CIV. PROC. CODE §547(a) (conforming the procedure under the Domestic Violence Prevention Act with that followed under the Uniform Parentage Act). Any of the orders that may be issued ex parte during the pendency of the proceeding also may be issued following notice and a hearing. CAL. CIV. CODE §7020(b).

10. CAL. CIV. CODE §7020(b).

Domestic Relations; restraining orders—enforceability

Civil Code §4359 (amended).

AB 3291 (Calderon); 1984 STAT. CH 402

Existing law provides that a party to an action seeking to void¹ or dissolve² a marriage may request while the action is still pending that the court issue ex parte orders³ (1) restraining the disposition of property;⁴ (2) enjoining any party from contacting, molesting, or in any way disturbing the peace of the requesting party;⁵ (3) excluding one party from the family dwelling or dwelling of the requesting party;⁶ (4) determining temporary custody of minor children of the marriage;⁷ (5) determining the temporary use and possession of real and personal property as well as the responsibility for payment of liens or encumbrances coming due;⁸ and (6) enjoining any specified behavior the court determines necessary to effectuate the orders.⁹ Chapter 402 specifies that ex parte orders issued pursuant to the request of a party

1. CAL. CIV. CODE §§4400-4458 (provisions for voiding a marriage).

2. *Id.* §§4500-4556 (provisions for dissolution of a marriage).

3. *Id.* §4359(a).

4. *Id.* §4359(a)(1).

5. *Id.* §4359(a)(2).

6. *Id.* §4359(a)(3).

7. *Id.* §4359(a)(4).

8. *Id.* §4359(a)(5).

9. *Id.* §4359(a)(6).

involved in an action of annulment or dissolution are enforceable any place in the state¹⁰ and by any law enforcement agency in the state provided the agency has received a copy of the order, or the officer enforcing the order has been shown a copy of the order.¹¹ Chapter 402 requires that each order state on its face that the order is enforceable in any place in the state by the law enforcement agency or the officer.¹²

10. *Id.* §4359.

11. *Id.* §4359(b).

12. *Id.* §4359(c).

Domestic Relations; special appearances

Civil Code §4356 (added).

AB 2286 (McAlister); 1984 STAT. Ch 156

Under existing law, a party may challenge the jurisdiction of the court by filing a motion to quash summons¹ or a motion to stay or to dismiss the proceeding on the grounds of inconvenient forum.² An appearance limited to this jurisdictional challenge is deemed a special rather than general appearance,³ and does not subject the party to the jurisdiction of the court.⁴

In an action under the Family Law Act,⁵ a petitioner may obtain pendente lite relief.⁶ Under prior law, a respondent's appearance at a hearing under the Family Law Act to *oppose* a motion for pendente lite relief was considered a general appearance and thereby prejudiced any challenge to the personal jurisdiction of the court.⁷ Chapter 156 permits a respondent in a family law proceeding to make a special appearance to oppose a motion for an order pendente lite during the

1. CAL. CIV. PROC. CODE §418.10(1).

2. *Id.* § 418.10(2).

3. *Id.* §1014 (definition of appearance). A general appearance of a defendant is equivalent to personal service of the summons and complaint. *Id.* §410.50.

4. *Id.* §418.10(d).

5. CAL. CIV. CODE §§4000-5174.

6. *Id.* §4357.

7. *Id.* CAL. CIV. PROC. CODE §418.10. See *Miller v. Miller*, 57 Cal. App. 2d 354, 359, 134 P.2d 292, 295 (1943); *Moore v. Superior Court of San Diego*, 8 Cal. App.3d 804, 808-09, 87 Cal. Rptr. 620, 623 (1970).

pendency of a motion to quash summons or a motion to stay or to dismiss for inconvenient forum.⁸

Under Chapter 156, a motion to quash summons or to stay or to dismiss for inconvenient forum is pending from the time notice of the motion is filed and served until the time in which the petition for a writ of mandate has expired, or, if a petition is made, until the time final judgment in the mandate proceeding is entered.⁹

8. CAL. CIV. CODE §4356. A motion under section 418.10 of the Code of Civil Procedure may be filed on or before the last day on which a response may be filed, or within the time as the court may allow for good cause. CAL. CIV. PROC. CODE §418.10(c).

