January 1980

Survey: Women and California Law

Carole Levine
SURVEY: WOMEN AND CALIFORNIA LAW

by Carole Levine*

This survey of California case law and legislation is a regular feature of the Women’s Law Forum. The purpose of the Survey is to summarize all California Supreme Court cases, courts of appeal cases, and legislation enacted in the past year that is of special importance to women. The focus of the Survey is on presenting issues most pertinent to women, rather than on analyzing all issues raised in each case or bill.

The survey period for cases in this issue is from June 1979 through February 1980. Summaries of significant legislation enacted from October 1, 1978 to September 30, 1979 are also included. We wish to thank the editors of California Women, a Bulletin published by the California Commission on the Status of women, for permission to reprint portions of their review of California legislation.

TABLE OF CONTENTS

I. Criminal Law
   A. Rape and Other Sex Offenses
      1. Commitment Procedures for Mentally Disordered Sex Offenders .................. 1291
      2. Equal Protection Challenge to Statutory Rape Law .................................. 1291
      3. Sufficiency of Evidence for Conviction of Rape and Great Bodily Injury ........ 1292
      4. Admissibility of Evidence of Victim’s Prior Sexual Conduct ..................... 1292
      5. Governmental Immunity for Failure to Enforce Rape Laws ....................... 1293

* Third Year Law Student, Golden Gate University School of Law.
II. Family Law

A. Wrongful Death and Negligence Actions
   1. Emotional Distress/Loss of Consortium in the Absence of Physical Injury 1297
   2. Imputed Contributory Negligence in Loss of Consortium Action 1298
   3. Spouse's Extramarital Activities in Loss of Consortium Action 1298

B. Inheritance Determinations
   1. Widow's Allowance Subject to Inheritance Tax 1299
   2. Apportionment of Life Insurance Proceeds Based on Nature of Contributions 1299

C. Community Property
   1. Division of Quasi-Community Property 1300
   2. Goodwill Valuation of Community Property Business 1300
   3. Division of Personal Injury Awards 1301
   4. Separate Property Funds Used for Community Residence 1302
   5. Married Woman's Property Acquired by Written Instrument 1303
   6. Sale of Family Residence 1303

D. Child Custody and Control
   1. Physical Handicap as Consideration in Custody Award 1304
   2. Consent to Adoption by Presumed Father 1304
   3. Disputes Under the Uniform Child Custody Jurisdiction Act 1305

Women's Law Forum
4. Removal of Child From Parental Custody
   ........................................... 1306
5. Removal of Child From Adoptive Placement
   ........................................... 1308
6. Rights of Non-Custodial Parents .......... 1308

E. Spousal and Child Support
1. Enforcement of Child Support Orders .... 1309
2. Definition of Cohabitation for Purposes of Reduced Spousal Support .......... 1311
3. County Right to Reimbursement for Public Assistance Payments .......... 1312
4. Availability of Step-Parent Income in Determining Child-Support Obligation 1313
5. Payment of Community Obligations as Spousal Support ...................... 1314
6. Modification of Spousal Support .......... 1315
7. Supporting Spouse's Ability to Earn as Standard for Support Award ........ 1316

F. Health and Welfare Issues
1. Public Funding of Abortion .............. 1316
2. Class Action Against Manufacturers for DES Induced Injury During Pregnancy 1317

G. Dissolution Proceedings
1. Nunc Pro Tunc Decree to Validate Otherwise Bigamous Marriage .......... 1318
2. Entry of Final Decree Conditioned on Reimbursement to County .......... 1318
3. Willful Violation of Discovery Orders ... 1319
4. Award of Attorney's Fees ............... 1320
5. Finality of Decree Dividing Community Property ............................ 1320
6. Modification of Property Settlement ... 1321
7. Adjudication of Issues After Death of Party .................................. 1322

H. Pension and Disability Benefits
1. Res Judicata Effect of Dissolution Decree .................................. 1322
2. Characterization of Benefits as Disability or Pension .................... 1323
3. Classification of Benefits as Separate or Community Property .......... 1326
4. Rights of Divorced Spouse to Division of ERISA Pension ................. 1328
5. Retirement Benefits Omitted From Dissolution Decree .................... 1329
6. Calculation of Community Interest in Retirement Benefits

I. Paternity Actions
   1. Effect of Failure to Dispute Paternity in Dissolution Proceedings
   2. Constitutionality of Paternity Agreement Statute
   3. Representation of Indigent Male in Paternity Action
   4. Appointment of Guardian in County Reimbursement Action

J. Meretricious Relationships
   1. Imputed Negligence of Cohabiting Partner
   2. Application of Marital Communications Privilege

K. Legislation
   1. Marriage and Dissolution
   2. Community Property
   3. Child Custody and Control
   4. Spousal Support
   5. Pregnancy and Childbirth

III. Labor Law
   A. Employment Discrimination
      1. Recovery of Back Wages for Equal Pay Violation
      2. Constitutionality of Affirmative Action Program for Public Employees
   B. Unemployment Insurance Benefits
      1. Permissibility of Questions Regarding Pregnancy in Determining Eligibility
   C. Legislation
      1. Employment Discrimination
      2. Wages, Hours, and Benefits
      3. Consideration of Volunteer Experience
I. CRIMINAL LAW

A. RAPE AND OTHER SEX OFFENSES

1. Commitment Procedures for Mentally Disordered Sex Offenders

_People v. Saffell_, 25 Cal. 3d 223, 599 P.2d 92, 157 Cal. Rptr. 897 (1979). Defendant was convicted of rape and sexual perversion, and found to be a mentally disordered sex offender (MDSO) amenable to treatment. Pursuant to Welfare and Institutions Code section 6316.1, he was committed to a state hospital for a period of treatment equal to the upper term for the underlying criminal offenses, without time off for good behavior. The California Supreme Court, in reversing the court of appeal, found that defendant was not denied equal protection of the law even though non-MDSOs and MDSOs not amenable to treatment would have been sentenced to a shorter prison term and allowed "good time" credit. The court reasoned that the imposition of the upper term is necessary to further the compelling state purposes of 1) identifying and providing medical attention to those individuals amenable to treatment who commit sexually motivated criminal acts, and 2) assuring the safety of the public. The court further held that the legislative purposes underlying the provisions for "good time" credits in a prison setting are not necessarily suitable within a hospital setting.

_People v. Compellebee_, 99 Cal. App. 3d 296, 160 Cal. Rptr. 233. (5th Dist. 1979). After trial, the lower court extended for one year the commitment period of a mentally disordered sex offender (MDSO). The court of appeal reversed, holding that the state must demonstrate that an MDSO can benefit from treatment before a commitment extension will be granted. (Welfare and Institutions Code section 6316.2). In the present case, the evidence offered at trial was insufficient to support a finding that the defendant would benefit from the extension.

2. Equal Protection Challenge to Statutory Rape Law

_Michael M. v. Superior Court_, 25 Cal. 3d 608, 601 P.2d 572, 159 Cal. Rptr. 340 (1979). In a four to three decision, the supreme court refused to compel the trial court to dismiss an information charging a minor with a felony violation of Penal Code section 261.5, unlawful intercourse with a female under
eighteen years of age. The court held that while the penal code section does classify both victims and offenders by sex, there is a compelling state interest in preventing teenage pregnancies that justifies the classifications. Thus, the statute meets the equal protection requirements of both the state and federal constitutions.

3. **Sufficiency of Evidence for Conviction of Rape and Great Bodily Injury**

*People v. Thomas*, 96 Cal. App. 3d 507, 158 Cal. Rptr. 120 (2d Dist. 1979). Among other charges, the defendant was found guilty of raping and inflicting great bodily injury on an unconscious woman. The evidence showed that the defendant had been seen walking in the vicinity of the crime; the victim could not see or identify her assailant because of the darkness; that after fainting, she awoke to find that she had been raped, badly bruised and had suffered a broken ankle, that the defendant had the same blood type as the rapist; and that a sweater, found in the defendant's car, had on it a leaf common to plants both in the victim's and the defendant's yard. The court of appeal affirmed the conviction, holding that while the evidence was circumstantial and admittedly weak, the jury was entitled to draw an inference of guilt. The court also held that the finding of great bodily injury in connection with the rape charge was warranted because the victim's bruises and broken ankle had not completely healed by the time of the trial, six months following the offense.

*People v. Hall*, 95 Cal. App. 3d 299, 157 Cal. Rptr. 107 (2d Dist. 1979). Defendant was charged with rape and forcible oral copulation. After preliminary hearing, the information was amended to include an allegation of infliction of great bodily injury. The jury found defendant guilty of all three offenses. The court found defendant guilty of all three offenses. The court of appeal affirmed, holding that the information was properly amended because the evidence at the preliminary hearing—including testimony that the defendant struck the victim with his fist numerous times—gave the defendant adequate notice of the allegation.

4. **Admissibility of Evidence of Victim's Prior Sexual Conduct**

*People v. Wall*, 95 Cal. App. 3d 978, 157 Cal. Rptr. 587,
modified on denial of rehearing, 97 Cal. App. 3d 505a (1st Dist. 1979). The defendant was convicted of rape by force and violence, and of false imprisonment. A former boyfriend of the victim testified that she had threatened to make a false accusation of rape against him. The trial court granted the prosecution’s motion to strike the testimony, ruling that it was prohibited by Evidence Code section 787, which provides that evidence of conduct tending to demonstrate a character trait, may not be used to attack or support the credibility of a witness. The court of appeal reversed, holding that the testimony of the former boyfriend was admissible under Evidence Code section 1103 subdivision 1. This subdivision authorizes the use of character trait evidence in the form of specific instances of conduct, if offered by the defendant to prove conduct of the victim in conformity with the character trait. The court reasoned that Evidence Code section 1103 which is a narrow statute applicable only to criminal actions, takes precedence over section 787 which is a general statute applicable to both civil and criminal actions.

People v. King, 94 Cal. App. 3d 696, 156 Cal. Rptr. 268 (2d Dist. 1979). Defendants were found guilty of forcible rape, sodomy and oral copulation. The trial court refused to permit the defendants to question the victim about the circumstances surrounding six prior rapes she had failed to report. The court of appeal affirmed, holding that evidence as to the circumstances of the alleged other rapes related to the nature of the victim’s prior sexual conduct and fell within the ambit of questions proscribed by Evidence Code section 1103 subdivision (a).

5. Governmental Immunity for Failure to Enforce Rape Laws

Graham v. City of Biggs, 96 Cal. App. 3d 250, 157 Cal. Rptr. 761 (3d Dist. 1979). Plaintiff alleged violations of her civil rights by a city and various city officials due to a city policy of nonenforcement of the rape laws. The complaint alleged that after being raped in her car, she reported the rape and identity of the rapist. The acting police chief and police commissioner refused to question the rapist and three men overheard discussing the rape. The plaintiff further alleged that the inaction of city officials denied her due process, equal protection, and the privileges and immunities of citizenship. The trial court entered judgment dismissing the plaintiff’s complaint after sustaining defendant’s demurrers without leave to amend. The court of appeal reversed,
holding that the allegations of the complaint were sufficient to state a cause of action for violation of the Federal Civil Rights Act of 1871. The court also held that the plaintiff’s action was not barred by the immunity provisions of the California Tort Claims Act that provides for public entity immunity from liability for an injury caused by failure to properly enforce a law.

6. Attorney’s Failure to Request Psychiatric Examination of Victim

In re Leonard M., 100 Cal. App. 3d 11, 160 Cal. Rptr. 631 (2d Dist. 1980), appeal docketed, No. 79-1787, (U.S., May 9, 1980). The juvenile court found that a sixteen year old boy had committed a lewd act on a six year old girl. The minor appealed, contending that 1) the evidence did not support the finding, and 2) he was denied effective assistance of counsel when his attorney failed to seek a psychiatric examination of the girl. The court of appeal, in a two to one decision, affirmed the juvenile court’s findings. The court determined that the child’s testimony was not in conflict with the medical testimony and was sufficient to support the finding of the trial court. The court held that the failure of counsel to seek a psychiatric exam in child abuse cases is not incompetent representation as a matter of law (People v. Lang, 11 Cal. 3d 134, 520 P.2d 393, 113 Cal. Rptr. 9 (1974)), and that in order to sustain an allegation of ineffective assistance of counsel, appellant must make an affirmative showing that his attorney’s decision was based on ignorance of the law (People v. Jenkins, 13 Cal. 3d 749, 532 P.2d 857, 119 Cal. Rptr. 705 (1975)).

7. Evidentiary/Procedural Error Prejudicial to Defendant

People v. St. Andrew, 101 Cal. App. 3d 450, 161 Cal. Rptr. 634 (1st Dist. 1980). The defendant, a hospital attendant, was convicted of rape by threat and forcible oral copulation on a mental patient. Prior to trial, the defense attorney’s motion to disqualify the trial judge was denied for failure to meet procedural requirements. Testimony of a former mental patient that the defendant had kissed her was admitted to show defendant’s propensity to use female patients for sexual gratification. The court of appeal reversed, holding that in a close criminal case, turning primarily on the respective credibility of the defendant and the alleged victim, any substantial error tending to discredit the de-
fense or to corroborate the prosecution must be considered prejudicial. In the instant case the trial court was found to have committed substantial error in 1) admitting the testimony of the former patient for purposes of showing a continuing plan by defendant to use psychiatric patients for sexual gratification, 2) failing to correct the motion to challenge the trial judge when all that was required was a simple statement by the judge of the procedural requirement necessary to make the motion successful, and 3) refusing to allow the defense to cross examine the victim during the competency hearing.

B. PROSTITUTION

1. Sufficiency of Evidence for Conviction of Pimping

_People v. Kent_, 96 Cal. App. 3d 130, 158 Cal. Rptr. 35 (1st Dist. 1979). The defendant was found guilty of pimping, pandering, battery, and the intentional infliction of great bodily injury. The defendant appealed on the ground that his conviction was not supported by substantial evidence. The court of appeal affirmed. The trial court record indicated that the defendant had introduced a woman to prostitution and informed her of the techniques to be used. He delivered her each night to a selected street location and then picked her up the next morning, after which he collected all her earnings. When her income was below average, he often beat her, as a result of which she was hospitalized at least four times. The woman testified that she shared her earnings with him. The court of appeal also held that the trial court properly refused to instruct the jury on Penal Code section 647(b), which provides that a person who solicits or engages in any act of prostitution is guilty of disorderly conduct, as a lesser offense necessarily included in the crimes of pimping and pandering. The record indicated that the defendant, if guilty at all, was guilty of the crimes of pimping and pandering.

C. DOMESTIC VIOLENCE

1. Sufficiency of Evidence for Conviction of Felony Child Abuse

_People v. Jaramillo_, 98 Cal. App. 3d 830, 159 Cal. Rptr. 771 (2d Dist. 1979). The court of appeal affirmed rulings of the trial court that defendant mother was guilty of felony child endangering (Penal Code section 273a, subdivision (1)), using a dangerous
weapon as a separate offense, and of inflicting great bodily injury on one of her daughters. The mother had administered discipline to her daughters with a wooden dowel. The court found substantial evidence that the mother's actions were "likely to produce great bodily harm" within the meaning of Penal Code section 273a thus qualifying the violation as a felony. Further, the court determined there were sufficient facts on which to base a finding of great bodily injury (Penal Code section 12022.7), and that the dowel was a deadly weapon.

D. LEGISLATION

1. Rape

A.B. 546 — Mori  
Chapter 994  
Statutes of 1979  

**Spousal Rape.** Establishes a separate category. Exempts individuals convicted of spousal rape from mandatory prison sentences and allows prosecution as a misdemeanor.

S.B. 13 — Richardson  
Chapter 944  
Statutes of 1979  

**Forcible Lewd and Lascivious Acts.** Establishes forcible lewd and lascivious conduct as a crime and prohibits probation for that and other violent sex crimes. Creates a series of new and longer enhancements for repeat offenders and changes the method by which terms are calculated for violent offenses. Bars Youth Authority commitment for some repeat offenders, and changes sex offender registration procedures and penalties for violation.

2. Domestic Violence

A.B. 265 — Nolan  
Chapter 367  
Statutes of 1979  

**Child Abuse Pilot Project.** Appropriates $80,000 for two child abuse project centers and requires $20,000 in local matching funds.
S.B. 9 — Smith
Chapter 795
Statutes of 1979
*Domestic Violence Prevention Act.* Expands and strengthens the court’s authority to enforce laws related to the prevention of domestic violence. Creates new categories under which temporary restraining orders may be issued.

S.B. 355 — Presley
Chapter 913
Statutes of 1979
*Diversion Program for Domestic Violence Defendants.* Under provisions of the program, individuals meeting specified requirements will be diverted from the criminal justice system and into an educational, treatment or rehabilitation program.

S.B. 965 — Dills
Chapter 129
Statutes of 1979
*Temporary Restraining Orders.* Amends section 527 of the Code of Civil Procedure. Extends from thirty to ninety the maximum number of days for which a court may issue a temporary restraining order.

II. FAMILY LAW

A. *Wrongful Death and Negligence Actions*

1. *Emotional Distress/Loss of Consortium in the Absence of Physical Injury*

*Molien v. Kaiser Foundation Hospitals,* 80 L.A. DAILY JOURNAL, D.A.R. 2397 (Aug. 28, 1980). The trial court sustained defendant’s demurrer to a husband’s complaint alleging negligently inflicted emotional distress and loss of consortium, caused by emotional injury to his wife due to an erroneous diagnosis of syphilis. The complaint stated that defendant diagnosed the wife as having syphilis and subjected her to massive doses of penicillin. Blood tests established that the husband did not have the disease. Suspicions of extramarital sexual activities and mutual hostility led to the breakup of the marriage. The appellate court modified the judgment to dismiss both causes of action on grounds that there is no recovery for negligent infliction of emotional distress or loss of consortium absent physical injury. Writ-
ing for the majority, Justice Mosk stated that the unqualified requirement of physical injury was no longer justifiable. The essential question is one of proof of a serious and compensable injury, to be presented to the trier of fact. Holding that similar reasoning applied to both claims, the judgment was reversed.

2. *Imputed Contributory Negligence in Loss of Consortium Action*

*Lantis v. Condon*, 95 Cal. App. 3d 152, 157 Cal. Rptr. 22 (1st Dist. 1979), *hearing denied*, Nov. 2, 1979. Plaintiff brought suit for loss of consortium based on injuries to her husband from the collision of two trucks. The trial court reduced the plaintiff's recovery by the proportion of negligence attributed to her spouse, the driver of one of the trucks. The court of appeal reversed, holding that 1) contributory negligence may not be imputed merely on the basis of marital relationship and 2) loss of consortium is not a derivative action—although a wife's cause of action “arises” from the bodily injury to her husband, the injury suffered is personal to the wife and is comprised of her own physical, psychological and emotional pain and anguish.

3. *Spouse's Extramarital Activities in Loss of Consortium Action*

*Morales v. Superior Court*, 99 Cal. App. 3d 283, 160 Cal. Rptr. 194 (5th Dist. 1979). In a wrongful death action, the trial court ordered plaintiff husband to answer interrogatories concerning his extramarital sexual activities. The court of appeal directed the trial court to modify its order so that the husband would not be required to give names, addresses and telephone numbers. The court held that evidence of extramarital sexual conduct is relevant to the nature of the personal relationship between husband and wife and thus to whether there was loss of love, companionship and sexual relations to the husband. However, since the trial court was dealing with the husband's constitutionally protected right of privacy, it had to justify its impairment of that right with a compelling state interest and draw its order with narrow specificity. The government objective of a fair trial would be served if the husband was required to state only whether, during some relevant period, he dated and had extramarital contacts with women and when those contacts took place.

Women's Law Forum
B. Inheritance Determinations

1. Widow’s Allowance Subject to Inheritance Tax

Estate of Schley, 100 Cal. App. 3d 161, 161 Cal. Rptr. 104 (1st Dist. 1979). The trial court upheld a widow’s objections to a tax referee report that included the value of her widow’s allowance in the husband’s estate for inheritance purposes. The allowance was payable monthly during her life or until she remarried. The court of appeal reversed, holding that because the legislature did not exempt pension rights under private plans from the inheritance tax and provided for the handling of contingent interests in Revenue and Taxation Code section 13411 subdivision (d), the legislature intended that benefits such as those under consideration were subject to the inheritance tax. The court rejected the contention that there was no transfer taking place at death within the meaning of the inheritance tax provisions. The court pointed out that 1) the pension rights were procured through expenditures of the decedent, 2) they were consideration for his employment rather than a gratuity, and 3) the fact that the transfer, made during decedent’s lifetime, did not take effect in possession or enjoyment until the time of the decedent’s death did not defeat the tax. The court also held that a transfer occurred even though the decedent had no right to name a successor, since the pension plan provided for a widow’s monthly allowance and there was no evidence that he preferred any other arrangement.

2. Apportionment of Life Insurance Proceeds Based on Nature of Contributions

Biltoft v. Wootten, 96 Cal. App. 3d 58, 157 Cal. Rptr. 581 (4th Dist. 1979). The trial court ruled that the proceeds of a group life insurance policy must be apportioned between two beneficiaries according to the amount of community and separate property funds paid toward its premiums. The decedent had been paying premiums out of his salary for nearly twenty years. He was married at the time coverage began, but he and his wife separated eight months before his death. After separation, he changed the beneficiary designation on the policy from his wife to his children. The court of appeal affirmed, holding that the nature of the policy benefits was derived from the contract which had its inception during the marriage and was preserved for almost twenty years by the payment of premiums out of
C. Community Property

1. Division of Quasi-Community Property

In re Marriage of Fink, 25 Cal. 3d 877, 603 P.2d 881, 160 Cal. Rptr. 516 (1979). In a dissolution proceeding, the trial court granted an interlocutory judgment and divided the couple’s community property by using the asset distribution method. Subsequently, the husband moved for and was granted a new trial on the sole ground that there was an error in law regarding the division of quasi-community property held by the couple. The trial court had awarded certain real property in Florida to the husband and other Florida real property to the wife. The husband asserted that Civil Code section 4800.5 requires an in-kind division. The Code section provides that real property in another state shall, if possible, be divided so that it is not necessary to change the nature of the interests in such property. The supreme court modified the judgment and then affirmed. The court held that nothing in Civil Code section 4800.5 requires out-of-state real property to be divided in kind, and that the trial court was well within its discretion in concluding that it was impossible to achieve a practical and equal division of community property without affecting record title to the property. Because no error of law appeared to have been committed in the trial court’s division of the community property, the court concluded that the trial court erred in granting a new trial.