9. CAL. CIV. CODE §4356(b). Petition for writ of mandate may be filed within 10 days after service of written notice of the courts denial of motion or within such time, not to exceed 20 days as the court will allow for good cause. CAL. CIV. PROC. CODE §418.10(c).

Domestic Relations; adoption information disclosure

Civil Code §230.7 (new); §§224t,* 224u,* 224v,* 227. *
AB 2493 (Campbell); 1984 STAT. Ch 288
SB 1531 (Watson); 1984 STAT. Ch 1049

In 1983 the California Legislature expressed concern that adoptees and birth parents may suffer emotional and physical illness resulting from the permanent severance of their relationship.¹ In response to this concern, the Legislature enacted the Adoption Information Act of 1983² which enables adoptees and birth parents to obtain information which facilitates the reestablishment of contact.³ Existing law requires a written report containing medical background on an adoptee and birth parents to be prepared at the time the child is placed for adoption.⁴ Under prior law, the report could be acquired by an adoptee upon reaching the age of twenty-one.⁵ Chapter 288 reduces

* CAL. CIV. CODE §§224t, 224u, 224v, and 227 shall be operative January 1, 1986. 1983 Cal. Stat. c. 1162, §10, at ____.

1. 1983 Cal. Stat. c. 1162, §2, at ____ (legislative concern).

2. *Id.* c. 1162, §1, at ____.

3. *Id.* c. 1162, §2, at ____ . Section 227 of the California Civil Code regulating the disclosure of names and addresses applies only to those adoptions in which the relinquishment for a consent to adoption was signed on or after January 1, 1984. CAL. CIV. CODE §227(b).

4. *Id.* §224s(a) (requirements for a written medical report).

5. 1983 Cal. Stat. c. 1162, §4, at ____ (enacting CAL. CIV. CODE §224t).

the age for acquisition of the medical report to eighteen.⁶

In order to facilitate reestablishment of contact between adoptees and birth parents,⁷ Chapter 288 requires any licensed agency⁸ responsible for adoptive placement or the State Department of Social Services (hereinafter referred to as Department) to send written notice encouraging birth parents to maintain a record of current address with the agency or Department.⁹ Under existing law the Department also must present to the birth parents¹⁰ and adoptive parents¹¹ a statement which assures the birth parents of the integrity of the adoption process.¹² Prior law required that the statement be presented to the adoptive parents when the relinquishment or consent to adoption was signed.¹³ Under Chapter 288, the statement is presented to the adoptive parents at the time of the home study.¹⁴

Chapter 1049 provides adoptees and birth parents access to information by establishing a procedure whereby letters, photographs, and meaningful personal property¹⁵ may be deposited with the State Department of Social Services or any licensed adoption agency for distribution to adoptees, adoptive parents and birth parents.¹⁶ The deposit must be accompanied by a signed release form specifying to whom the material may be released.¹⁷ Chapter 1049 requires the material to be released upon the written request of (1) an adoptee who has reached the age of eighteen,¹⁸ (2) the adoptive parents of an adoptee under the age of eighteen,¹⁹ or (3) the birth parents.²⁰ All identifying names and addresses must be deleted from the material before delivery.²¹

6. Compare CAL. CIV. CODE §224t with 1983 Cal. Stat. c. 1162, §4, at ____ (enacting CAL. CIV. CODE §224t).

7. 1983 Cal. Stat. c. 1162, §2, at ____ (legislative intent).

8. CAL. HEALTH & SAFETY CODE §1508 (licensing provisions).

9. CAL. CIV. CODE §224u (specifying which agency or department must send the notice under particular adoptive circumstances).