2. Goodwill Valuation of Community Property Business

In re Marriage of Winn, 98 Cal. App. 3d 363, 159 Cal. Rptr. 554 (2d Dist. 1979). In a marriage dissolution proceeding, the trial court awarded a business found to be community property to the husband and required him to give the wife a note for one-half its value. The trial court also awarded the wife spousal support of $500.00 per month for forty-two months. The court of appeal affirmed. Although community property is ordinarily divided in kind, Civil Code section 4800 subdivision (b) provides that “where economic circumstances warrant, the court may award any asset to one party on such conditions as it deems proper to effect a substantially equal division of the property.” The court held that while the business had no saleable value to
another, it had good will value to the husband and it was proper, under the statute, to compel him to pay for what he retained. The court also affirmed the order for spousal support. The husband’s financial statement showed he was capable of paying the amount and the wife, unemployed at the time of the trial, showed that she had been unsuccessful in securing work.

In re Marriage of Slater, 100 Cal. App. 3d 241, 160 Cal. Rptr. 686 (1st Dist. 1979). In a dissolution proceeding, the trial court entered an interlocutory judgment dividing the parties' community property and awarding the wife both spousal and child support. In dividing the community property, the court assigned a zero value to the husband’s interest in the goodwill of his group medical practice. The court based its evaluation on the practice partnership agreement that in the event of the husband’s departure from the group, his interest would be repurchased with no separate value given for goodwill. In order to equalize the division of community assets, the court ordered the husband to execute a promissory note in favor of the wife secured by his interest in the group practice and bearing an interest of ten percent per annum, payable annually. The court of appeal reversed for a redetermination of the husband’s interest in the goodwill of his group practice. The court held that the wife was entitled to a share of the husband’s interest in the practice as a going concern on the date of dissolution, an interest which could not be ascertained solely by reference to the partnership agreement, despite the fact that the wife had cosigned the agreement. The court further held that the award of a five-year promissory note was an appropriate method of equalizing the division of community property. The note’s actual value was not substantially less than its face value because it was secured by the husband’s interest in his partnership; it bore a sufficiently high interest rate to compensate for inflation, and it was payable in full after a relatively short period. The court also held that the trial court had not erred in failing to consider the possible tax consequences of awarding the note to the wife, in the absence of any evidence that she would incur an immediate and specific additional tax liability.

3. Division of Personal Injury Awards

In re Marriage of Mason, 93 Cal. App. 3d 215, 155 Cal. Rptr. 350 (5th Dist. 1979). In a dissolution proceeding, the court
of appeal upheld the actions of the trial court in denying spousal support to the wife, and awarding the bulk of a $400,000 personal injury judgment to the husband. Civil Code section 4800(c) provides that community property personal injury damages shall be assigned to the party who suffers the injuries. The personal injury judgment had been received as a result of the husband’s permanently disabling injury. Despite the fact that the wife’s name was placed on the instrument creating the trust fund in which the money damages were placed, the wife failed to offer evidence establishing that the initial trust instrument constituted the creation of her separate property. The court of appeal also affirmed the trial court’s conclusion that the wife was capable of full-time employment and not in need of spousal support.

4. Separate Property Funds Used for Community Residence

In re Marriage of Trantafello, 94 Cal. App. 3d 533, 156 Cal. Rptr. 556 (2d Dist. 1979), hearing denied, Aug. 22, 1979. In a dissolution proceeding, the trial court annulled the marriage, divided the community assets, and determined that the parties’ family residence was the husband’s separate property. The court of appeal reversed, holding that the husband had failed to present evidence sufficient to rebut the presumption that the family residence was community property where 1) the title was taken in joint tenancy and 2) there was no evidence of a common understanding that the joint tenancy deed was to have a legal effect different from that given it by Civil Code section 5110. The court further held that in the absence of any communicated intention to the contrary, a residence acquired during marriage by joint tenancy is community property regardless of the fact that the source of funds which went into its down payment is clearly traceable to the separate property of one spouse. A gift of separate property funds to the community is presumed unless there is proof of an agreement between the parties to the contrary, and regardless of the marriage being declared a nullity.

In re Marriage of Sparks, 97 Cal. App. 3d 353, 158 Cal. Rptr. 638 (4th Dist. 1979). In a dissolution proceeding, the trial court awarded the wife a house built with her separate property funds but determined the land on which the house was built to be community property. Accordingly, the husband was given a credit for one-half the appreciated value of the land. The court
of appeal affirmed holding that 1) there was substantial evidence that the wife did not intend to make a gift of the house to the community, 2) the wife alone had authorized its construction, and 3) the money used to build the house had been a gift to the wife.

5. Married Woman’s Property Acquired by Written Instrument

In re Marriage of Ashodian, 96 Cal. App. 3d 43, 157 Cal. Rptr. 555 (2d Dist. 1979), hearing denied, Nov. 8, 1979. In a dissolution proceeding, the trial court ruled that properties and proceeds acquired in the wife’s name in connection with her real estate business were her separate property in accordance with the presumption raised by Civil Code section 5110. The section states that property acquired by a married woman prior to 1975 by an instrument in writing, is her separate property. The court of appeal affirmed, holding that 1) Civil Code section 5110 is an exception to the general presumption that all property acquired after marriage is community property and 2) the section must be rebutted by clear and convincing evidence. The appellate court agreed with the lower court that the husband failed to rebut the presumption and that he had made a gift of his community interest in the properties by his unwillingness to have any involvement in the business, or to sign the grant deeds necessary to facilitate their transfer.

6. Sale of Family Residence

In re Marriage of Duke, 101 Cal. App. 3d 152, 161 Cal. Rptr. 444 (4th Dist. 1980). A wife appealed from a portion of an interlocutory decree, contending among other things, that the trial court erred in failing to defer the sale of the family residence. The court of appeal remanded the case, holding that the trial court failed to exercise proper discretion in denying the wife’s request to defer the sale where 1) the wife had been awarded custody of the two minor children who had lived in the house all their lives and wished to remain, 2) sale of the home would subject the wife to serious economic hardship including high interest rates, tight credit and increased market prices, and 3) the husband’s income was adequate to provide for his own needs and the court-ordered support of his former wife and children.
D. **Child Custody and Control**

1. **Physical Handicap as Consideration in Custody Award**

   *In re Marriage of Carney,* 24 Cal. 3d 725, 598 P.2d 36, 157 Cal. Rptr. 383 (1979). In a dissolution proceeding, the trial court ordered a change in child custody from the father to the mother. The mother had relinquished custody by written agreement when the couple separated almost five years before and had not seen the children from the time of the separation until a few days prior to the hearing. The father was a quadriplegic as the result of an accident that occurred after separation while he was serving in the military reserve. The trial court awarded custody to the mother on the ground of the father’s disability which, it stated, would prevent a normal relationship between father and sons. The supreme court reversed the portion of the interlocutory decree transferring custody of the minor children to the mother. The court held that in light of the capabilities of, and support services for physically handicapped, an accommodation can be made between the policies requiring that a custody award serve the best interests of the child, and the moral and legal obligation of society to respect the civil rights of the physically handicapped. It is impermissible for the trial court to rely on a physical handicap as prima facie evidence of a person’s unfitness as a parent or of probable detriment to the child.

2. **Consent to Adoption by Presumed Father**

   *W.E.J. v. Superior Court,* 100 Cal. App. 3d 303, 160 Cal. Rptr. 862 (2d Dist. 1980). In a proceeding by a husband and wife to adopt an eight month old child whose natural mother consented to adoption at birth, the trial court awarded custody to the child’s biological father who had also appeared in the proceeding seeking custody. The biological father was, at the time of conception and at the time of the proceeding, married to another woman. The court of appeal directed the trial court to vacate its order and conduct a new hearing. Since the record showed that the natural father and the mother had never attempted to marry, and that the child had never been in the father’s home, the court held that he was not a “presumed father” under Civil Code section 7004 subdivision (a), a part of the Uniform Parentage Act, and that his consent to the adoption was not required. The court further held, however, that the natural
father was entitled to be heard in opposition to the adoption proceeding and to present his own qualifications for custody. The court also held that Civil Code section 7017 subdivision (d), by permitting the adoption of a child with only the mother’s consent, does not create an impermissible gender-based distinction. Over strong dissent, the court reasoned that a statutory scheme differentiating between fathers who have established a parental relationship and those who have not, is constitutional in light of the important state interest in protecting the best interests of the child.

3. Disputes Under the Uniform Child Custody Jurisdiction Act

_Palm v. Superior Court_, 97 Cal. App. 3d 456, 158 Cal. Rptr. 786 (4th Dist. 1979). The father of a minor child, a resident of North Dakota, sought to compel the California superior court to stay its child custody proceedings. The court had determined that it had jurisdiction to hear the dispute under the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA). The father had already obtained the jurisdiction of the North Dakota Court to hear the same matter. The California court ordered the father to dismiss his North Dakota change of custody action, to refile it in California and to transfer custody of the child to the mother pending a full hearing. The court of appeal found that under the UCCJA, both California and North Dakota had jurisdiction over the custody of the child: California, because it was the home state of the child; North Dakota, because it was the home state of the father and the state which issued the original divorce custody decree. Further, the court of appeal directed the superior court to stay all proceedings under Civil Code section 5155 subdivision (1) since 1) a custody proceeding intitiated by the father was already pending in North Dakota, 2) the relief sought by the mother amounted to a modification of the original North Dakota decree, 3) North Dakota, as the court which rendered the initial custody decree, had continuing jurisdiction under the UCCJA and 4) there was nothing in the record to show North Dakota was not acting substantially in conformity with the Act.