10. *Id.* §224v(a). The statement is presented to the birth parents at the time they sign the consent to adoption. *Id.*; see *id.* §226.1 (requirements for signing consent).

11. *Id.* §224v(a).

12. *Id.*

13. 1983 Cal. Stat. c. 1162, §3, at ____ (enacting CAL. CIV. CODE §224(v)(a)).

14. CAL. CIV. CODE §224(v)(a). *Id.* §226.2 (definition of home study).

15. *Id.* §270(c) (limitation on items of personal property).

16. *Id.* §230.7.

17. *Id.*

18. *Id.* §230.7(a).

19. *Id.* §230.7(b) (as long as instructions to the contrary have not been made by the depositor).

20. *Id.* §230.7. *Id.* §230.7(c) (allowing access to birth parents).

21. *Id.* §230.7.

Domestic Relations; adoptee's access to information

Civil Code §1798.24 (amended).

SB 1232 (McCorquodale); 1984 STAT. Ch 724

Under the Information Practices Act of 1977,¹ no state agency may disclose personal² or confidential³ information unless specified circumstances are present.⁴ One exception under existing law permits adoptees to obtain general background information on their parents, although the identity of the parents cannot be revealed.⁵

Chapter 724 specifically allows a child or grandchild of an adoptee to receive medically necessary information about the adoptee's natural parents.⁶ This information must not include or reveal the identity of the adoptee's natural parents.⁷ In addition, Chapter 724 declares that an agency may delete any confidential information from a disclosure of personal information to the individual to whom the information pertains.⁸

1. CAL. CIV. CODE §§1798-1798.70.

2. Personal information means any information in any record about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical or employment history. *Id.* §1798.3(b).

3. *Id.* §1798.3(a) (confidential information).

4. *Id.* §1798.24.

5. *Id.* §1798.24(r).

6. *Id.* §1798.24(s).

7. *Id.* The Department of Social Services must adopt regulations regarding the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services required of the Department of Social Services under this subdivision. *Id.*

8. *Id.* §1798.24. *See also id.* §1798.42 (deletions from disclosures of personal information).

Domestic Relations; child support

Civil Code §§4700, 4722, 4723, 4724, 4725, 4726, 4727, 4728, 4729, 4730, 4731, 4732 (new); §242, 4600.2 (amended).

AB 1527 (Agnos); 1984 STAT. Ch 1605

Existing law imposes a duty upon parents to support their children.¹

1. CAL. CIV. CODE §§241(d), 242 (definition of child). The duty to support is not limited to necessities, but also includes maintenance in accordance with the child's customary mode

In a court proceeding when the support of a minor child is at issue, the court may order one or both parents to pay any amount necessary for the support, maintenance and education of the child.²

Under prior law, California lacked a single standard to promote equitable and adequate child support awards.³ Chapter 1605 establishes a system of standards and procedures that provide for uniform determinations of support awards.⁴ Chapter 1605 provides that, dependent on the financial ability of each parent, no child support award will be less than otherwise would be provided to that child under the State Aid to Families with Dependent Children program (hereinafter referred to as AFDC).⁵

Under Chapter 1605, the ability to pay the minimum level of child support is determined by a formula based on combined net disposable income⁶ and the number of dependent children.⁷ The ability to pay, as determined by the formula, then is compared with the minimum basic standards of adequate care of dependent children established by the AFDC.⁸ The lower of the two figures is the minimum award level of child support.⁹

Chapter 1605 only establishes the *minimum* level of child support.¹⁰ Upon request of either party, the court may award a higher amount than the mandatory minimum, guided by relevant case law statutes, and local guidelines not in conflict with Chapter 1605.¹¹ In the event that a parent is experiencing extreme financial hardship,¹² the court may permit necessary deductions to accomodate those circumstances.¹³ The court may not order a child support order that would reduce

of living. *Smith v. Workmen's Compensation Appeals Board*, 245 Cal. App. 2d 292, 297, 53 Cal. Rptr. 816, 820 (1966).

2. CAL. CIV. CODE §4700(a).

3. *Id.* §4720(a). The former method of awarding child support has led to substantial variations in awards among families with similar financial conditions. *Id.* §4720(b). Inadequacies of child support awards ultimately may be borne by the state. *Id.* §4720(c). The state program most likely to be affected by inadequacies of child support is the Aid to Families with Dependent Children. *Id.* §4720(d). See CAL. WELF. & INST. CODE §§11452 (minimum basic standard of adequate care), 11453 (annual adjustments).

4. CAL. CIV. CODE §4720(d).

5. *Id.* §§4720(d), 4722(c); see CAL. WELF. & INST. CODE §§11452 (minimum basic standard of adequate care), 11453 (annual adjustments).

6. See CAL. CIV. CODE §4721 (computation of net income).

7. *Id.* §4722(d)(1).

8. *Id.* §4722; see also CAL. WELF. & INST. CODE §§11450, 11452, 11453.

9. CAL. CIV. CODE §4722(b)(3).

10. *Id.* §4720(d). Other expenses, such as special medical, dental, and educational costs, are to be considered by the court in making supplemental awards. *Id.* §4723.

11. *Id.* §4724(b).

12. See *id.* §4725(a). Circumstances evidencing hardship include health expenses, uninsured catastrophic losses, and living expenses of dependent children from other marriages and relationships. *Id.*

13. *Id.* §4725(e).

a parent's net income to an amount less than the minimum basic standard of adequate care for one person.¹⁴

Although Chapter 1605 must not be construed to prevent the parties from entering into stipulated agreements, the agreements are subject to court approval.¹⁵ Finally, Chapter 1605 applies to all applications for modification of existing child support orders as well as initial orders.¹⁶

14. *Id.*

15. *Id.* §4728. The following conditions must be met: (1) the parties acknowledge that they are informed of their rights and are not acting under coercion or duress, (2) the parties declare that their children's needs will be adequately met, (3) the parents have not assigned to the county the right to support, and (4) no public assistance application is pending. *Id.*

16. *Id.* §4729; see *Review of Selected 1983 California Legislation*, 15 PAC. L.J. 614 (1984) (modification of child support award procedure).

Domestic Relations; parent and child

Civil Code §237.7, Code of Civil Procedure §45 (new).
SB 1912 (Watson); 1984 STAT. Ch 605

Existing law specifies the grounds and procedure by which a minor may be declared free from parental custody and control.¹ Existing law also provides counsel for indigent parents during the initial proceeding² unless the representation is knowingly and intelligently waived.³ Chapter 605 expands existing law by stating that upon appeal from a judgment freeing a child, the appellate court must appoint counsel for an indigent appellant.⁴ Chapter 605 also permits the indigent appellant's counsel to be provided with a free copy of the reporter's and clerk's transcript.⁵

Additionally, Chapter 605 provides that an appeal from a judgment freeing a child from parental custody and control has precedence over

1. CAL. CIV. CODE §§232-239 (effectively making the minor a dependent child of the juvenile court and subject to adoption).

2. *Id.* §237.5.

3. *Id.*

4. Compare with *id.* §237.7. See also *In re Jacqueline H.*, 21 Cal. 3d 170, 177, 577 P.2d 683, 687, 145 Cal. Rptr. 548, 552 (1978) ("[T]he Legislature could not have intended to withhold from an indigent parent the right to an effective appeal, and, therefore the services of appellate counsel in section 232 proceedings.").

5. CAL. CIV. CODE §237.7.

all cases in the particular appellate court.⁶ Chapter 605 allows an extension of time to court reporters and to counsel only upon an exceptional showing of good cause⁷ so as to encourage quick adoptions and minimize the anxiety to all parties.⁸

6. CAL. CIV. PROC. CODE §45.

7. *Id.*

8. *Id.*