_Allison v. Superior Court_, 99 Cal. App. 3d 993, 160 Cal. Rptr. 309 (2d Dist. 1980). A father, the custodial parent living in Texas, sought dismissal in the California court of the mother’s
order to show cause regarding contempt and modification of child custody. The show cause order was issued following the father's refusal to permit the children to visit their mother in California, in alleged contravention of a stipulated California custody order. Prior to the California hearing date, the father filed a petition in the Texas courts that resulted in an order purporting to terminate the mother's visitation rights. The Texas hearing was held in the mother's absence after three days notice and a denial of her request for a continuance. The mother subsequently petitioned the California court to modify custody and the father moved to dismiss the proceedings under the Uniform Child Custody Jurisdiction Act. The court of appeal denied the father's petition for mandate, holding that California acquired jurisdiction to make a child custody determination under Civil Code section 5152 subdivision (1)(b). The court further held that the California courts were not constrained by principles of comity from an appropriate exercise of jurisdiction since Texas was not a state exercising child custody jurisdiction substantially in conformity with the Uniform Act. (Civil Code sections 5154, 5155).

4. Removal of Child From Parental Custody

Adoption of D.S.C., 93 Cal. App. 3d 14, 155 Cal. Rptr. 406 (4th Dist. 1979), hearing denied, Sept. 12, 1979. The court of appeal affirmed a trial court decision declaring a minor child free from the custody and control of his natural father, and placing him with adoptive parents. Civil Code section 232(a)(4) provides that a minor may be taken from a parent convicted of a felony if the facts of the crime are of such a nature as to prove the unfitness of the parent. The court held that in determining whether the legal relationship between child and natural parent should be severed, the parental rights doctrine is not to be subordinated to the best interests of the child. Rather, to terminate parental rights, it must also be determined that the parent whose rights are to be terminated is unfit, and that continuing parental custody would be detrimental to the child. In this case, the father had spent the last thirteen years incarcerated for various robbery offenses. The court concluded there was substantial evidence of parental unfitness and detriment to the child, and that allowing the adoption was in the child's best interest.
In re La Shonda B., 95 Cal. App. 3d 593, 157 Cal. Rptr. 280 (2d Dist. 1979). In dependency proceedings arising out of the physical abuse of a child by her unmarried mother, the trial court dismissed the county’s petition with prejudice and released the child to the custody of her father, who lived apart from the mother. The court of appeal reversed, holding that when there are two parents with separate homes, a child can be removed from the home of the unfit parent at the adjudication hearing without prejudicing the other parent’s right to gain custody of the child at the second dispositional hearing. The court also held that the trial court erred in finding the father made a sufficient showing of his capability to provide parental care since 1) he had no home of his own and 2) he was away so often that he intended to leave the child with relatives for full-time care. Finally, the court held that the trial court abused its discretion in dismissing the petition with prejudice.

In re Jeanette S., 94 Cal. App. 3d 52, 156 Cal. Rptr. 262 (5th Dist. 1979). The trial court entered judgment declaring a five-year-old child to be a dependent of the juvenile court and, pursuant to Welfare and Institutions Code section 361 subdivisions (a) and (b), removed the child from her mother’s custody and control. The court of appeal upheld the trial court’s order that the child be declared a dependent of the court but reversed the dispositional hearing. The court held that clear and convincing proof of parental inability to provide proper care for the child, and detriment to the child if she remains with the parents are both required before custody can be awarded to a non-parent. Two reasonable alternatives were available to the trial court short of removing the child from the custody of her parents: 1) the child could have been returned to her mother under stringent conditions of supervision, or 2) assuming that the mother was incapable of providing a suitable home, the child could have been placed with her divorced father.

In re Jacqueline H., 94 Cal. App. 3d 808, 156 Cal. Rptr. 765 (2d Dist. 1979). The court of appeal affirmed a trial court terminating a mother’s parental rights to her minor daughter on the grounds of abandonment. The court of appeal upheld the trial court, finding that the mother had abandoned her child where 1) the child had been in a foster home for approximately four years, 2) the mother’s failure to engage in psychological and
family counseling had resulted in the termination of her visitation rights, and 3) she had made only a token effort to regain those rights. The court of appeal also held that because no miscarriage of justice appeared to have resulted from the trial court’s failure to appoint counsel for the child, the error was harmless.

5. Removal of Child From Adoptive Placement


The trial court refused to compel the county adoption agency to return a minor child to its prospective adoptive parents. The agency had removed the child without advance notice because it believed that notice to the couple would place the child in imminent danger. The evidence showed that the wife was emotionally unstable and dependant on the child for her emotional needs, that both the husband and wife were insensitive to the child’s needs, and that the couple, in order to obtain the adoptive placement, had concealed their marital differences and had failed to report their subsequent separation as required by their agreement with the agency. The court of appeal affirmed, holding that there was substantial evidence to support the trial court finding that the child was in imminent danger and that removal from the home without prior notice was justified. The court also upheld the trial court’s finding that to return the child to the adoptive husband and wife would be detrimental to the child. The appellate court rejected the wife’s request, made in her reply brief, that independent counsel could be appointed to represent the child when there was nothing in the record to suggest that the agency had any concern other than the welfare of the child.

6. Rights of Non-Custodial Parents

_In re Marriage of Oldfield_, 94 Cal. App. 3d 259, 156 Cal. Rptr. 224 (1st Dist. 1979). A husband seeking modification of his visitation rights, was denied a request to have his former wife disclose her address, and was ordered by the trial court to pick up and return the children to the grandparents’ home. The trial court also directed the husband to pay all mortgage payments and late charges which had accrued from the time he ceased using the community residence until the close of its sale. The court
of appeal affirmed the order requiring the husband to pick up and return the children to their grandparent’s house, but reversed as to his obligation to pay all charges due on the family residence. The court held that, in the absence of any evidence showing it would be unwise for the husband to have his children’s address, the denial was an impermissible curtailment of his contact with them. As to the mortgage payments and late charges, the court held that the fact that a husband assumes the mortgage payments while he is living in the community residence does not alter the nature of the debt when the couple separates. Once the husband leaves the residence, each party should pay one-half the mortgage payments and late charges incurred until the close of the sale.

E. SPOUSAL AND CHILD SUPPORT

1. Enforcement of Child Support Orders

In re Marriage of Moffat, 94 Cal. App. 3d 724, 156 Cal. Rptr. 609 (2d Dist. 1979), hearing granted, Oct. 11, 1979. The court of appeal affirmed a trial court order that a husband pay his former wife child support pursuant to the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). After obtaining custody of the children under a prior judgment, the wife prevented her ex-husband from exercising his visitation rights although he was paying spousal and child support pursuant to court order. The court found her in contempt and excused the husband from making spousal or child support payments until she complied with the court order. The wife then moved to another state and filed for child support payments under the Act. The court of appeal held that refusal of visitation does not prevent a wife from pursuing child support under the Revised Act. The court also held that the prior court order excusing the husband’s duty of support pending his wife’s cooperation with his rights of visitation was not res judicata and did not render the subsequent order for child support invalid.

In re Marriage of Thompson, 96 Cal. App. 3d 621, 158 Cal. Rptr. 160 (4th Dist. 1979). An interlocutory judgment of dissolution contained no order for child support, however, the court maintained jurisdiction to modify the provision. Soon after separation, the husband was jailed for attempting to abduct the parties’ two children. The wife filed a motion seeking modification
of child support. The court awarded child support on the condition that an allotment could be obtained from the Navy to pay support while the husband was in custody. The husband immediately appealed the order. When he failed to comply with the terms of the child support order, he was held in contempt and directed to execute the documents necessary to obtain the Navy allotment. The court of appeal affirmed, holding that 1) modification of the support provisions of an otherwise final judgment of dissolution is permitted, 2) the filing of a notice of appeal does not necessarily stay the order which is being appealed, 3) the trial court properly used a contempt proceeding to enforce its child support order and 4) the trial court did not err in awarding the husband's truck to the wife as partial payment of child support.

In re Marriage of Popenhager, 99 Cal. App. 3d 514, 160 Cal. Rptr. 379 (1st Dist. 1979). In February 1969, a trial court entered an interlocutory decree awarding a wife $200 per month child support. She subsequently moved to another state and, under the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA) sought to enforce the terms of her interlocutory decree. In June 1969, at a California hearing on the reciprocal action, the husband stated that he could only pay a maximum of thirty dollars per month and was ordered to pay that sum. The trial court made no mention of the existing interlocutory judgment. The husband made payments sporadically, and in 1977, the wife again sought to enforce the original order. The California court issued a writ of execution for arrearages amounting to over $18,000.00, representing the total amount for child support owed under the interlocutory decree less the amounts paid by the husband pursuant to the reciprocal action order of $30.00 per month. The husband moved to quash the writ and consolidate all proceedings. The trial court granted his motion to reduce child support and to modify arrearages to the thirty dollars per month specified in the reciprocal action order. The trial court specifically found that the reciprocal order action superseded the support provisions of the original decree. The court of appeal reversed and remanded. The court held that under former Code of Civil Procedure section 1689, a reciprocal support order did not act to supersede a prior order arising from a dissolution action where no specific plea for modification had been made. Accordingly, the husband was continuously obli-
gated to pay child support obligations at the rate of $200.00 per month up until the 1977 modification. The court further held it error to deny interest on arrearages, and to deny attorney fees in the absence of findings on the parties’ income and need.

**In re Marriage of DeMore**, 93 Cal. App. 3d 785, 155 Cal. Rptr. 899 (1st Dist. 1979). The court of appeal reversed a trial order that a mother was not entitled to a wage assignment for overdue child support. Civil Code section 4701(b) provides that a trial court shall order a defaulting parent to assign wages once a finding is made that child support payments are in arrears in a sum equal to the amount of two months’ payment. The order is mandatory despite the fact that the defaulting parent has subsequently paid the arrearages. The court found that the statute bears a rational relationship to a valid state interest and does not deprive the non-custodial parent of due process.

**In re Marriage of Hudson**, 95 Cal. App. 3d 72, 156 Cal. Rptr. 849 (1st Dist. 1979). In a proceeding to enforce child support payments, the court of appeal affirmed the trial court order that a husband pay his former wife arrearages of child support due beyond the ten-year period from entry of the original judgment. Although the former wife did not file an affidavit, the court held that a combination of her written declaration and her testimony at trial constituted substantial compliance with Code of Civil Procedure section 685. Section 685 provides that a judgment may be enforced after the lapse of ten years from the date of its entry by leave of the court on a motion, accompanied by an affidavit setting forth the reasons for failure to proceed with enforcement within ten years.

2. **Definition of Cohabitation for Purposes of Reduced Spousal Support**

**In re Marriage of Thweatt**, 96 Cal. App. 3d 530, 157 Cal. Rptr. 826 (4th Dist. 1979). A wife filed contempt proceedings against her former husband for his failure to pay spousal support. At the hearing, the husband moved for a reduction or termination of the spousal support on the ground that his wife was cohabiting with another man and his son, thus creating a rebuttable presumption of decreased need for support under Civil Code section 4801.5. The trial court denied the husband’s motion and found him in contempt of court. The court of appeal
affirmed, holding that in the absence of a sexual, romantic or homemaker-companion relationship, the presence of two male boarders sharing expenses with the wife did not amount to cohabitation within the meaning of the statute. The court also held that there was no evidence of an actual decreased need on the part of the wife, who was fifty years old and unemployed.

3. County Right to Reimbursement for Public Assistance Payments

Amie v. Superior Court, 99 Cal. App. 3d 421, 160 Cal. Rptr. 271 (4th Dist. 1979). The county sought to establish child support and be reimbursed for public assistance from the noncustodial father of a minor child. The father demurred to the extent that the county demanded recovery of money paid for the support of the child more than three years prior to the filing of the complaint. The trial court overruled the demurrer and the father then sought a writ of mandate. The court of appeal initially denied the writ but the supreme court remanded with directions to issue an alternative writ. The appellate court then held that 1) the county’s action, based on Welfare and Institutions Code section 11350 and Civil Code section 248 is subject to the three year limitation period of Code of Civil Procedure 338 subdivision (1), 2) a noncustodial parent is not required to reimburse another for support furnished to a child in the absence of an order or agreement, and 3) the county has no right to reimbursement derived by way of assignment or subrogation, from the child’s right to parental support.

County of Los Angeles v. Ferguson, 94 Cal. App. 3d 549, 156 Cal. Rptr. 565 (2d Dist. 1979). In an action brought by the county on behalf of a minor child against his father for child support, the trial court granted judgment on the pleadings for defendant on the basis of 1) deficiencies in the form complaint, 2) the county’s failure to state that the child was receiving public assistance, and 3) the complaint’s failure to state that the father was in default of a valid order for child support in existence in another county. The court of appeal affirmed, holding that a complaint brought by the county under the provisions of Welfare and Institutions Code sections 11350.1 and 11475.1 must plead that the county has standing to sue based on the minor or his mother being granted aid by the county or on the...
district attorney being asked to enforce a support obligation on behalf of the individual for whom the support order was made. The court also held that the county's action was superseded by a prior judgment made in another county pursuant to the Family Law Act. The court noted that the appropriate action in a case where there is an existing order for support in Family Law Act proceedings is by an order to show cause in the same proceeding.

4. Availability of Step-Parent Income in Determining Child-Support Obligation

In re Marriage of Brown, 99 Cal. App. 3d 702, 160 Cal. Rptr. 524 (3d Dist. 1979). A former husband, who had custody of the couple's three children, sought an order to compel his former wife to pay child support. As part of the proceedings, he obtained a subpoena ordering the deposition of the wife's present husband and the production of income tax returns filed during the second marriage. The present husband appeared at the deposition, but refused to produce the income tax returns and refused to testify, asserting spousal privilege. The first husband sought sanctions on the ground that Civil Code section 250 precluded the assertion of the marital privilege in child support proceedings. The trial court granted the second husband's motion to quash the subpoena. The court of appeal affirmed, holding that the trial court properly allowed the present husband to assert the privilege. The court pointed out that Revenue and Taxation Code section 19282, which prohibits disclosure of returns by the Franchise Tax Board, is construed to render both state and federal income tax returns privileged. To require the present husband to disclose his returns would be contrary to the public policy and interest in the preservation of existing marital relationships.

Camp v. Swoap, 94 Cal. App. 3d 733, 156 Cal. Rptr. 600 (3d Dist. 1979). The trial court held invalid the administrative regulations under which a specified portion of a nonadoptive stepfather's income was considered available for the support of his wife's children from a prior relationship. Also determined to be invalid was the practice of deducting such an amount from the aid to families with dependent children (AFDC) grant that would otherwise be paid on behalf of the children. The trial court, relying primarily on Vlandis v. Kline, 412 U.S. 441 (1973) and U. S. Department of Agriculture v. Murry, 413 U.S. 508
(1973), held that the regulations denied AFDC recipients due process of law by conclusively presuming that a nonadoptive stepfather would make his wife's community property interest in his earnings available to her for the support of her children. The trial court also held that the state rules conflicted with federal regulations governing the administration of the AFDC program, under which only the income of a natural, adoptive, or legally obligated parent could be considered available for children in the household, absent proof of actual contribution. The court of appeal, relying on *Weinberger v. Salfi*, 422 U.S. 749 (1975), rejected the trial court's ruling that a conclusive presumption of income availability violates due process since the legislature could have validly determined that limited AFDC resources would not be well spent in making individual assessments of stepfather income availability. However, it upheld the trial court's holding that the state rules were incompatible with federal regulatory provisions barring states from assuming that persons not legally responsible would apply their resources to aid dependant children.

5. Payment of Community Obligations as Spousal Support

In *re Marriage of Chala*, 92 Cal. App. 3d 996, 155 Cal. Rptr. 605 (2d Dist. 1979). In a dissolution proceeding, the trial court required the husband to pay all community obligations, but considered one-half of the payments to be spousal support. The court of appeal reversed, holding that community assets and obligations must be divided equally when the community assets exceed the community obligations. In appropriate circumstances a spouse can be ordered to pay continuing community debts as spousal support. Those circumstances are: 1) when the payment is to third parties for the future living expenses of the supported spouse; 2) when the supporting spouse's payment of past debts will protect the supported spouse's future alimony money from the reach of creditors; and 3) when the supporting spouse's post-separation, pre-trial payment of debts is in reality a discharge of the paying spouse's duty to support the other spouse. None of the circumstances set forth were present in this case. The trial court also failed to follow the criteria for spousal support set forth in Civil Court section 4801, making the resultant division of community property unequal.
In re Marriage of Marx, 92 Cal. App. 3d 984, 155 Cal. Rptr. 609 (2d Dist. 1979). The court of appeal reversed the trial court’s division of community property in a dissolution proceeding, holding that a husband cannot be ordered to pay community obligations as additional spousal support when the wife has already been awarded a reasonable monthly support sum. In addition, such a disposition violates Civil Code section 4801(b) in that it requires the husband to pay the debt regardless of the wife’s remarriage or death before full payment is made. The court of appeal held that under In re Marriage of Brigden, 80 Cal. App. 3d 380, 145 Cal. Rptr. 716 (2d Dist. 1978), absent economic circumstances warranting the assignment of an entire asset to one spouse, Civil Code section 4800 (b)(1) requires equal in kind division. Further, it was error for the trial court to award to the husband all of the community-owned pension fund when he did not want the fund and when an inequitable tax consequence would result.

In re Marriage of Marx, 97 Cal. App. 3d 552, modified, 98 Cal. App. 3d 533c, 159 Cal. Rptr. 215 (2d Dist. 1979). In a dissolution proceeding, the trial court divided the community property, awarding the wife the family residence. The husband was ordered to pay spousal and child support, and was also ordered to pay a community obligation as additional spousal support. The husband was awarded his pension fund at the face value of the contributions deposited in it. The court of appeal reversed the part of the order which required the husband to pay the community obligation and affirmed all other aspects of the judgment. The court held that the debt should have been equally divided between the parties since the wife had been given reasonable monthly support and there was no need to increase that support by ordering the husband to assume responsibility for the obligation. The court also held that the assignment of the pension fund at its face value to the husband was proper. There was no need to take into consideration the future taxes to be paid by the husband when he received the fund since the taxes were not immediate and specific but were payable in the future with the exact amount being speculative.

6. Modification of Spousal Support

In re Marriage of Kilkenny, 96 Cal. App. 3d 617, 158 Cal. Rptr. 158 (4th Dist. 1979). The trial court denied a husband’s
motion for modification of spousal support paid by him to his former wife. The support obligation was originally set out in a separation agreement which provided that its terms were “absolute, unconditional and irrevocable.” The separation agreement was later incorporated into the interlocutory and final decrees of dissolution. The court of appeal affirmed, holding that the support agreement was nonmodifiable under Civil Code section 4811 subdivision (b), which provides that an agreement for spousal support is not modifiable if there is a written or oral agreement for spousal support in open court specifically providing that the support agreement is not modifiable. The court stated that the terms “absolute, unconditional irrevocable,” were intended to prohibit modification of spousal support by a later court decree.

7. Supporting Spouse's Ability to Earn as Standard for Support Award

In re Marriage of Wyatt, 98 Cal. App. 3d 898, 159 Cal. Rptr. 784 (1st Dist. 1979). An ex-husband sought termination of his obligation to pay spousal support. Instead, the trial court substantially reduced his monthly support obligation on the basis of the continued decline in profits of his business. Both parties appealed and the court of appeal affirmed, holding that the trial court properly based its award on the husband's ability to earn rather than his actual income. The court rejected the husband's contention that the ability-to-pay standard may only be used when it appears there is a deliberate attempt to avoid family financial responsibility. The court also held that the trial court adequately considered the amount of the wife's separate property before making the award.

F. Health and Welfare Issues

1. Public Funding of Abortion

† Committee to Defend Reproductive Rights v. Myers, 93 Cal. App. 3d 492, 156 Cal. Rptr. 73 (1st Dist. 1979), hearing

† Because the California Supreme Court has granted a hearing in this case, the court of appeal opinion is of no force or effect and is no longer an authoritative statement of any principle of law. 5 CAL. JUR. 2d, Appellate Review § 434 (1952), citing Knouse v. Nimocks, 8 Cal. 2d 482, 66 P.2d 438 (1937). This case appears in the Survey for the sole purpose of familiarizing the reader with issues presently pending before the high court.

Women's Law Forum
The trial court granted a temporary restraining order against implementation of provisions of the state's Budget Act of 1978 which restricted the circumstances under which public funds could be used to pay for abortions for Medi-Cal recipients. The trial court refused to issue a preliminary injunction, but stayed the denial pending outcome of the appeal. The court of appeal reversed and remanded with directions to enjoin implementation of the Act only to the extent necessary to conform with the court's views. Over a well-reasoned dissent, the appellate court held that the Budget Act did not deny indigent women equal protection under either the federal or state constitution. The state is not required to show a compelling state interest in justifying its policy choice. The distinction drawn between childbirth and elective abortions by the Act's funding restrictions is rationally related to the state's legitimate interest in favoring normal childbirth. The court of appeal also rejected the contention that the state's decision not to fund elective abortions violates the free exercise and the establishment of religion clauses of the United States Constitution. When a law is attacked on establishment of religion grounds, the court must consider whether it furthers any of the primary evils which the clause was intended to forestall, i.e., financial support for or involvement in a religious activity. The right of a woman to choose to terminate her pregnancy is fundamental. The legislature has not prohibited elective abortions but merely chosen not to use public funds to pay for the elective abortions of any women, whatever their religious persuasion or economic status.

2. Class Action Against Manufacturers for DES Induced Injury During Pregnancy

Sindell v. Abbott Laboratories, 26 Cal. 3d 588, 607 P.2d 924, 163 Cal. Rptr. 132 (1980). The plaintiff, injured as a result of a drug administered to her mother during pregnancy, brought a class action against eleven drug companies who were manufacturers of diethylstilbestrol (DES). She alleged that they were jointly liable for manufacturing, marketing, and promoting DES as a safe drug for preventing miscarriage without adequate testing. Plaintiff further alleged that all the named defendants produced the drug from an industry-wide formula. Because plaintiff could not identify the manufacturer of the specific DES which caused her injuries, the trial court sustained defendants' demurrers without leave to amend.
In a landmark decision, the supreme court reversed, noting that “in an era of mass production and complex marketing methods the traditional standard of negligence [is] insufficient to govern obligations of manufacturer to consumer. . . . [S]ome adaptation of the rules of causation and liability may be appropriate. . . .” The court held that: 1) plaintiff’s obligation is to join in the action the manufacturers of a substantial share of the DES produced; 2) the extent of a defendant-manufacturer’s liability may be measured by the amount of DES produced by a manufacturer in proportion to the entire amount of DES sold to the public; and 3) the burden of proof must shift to defendants to demonstrate that they could not have produced the particular substance which injured plaintiff.

G. DISSOLUTION PROCEEDINGS

1. Nunc Pro Tunc Decree to Validate Otherwise Bigamous Marriage

Coefield v. Coefield, 92 Cal. App. 3d 959, 155 Cal. Rptr. 335 (2d Dist. 1979). The trial court denied the motion of the putative wife of a deceased spouse for a nunc pro tunc order directing the entry of a final decree of dissolution of the marriage of the deceased and his prior wife, pursuant to Civil Code section 4515. The court of appeal reversed the lower court. A common law marriage, valid where contracted, is recognized as valid in California. Civil Code section 4515 requires that, in order for a nunc pro tunc decree to validate an otherwise bigamous marriage, the second marriage must follow the nunc pro tunc date. Here the second marriage preceded both the interlocutory decree of marriage and the proposed nunc pro tunc date. However, since the putative spouse and her deceased husband had held themselves out to be husband and wife in two states recognizing common law marriages after the proposed nunc pro tunc date, the court held that the putative spouse could claim the status of a valid common law wife under the laws of either of those two states at a time after the proposed nunc pro tunc date.

2. Entry of Final Decree Conditioned on Reimbursement to County

In re Marriage of Sanabia, 95 Cal. App. 3d 483, 157 Cal. Rptr. 56 (4th Dist. 1979). A wife obtained by default an interloc-
utory decree of dissolution. The trial court conditioned entry of final judgment on reimbursement to the county of a filing fee previously waived because of the wife's indigency, and ordered her to partially reimburse the county for welfare child support payments. The court of appeal reversed, holding that the trial court lacked jurisdiction to condition entry of the final decree on the wife's reimbursement of the filing fee. The court also held that the trial court could not order the sale of the community stereo set to pay for the filing fee since the stereo is considered a necessary household furnishing or appliance and is exempt from execution. (Code of Civil Procedure section 690.1) Finally, the court held that federal and state law limits the county's claim for reimbursement of child support to non-custodial parents. Because the wife had custody of the minor children and was eligible for welfare, the reimbursement order was improper.

3. Willful Violation of Discovery Orders

In re Marriage of Stallcup, 97 Cal. App. 3d 294, 158 Cal. Rptr. 679 (3d Dist. 1979), modified on denial of rehearing, 98 Cal. App. 3d 533d. In an interlocutory decree of dissolution, the trial court appointed a certified public accountant (CPA) to prepare a financial report on the couple's community assets, and ordered the parties to turn over all necessary documents to the accountant. When the issues of property division and support were brought to trial almost four years later, the court found that the husband had willfully disobeyed the discovery order, and precluded him from introducing evidence of specified financial transactions. On appeal by the husband from the judgment dividing community property and awarding child and spousal support, the court of appeal affirmed. Holding that the trial court did not abuse its discretion in excluding the evidence of financial transactions, the court pointed out that the husband, despite repeated court orders to deliver documents, had never supplied meaningful information concerning the couple's financial situation. The court further held that 1) the trial court had properly valued community assets at a date near that of separation rather than trial, 2) the evidence was sufficient to support a finding that the husband had misappropriated a community bank account, 3) an award to the wife of one-half the amount involved in the bank account in addition to one-half of the other property did not allow her a double recovery, and 4) the trial court did not err in ordering the husband to pay ten
percent interest on the unpaid balance of installments due the wife as her share of community property. Marital property dispositions are limited by judgment rate of interests, but are controlled by the dictates of fairness and equity under Civil Code section 4800. Finally, distinguishing Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) as having only addressed benefits under the 1974 Railroad Retirement Act, the court rejected the husband's contention that the trial court had improperly retained jurisdiction to modify any military pension and retirement rights.

4. Award of Attorney's Fees

In re Marriage of Pollard, 97 Cal. App. 3d 535, 158 Cal. Rptr. 849 (2d Dist. 1979). Pursuant to Civil Code Section 4370(a), the trial court ordered the husband to pay his ex-wife's attorney's fees pursuant to his motion to modify visitation rights. Both the husband and wife were welfare recipients. The order was to take effect when the husband's income exceeded $500.00 per month. Noting that ability to pay is one of four conditions which must be met to warrant an allowance of attorney's fees, the court of appeal reversed, holding that since both parties were legitimately on welfare and there was no showing of any reasonable expectation of changed financial circumstances, it was an abuse of discretion to impose on one of the parties an obligation to pay the attorney contracted by the other.

5. Finality of Decree Dividing Community Property

In re Marriage of Shanahan, 95 Cal. App. 3d 295, 157 Cal. Rptr. 30 (2d Dist. 1979). An action for dissolution was consolidated with an earlier separate maintenance action in which a final decree had been entered establishing the family residence as community property, and setting forth the circumstances under which it could be sold. The trial court, in entering the interlocutory decree, found that the earlier provision pertaining to the family home was meant to be a form of support and therefore modified the provisions by ordering the immediate sale of the property. The court of appeal reversed, holding that once it has become final, a decree dividing community property is not subject to modification by a later decree, whether in the original action or a subsequent one. The court found that a stipulation in the separate maintenance action, and the decree based upon it, expressly declared that the order pertaining to the family home

Women's Law Forum
was intended to be a division of the community property of the marriage.

6. **Modification of Property Settlement**

   *In re Marriage of Kaufman*, 101 Cal. App. 3d 147, 161 Cal. Rptr. 538 (2d Dist. 1980). The trial court approved terms of a property division stipulated to in open court by a husband and wife and ordered the wife's attorney to prepare the written order. Subsequently, counsel for the parties exchanged correspondence which discussed terms not previously agreed upon; a modified judgment was approved by both attorneys and signed by the court. Two and one-half years later, the husband instituted an action to conform the judgment to the original stipulation and order, contending that there were clerical discrepancies between the stipulation and order and the signed judgment. The wife asserted that the signed judgment accurately reflected modifications discussed in the correspondence between the attorneys. The trial court gave little weight to the correspondence, viewing it as self-serving hearsay, and viewed the discrepancies as clerical errors to be corrected in conformance with the original stipulation. The court of appeal affirmed, holding that there was no direct evidence that the husband consented to anything but the terms of the original stipulation and that any substantive modifications agreed to by counsel were not binding.

   *In re Marriage of Neilsen*, 100 Cal. App. 3d 874, 161 Cal. Rptr. 272 (1st Dist. 1980). Pursuant to a dissolution, the parties signed a property settlement agreement containing a spousal support provision, and incorporated but did not merge it into the final judgment. Six years later, the wife requested and was granted a modification of spousal support. The husband contended unsuccessfully, that the court lacked jurisdiction to modify the support provision because the property settlement agreement had not been merged into the dissolution decree. The court of appeal reversed. The court noted that under Civil Code section 4811, spousal support provisions of property settlement agreements are generally subject to judicial modification unless the agreement specifically provides to the contrary. The code section makes the concept of merger irrelevant to the determination of whether or not a court may modify a marriage settlement agreement. In the instant case, however, language in the final paragraph of the property settlement agreement stated that it
“shall not depend for its effectiveness on [court] approval, nor be affected thereby.” This language was sufficient to bar judicial modification.

7. **Adjudication of Issues After Death of Party**

   *In re Marriage of Williams*, 101 Cal. App. 3d 507, 161 Cal. Rptr. 808 (2nd Dist. 1980). In a dissolution proceeding, the trial court awarded the wife temporary custody of the parties’ children and five months later, the wife became seriously ill. Two days before her death, the children’s father petitioned the court for custody. At the same time, the wife’s mother and brother moved for joinder in the dissolution proceedings, seeking custody based on an allegation that the father was unfit. The trial court denied the joinder motion on the grounds that the wife’s death terminated the dissolution proceeding as a matter of law and therefore there was no pending action to which the mother and brother could be joined. The court of appeal affirmed, holding that when a party to a dissolution dies, the court has the power only to enter judgment in conformity with issues adjudicated before the death. Because the motion for joinder was not adjudicated before the wife died, any right petitioners had in the dissolution proceeding was terminated, and the court had no choice but to deny their motion.

H. **Pension and Disability Benefits**

1. **Res Judicata Effect of Dissolution Decree**

   *Henn v. Henn*, 26 Cal. 3d 323, 605 P.2d 10, 161 Cal. Rptr. 502 (1980). A wife’s community property interest in her husband’s matured federal military retirement pension was not mentioned in their property settlement agreement or in the dissolution decree. Two years later, the wife moved for an order to show cause why the retirement pension should not be divided as community property. Her motion was denied on the grounds that absent extrinsic fraud or mistake, the court has no jurisdiction to modify a property settlement agreement which has been incorporated into a final judgment of dissolution. Approximately two and one-half years later, the wife filed a complaint in the superior court asking for 1) a determination that her husband’s military pension was community property to the extent it was earned during their marriage; 2) a full accounting of all pension
payments received by her husband, and 3) a division of the community property portion of the pension. Her husband raised the defense of res judicata and the trial court entered judgment on his behalf.

The supreme court reversed, holding that while the dissolution of marriage and property settlement occurred before its ruling that federal military retirement pay is subject to California community property law (In re Fithian, 10 Cal. 3d 592, 517 P.2d 449, 111 Cal. Rptr. 369 (1974)), the decision was fully retroactive in application. The court also held that failure to mention the pension in the interlocutory decree did not bar the present proceeding because the wife's interest in the military pension was distinct from her interest in other community property divided at the time of dissolution. Because the question of dividing the military pension was not before the court issuing the final dissolution decree, the decision of that court was not res judicata as to the military pension.

† Mead v. Lachelt, 94 Cal. App. 3d 445, 156 Cal. Rptr. 444 (1st Dist.), hearing granted, Aug. 22, 1979. The trial court sustained a husband's demurrer to his former wife's action concerning her rights in his military retirement benefits. The court of appeal affirmed, holding that the doctrine of res judicata was applicable to preclude the wife from asserting an interest in her husband's military benefits where 1) the marriage had been dissolved eight years before without mention of the benefits, and 2) the court had failed to reserve jurisdiction to divide the pension benefits at a later time. The court further stated that In re Marriage of Brown, 15 Cal. 3d 838, 544 P.2d 561, 126 Cal. Rptr. 633 (1976) limited the retroactivity of pension decisions to all cases not yet final at that time.

2. Characterization of Benefits as Disability or Pension

In re Marriage of Samuels, 96 Cal. App. 3d 122, 158 Cal. Rptr. 38 (1st Dist. 1979). In a dissolution proceeding, ninety-
four percent of a husband’s disability annuity was determined to be community property and the wife was awarded a one-half interest, payable retroactively. The judgment also determined that the wife held a property interest in any future death benefits and enjoined the husband from exercising his right to modify or terminate her interest. Due to an injury, the husband had left his civil service job when he was fifty years old. He began to receive monthly disability benefits reduced in amount due to his election to provide death benefits to his surviving spouse. When the husband reached sixty-two years of age, he was to be eligible for a deferred retirement annuity. The court of appeal reversed and remanded, holding that the disability benefits received by the husband when he terminated his employment served the principal purpose of compensating him for his injury and were his separate property until he reached the age of sixty-two. At that time, the disability benefits would become retirement benefits and therefore be community property. Accordingly, the wife was entitled to an allocation of the present actuarial value of the community interest, or an award of one-half the benefits paid on the husband’s attaining the age of sixty-two. The court further held that because survivorship benefits are payable only to an employee’s spouse, an ex-wife has no community interest in such benefits when dissolution occurs before retirement. Therefore, the trial court was in error in attempting to restrain the husband from terminating or modifying the existing survivorship benefits.

In re Marriage of Reyes, 97 Cal. App. 3d 876, 159 Cal. Rptr. 84 (5th Dist. 1979). In a dissolution proceeding, the wife joined the husband’s pension trust fund as a party and secured a decree ordering direct payments to her. Upon the fund’s unsuccessful appeal from judgment, the wife moved the trial court to assess attorney fees against the fund but the trial court denied the motion. The court of appeal affirmed, holding that Civil Code section 4370 explicitly restricts the court’s authority to order the payment of attorney fees to “the husband or wife, father or mother”, and there is nothing in the statute’s legislative history or in case law that would authorize an interpretation allowing such an order against any other party in a dissolution proceeding. Generally attorney fees are not recoverable from an opposing party in the absence of express statutory or contractual authority (Code of Civil Procedure section 1021) or in exceptional circumstances. The wife failed to bring her case within
any of the specified exceptions. The court also rejected the wife’s contention, made for the first time on oral argument, that she was entitled to attorney fees under 29 USC section 1132(g) which authorizes an award of attorney fees to a “participant, beneficiary or fiduciary.” The court held that the wife’s failure to raise that argument at trial or in her opening brief constituted a waiver.

_In re Marriage of Webb_, 94 Cal. App. 3d 335, 156 Cal. Rptr. 334 (1st Dist. 1979). In a dissolution of a twenty-five year marriage, the trial court 1) found that the husband’s police pension was for disability and would remain his separate property even after he reached retirement age despite the fact that his contribution to the retirement fund during marriage was community property, 2) ordered the husband to pay his wife spousal support for three years, followed by step-down support for seven years and termination thereafter, and 3) valued the goodwill of the husband’s business. The court of appeal reversed the characterization of the disability pension, reversed the termination of spousal support, and affirmed the rest of the judgment. The court determined that the community interest in the pension was equal to the ratio between the number of years the husband worked as a police officer during the marriage and the total number of years from the date of his hiring to the date he would become eligible for longevity retirement benefits. Noting that the city charter provided for a recalculation of the benefits received by a police officer who is retired for disability once the officer reached the age for longevity retirement, the court concluded that the primary purpose of benefits after retirement is to provide for the support of the police officer and his family, not to compensate him for loss of earnings resulting from disability. The court also held that the trial court erred in terminating spousal support at a certain date without reserving jurisdiction over the matter.

_Goins v. Board of Pension Commissioners_, 96 Cal. App. 3d 1005, 158 Cal. Rptr. 470 (2d Dist. 1979). The trial court granted summary judgment to defendant when a widow of a former police officer brought an action to compel payment of a pension under the terms of the city charter. Her husband had taken disability retirement after nineteen years of service in the police department. She had married his almost two years before he
died from non-service causes and almost seven years after he began to collect retirement pay. She sought benefits under provisions of the charter providing that an annual pension of forty percent of the highest salary will be paid to the widow of any member of the police department who has served five years or more and dies from causes other than those arising from the performance of his duties. To be eligible, the widow must be married to the member at least one year prior to his death. The court of appeal reversed with directions to enter judgment for the plaintiff. Rejecting defendant’s argument that the term “any member” should be construed as limited to persons in active service, the court held that the plaintiff satisfied all of the requirements of a literal reading of the city charter and was therefore eligible for the pension.

3. Classification of Benefits as Separate or Community Property

† In re Marriage of Milhan, 97 Cal. App. 3d 41, 158 Cal. Rptr. 523 (2d Dist. 1979), hearing granted, Nov. 15, 1979. In a dissolution proceeding, the trial court ordered community division of the husband’s retirement pay and of the case surrender value of two military life insurance policies, and awarded the wife attorney’s fees. The judgment was entered pursuant to a decision of the California Supreme Court which had reversed the trial court’s earlier adjudication, In re Marriage of Milhan, 13 Cal. 3d 129, 528 P.2d 1145, 117 Cal. Rptr. 809 (1974), cert. den., 421 U.S. 976 (1975), that these assets were the husband’s separate property. The court of appeal reversed, noting that a recent United States Supreme Court decision (Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979)) was controlling. The appellate court held that military retirement pay, being nonattachable under the doctrine of federal sovereign immunity, remains the separate property of the former serviceman to whom it is payable. The court noted that while special legislation was enacted to permit garnishment of a civil servant’s retirement benefits for

† Because the California Supreme Court has granted a hearing in this case, the court of appeal opinion is of no force or effect and is no longer an authoritative statement of any principle of law. 5 CAL. JUR. 2d, Appellate Review § 434 (1952), citing Knouse v. Nimocks, 8 Cal. 2d 482, 66 P.2d 438 (1937). This case appears in the Survey for the sole purpose of familiarizing the reader with issues presently pending before the high court.

Women’s Law Forum
community property purposes, no comparable provision allows such garnishment of a former serviceman’s pay. The court also held that the trial court’s award of half the cash value of the military life insurance policies to the wife would effectively nullify the beneficiary election given to insured servicemen by Congress. Finally, the court ruled that because the husband’s contentions were upheld in full, the trial court’s award of attorney’s fees to the wife was erroneous.

_In re Marriage of Lionberger_, 97 Cal. App. 3d 56, 158 Cal. Rptr. 535 (2d Dist. 1979). In a dissolution proceeding, the trial court entered an interlocutory judgment providing that 1) spousal support to the wife should terminate after five years, and 2) the interest of the husband in a union pension was community property. On appeal by the wife and the pension trust, the court of appeal modified the judgment insofar as it declared the wife’s interest in the pension to be alienable, inheritable and assignable. The court held that the termination of spousal support after five years was binding; the wife’s failure to object at the time the trial court included the provision in the interlocutory decree amounted to an implied waiver of her right to raise that contention on appeal. The fact that the wife objected to the provision in an attorney’s conference in chambers was irrelevant since there was no record of the conference. The court rejected the trust’s contention that the provisions of the Employee Retirement Income Security Act (ERISA) preempted state law and precluded the application of California community property law to the distribution of benefits, finding that the nature of the action fell within the exception of ERISA and conferred concurrent jurisdiction on the state. U.S. Appeal Pending.

_In re Marriage of Orr_, 95 Cal. App. 3d 561, 157 Cal. Rptr. 301 (2d Dist.), hearing denied, Oct. 11, 1979. In a dissolution proceeding, the court of appeal affirmed a trial court ruling that Veterans Administration disability compensation was the husband’s separate property. The court held that Congress made veterans’ disability benefits free from community property claims of spouses by 1) protecting those benefits by the anti-attachment provisions of the Veterans Benefits Act (38 U.S.C. section 3101), 2) providing that attachment is not allowed for child and spousal support against payments made by the Veterans Administration as compensation for service-connected disa-
bility, at least when the disability payments wholly displace re-
tirement pay (52 U.S.C. section 662 subdivision (f)(2), and (3))
specifically excluding any community property division from the
definition of alimony (42 U.S.C. section 662(c)). Under the
supremacy clause of the United States Constitution, California's
community property law must defer to the specific provisions in
the Veterans Benefits Act designed to protect those benefits.
The court also held that the trial court acted within its discre­
tion in refusing to award the wife spousal support and in termi­
nating jurisdiction over the case since the husband was totally
disabled and the wife was gainfully employed.

_In re Marriage of Forrest,_ 97 Cal. App. 3d 850, 159 Cal.
Rptr. 229 (4th Dist. 1979). In a dissolution proceeding, the trial
court entered an interlocutory judgment awarding the wife a
community property interest in her husband's military retire­
ment pension, and denying the husband a community share in
his wife's right to reinstate her federal civil service retirement
benefits. The court of appeal affirmed, holding that the wife's
pension asset was not only not vested but also nonexistent, sub­
ject to reinstatement only if she resumed employment with the
federal government and redeposited some $6,500.00 of with­
drawn contributions. The wife had withdrawn the contributions
during her marriage and presumably used them for community
purposes. The community, therefore, had not been depleted as
would be the case if she had been contributing all along to a
nonvested pension. The court held that her present contribu­
tions were from separate property and that the trial court prop­
erly refused to divide so tenuous an asset. The court further
held that the husband's military retirement benefits were com­

4. Rights of Divorced Spouse to Division of ERISA Pension

_In re Marriage of Pilatti,_ 96 Cal. App. 3d 63, 157 Cal. Rptr.
Rptr. 594, _cert. denied sub nom._ Trustees of Operating Engi­
neers Pension Trust v. Pilatti, 100 S. Ct. 1276 (1980). In a disso­
lution proceeding, the wife joined the trustees of her husband's
pension trust as third party. The trial court ordered the trustees
to pay one half the husband's retirement benefits directly to the
wife. The trust came under the Federal Employee Retirement
Income Security Act (ERISA), under which benefits may be paid only to participants or, upon death, to the surviving spouse, designated beneficiary, or estate. The trustees appealed. The court of appeal affirmed, holding that 1) ERISA gives state courts concurrent jurisdiction in actions to enforce a participant's rights under the plan, and 2) the wife was an owner of her share of the benefits under community property status and thus was a “participant” in the pension by the operation of law.

5. Retirement Benefits Omitted From Dissolution Decree

In re Marriage of Snyder, 95 Cal. App. 3d 636, 157 Cal. Rptr. 196 (4th Dist. 1979). Plaintiff's complaint sought a one-half interest in her ex-husband's retirement benefits, which were vested and matured at the time the final judgment of dissolution was entered. The trial court sustained a husband's demurrer, without leave to amend, on the basis of res judicata. The court of appeal reversed, holding that the doctrine of res judicata cannot be based on reference or surmise. At an uncontested hearing, the parties omitted reference to retirement benefits in their pleadings and stipulated that all community property had been listed. The trial court was thus precluded from performing its duty to divide the community retirement benefits, and the doctrine of res judicata would not apply.

6. Calculation of Community Interest in Retirement Benefits

In re Marriage of Poppe, 97 Cal. App. 3d 1, 158 Cal. Rptr. 500 (4th Dist. 1979). The trial court: 1) denied the request of a former husband that spousal support for his wife be decreased or terminated; and 2) granted the wife a modification of the prior dissolution judgment by fixing her interest in the husband's Naval Reserve pension on the basis of the time rule (one-half the ratio between number of years of service during marriage to the number of total qualifying years). The court of appeal reversed the lower court as to the extent of the wife's interest in the pension, but affirmed in all other respects. The court held that the apportionment of retirement benefits on the basis of the time rule was appropriate only where the amount of benefits was substantially related to the number of years of service. The Naval Reserve pension is calculated on a point system—one point for each drill while a reserve, and one point for each day on active duty. The husband served nine years on active duty.
prior to marriage, and twenty-seven years in the reserve during marriage. While only one-third of the total points were earned during the marriage, by using time rule calculations, the community interest in the pension amounted to almost nine-tenths. Since no substantial relationship existed between benefits and length of service, the trial court abused its discretion in using the time rule for its calculations.

I. PATERNITY ACTIONS

1. Effect of Failure to Dispute Paternity in Dissolution Proceedings

In re Marriage of Guardino, 95 Cal. App. 3d 77, 156 Cal. Rptr. 883 (1st Dist. 1979). The trial court granted a husband’s motion to set aside portions of a dissolution judgment declaring him to be the father of his former wife’s child, and ordering him to pay child support. His motion was based on an allegation that his wife had fraudulently led him to believe he was the child’s legal father. The trial court found that the husband’s attorney in the dissolution failed to inquire into the circumstances surrounding the birth of the child and failed to inform him that the child was conclusively presumed to be the issue of his wife’s prior marriage. The court of appeal reversed, holding that the trial court abused its discretion in setting aside the contested portions of the judgment since the husband was aware that his former wife was married to another man when she became pregnant and that she was having sexual relations with both men during the conception period. Therefore, the failure of his attorney to inform the husband that the child was conclusively presumed to be the issue of the prior marriage was not a proper ground on which to set aside the judgment. The court further held that the issue of paternity decided in the interlocutory decree, was res judicata.

Brown v. Superior Court, 98 Cal. App. 3d 633, 159 Cal. Rptr. 604 (1st Dist. 1979). In a proceeding by a wife for increased child support, her ex-husband defended on the ground that he was not the father of the child. The trial court ruled in his favor, rejecting the wife’s contention that the prior divorce decree was res judicata on the paternity issue. The trial court also granted the ex-husband’s motion for a blood test of his ex-wife and the child, and to depose the child. The husband stated
that he did not try to establish lack of paternity at the original proceeding ten years before on his attorney's advice that it would be too difficult to prove. The court of appeal directed the trial court to vacate its order and to enter an order granting the ex-wife's motion to quash the deposition of the child. The court held that the paternity determination in the default divorce decree was res judicata in the absence of extrinsic fraud or mistake and that the ex-husband had shown no evidence of such circumstances.

2. **Constitutionality of Paternity Agreement Statute**

*County of Ventura v. Castro*, 93 Cal. App. 3d 462, 156 Cal. Rptr. 66 (2d Dist. 1979). In accordance with an agreement between the district attorney and defendant, the trial court entered judgment pursuant to Welfare and Institutions Code section 11476.1 which authorizes judgment establishing paternity and order of child support. The trial court denied the defendant's motion to set aside the judgment. The court of appeal reversed holding that Welfare and Institutions Code section 11476.1 is constitutionally defective in that 1) it makes no provision for the protection of the non-custodial parent's due process rights to notice and hearing, 2) it fails to address the manner in which a defendant can waive his rights to a hearing and 3) it makes no provision for a prejudgment judicial determination on the issue of waiver. A judgment entered accordingly might deprive a defendant of his personal property and, subsequently, his freedom. The court saw no distinction between the confession of judgments statutes (Code of Civil Procedure sections 1132-1134, struck down by the supreme court on due process grounds) and the agreement for judgment statute embodied in Welfare and Institutions Code section 11476.1.

3. **Representation of Indigent Male in Paternity Action**

*Littlefield v. Superior Court*, 98 Cal. App. 3d 652, 160 Cal. Rptr. 175 (2d Dist. 1979). The trial court appointed the public defender to represent an indigent man in an action by the county seeking to establish paternity of and support for two minor children. The court of appeal ordered the trial court to vacate its order of appointment, holding that the court acted in excess of its jurisdiction. Government Code section 27706 sets forth the authorized duties of the county public defender who is
empowered to act in a limited number of narrowly defined civil actions. An action to establish paternity and enforce child support is not one of those actions.

4. Appointment of Guardian in County Reimbursement Action

_D.G. v. Superior Court_, 100 Cal. App. 3d 535, 161 Cal. Rptr. 117 (4th Dist. 1980). The trial court denied a mother’s motion to have herself appointed guardian ad litem for her minor child rather than the court-appointed guardian. The child had been named as plaintiff in an action by the county to establish paternity, for child support and to obtain reimbursement of welfare funds expended on the child’s behalf. The mother sought a writ of mandate to compel the trial court to grant her motion for substitution and the court of appeal denied the writ. Following petition to the Supreme Court, the matter was remanded to the court of appeal with directions to issue an alternative writ. Subsequently, the court of appeal denied the mother’s petition, holding that although the district attorney appointed the guardian ad litem pursuant to the Uniform Parentage Act (Civil Code § 7008), which potentially broadened the scope of the proceedings, the county’s complaint asked for no more than was proper within the context of an action for reimbursement of welfare funds and to establish paternity under Welfare and Institutions Code section 11350.1. The trial court, therefore, rightfully treated the appointment of the guardian ad litem as having been made pursuant to the general authority of Code of Civil Procedure section 372, which permits the appointment of a guardian ad litem by the trial court whenever expedient. As to the substantive issues, the court held that 1) the mother failed to establish that the present guardian ad litem was not properly discharging his duties or had a conflict of interest, and 2) there was no established preference to have the mother serve as guardian ad litem.

J. MERETRICIOUS RELATIONSHIPS

1. Imputed Negligence of Cohabiting Partner

_Planck v. Hartung_, 98 Cal. App. 3d 838, 159 Cal. Rptr. 673 (3d Dist. 1979). The trial court rejected the plaintiff’s contention that the negligence of a man could be imputed to the woman he
lived with. The plaintiff based his allegation on the ground that the man and woman, by living together, were engaged in a joint venture and that the negligence of one could be imputed to the other. The court of appeal affirmed, reasoning that there was nothing in the case to suggest any business purpose, profit motive or tangible benefit to the couple from their living arrangement other than that which was typical of all families; therefore, the relationship did not become a joint venture for purposes of vicarious or imputed liability.

2. Application of Marital Communications Privilege

*People v. Delph*, 94 Cal. App. 3d 411, 156 Cal. Rptr. 422 (2d Dist. 1979). The trial court allowed a woman, with whom defendant had lived for four years and with whom she had had a child, to testify that the defendant had made statements to her regarding bomb threats. The court of appeal affirmed, holding that the trial court was correct in refusing to apply the marital communications privilege with respect to the woman’s testimony. The court stated that a valid marriage is a prerequisite to the exercise of the privilege and that it is for the legislature to determine whether meretricious relationships deserve the same statutory protection.

K. LEGISLATION

1. Marriage and Dissolution

A.B. 537 — Waters
Chapter 164
Statutes of 1979

*Dissolution.* Allows final judgment of marriage to be filed even if appeal or motion for new trial has been filed absent specified objection in the notice of appeal or motion for new trial.

A.B. 746 — McVittie
Chapter 621
Statutes of 1979

*Marriage.* Authorizes the court to impose a fee to cover counselling costs for persons under the age of eighteen who are participating in pre-material counseling provided by the county.
2. Community Property

A.B. 1826 — Kapiloff
Chapter 638
Statutes of 1979

*Personal Injury Damages.* Designates money received in settlement of an accident or injury as separate property if the accident or injury occurred after separation of the spouses.

3. Child Custody and Control

A.B. 363 — Chappie
Chapter 69
Statutes of 1979

*Child Support Offsets.* Allows Social Security payments to be credited toward amount of child support ordered by the court.

A.B. 381 — Boatwright
Chapter 1170
Statutes of 1979

*Child of Prior Marriage.* Requires all the community property interest of an adoptive parent or natural parent to be available for child support of a child by a prior marriage. Makes other changes in welfare laws.

A.B. 1480 — Imbrecht
Chapter 915
Statutes of 1979

*Joint Custody Provisions:* Specifies circumstances in which a presumption favoring joint custody shall operate, and provides that access to records and information pertaining to a minor child may not be denied a parent because she is not the child's custodial parent.

S.B. 477 — Smith
Chapter 204
Statutes of 1979

*Joint Custody Authorized.* Specifies the circumstances in which joint custody would be in the best interest of the child and specifically authorizes such an award of joint custody in other cases as designated by the court.

Women's Law Forum
S.B. 540 — Presley
Chapter 752
Statutes of 1979

Consent to Adoption. Requires consent of natural father where adoption of a child is being considered; clarifies who can be considered as a natural father in paternity questions.

4. Spousal Support

A.B. 437 — McAlister
Chapter 912
Statutes of 1979

Unemployed Spouse. Requires the courts, in awarding spousal support, to consider the extent to which the spouse’s earning capacity was impaired by periods of unemployment during marriage because of domestic duties.

5. Pregnancy and Childbirth

A.B. 121 — Berman
Chapter 13
Statutes of 1979

Discrimination Based on Pregnancy. Makes technical changes in laws prohibiting discrimination on the basis of childbirth, pregnancy or related medical conditions.

A.B. 873 — Agnos
Chapter 657
Statutes of 1979

Genetic Disease Testing. Provides for an ongoing appropriation for Genetic Disease Testing Unit in the Department of Health.

A.B. 1097 — Rosenthal
Chapter 629
Statutes of 1979

Prenatal Diagnosis of Genetic Disorders. Requires that health insurers offer coverage of genetic testing in cases of high risk pregnancies, and requires that group policies offer coverage on terms agreed upon by insurer and group policy holder. Also requires prospective policy holders to be informed of coverage availability.
S.B. 775 — Keene
Chapter 1141
Statutes of 1979
Perinatal Care. Establishes regional perinatal transport systems for high risk pregnant women and infants and appropriates $921,000 for the program which is to run until January 1, 1985.

S.B. 776 — Keene
Chapter 331
Statutes of 1979
Perinatal Program. Requires the Department of Health Services to maintain a program addressing the special needs of high risk pregnant women and infants particularly in underserved geographic areas.

III. LABOR LAW
A. Employment Discrimination
1. Recovery of Back Wages for Equal Pay Violation

† Jones v. Tracy School District, 93 Cal. App. 3d 552, 155 Cal. Rptr. 804 (3d Dist. 1979), hearing granted, July 25, 1979. In an action by an employee for back pay under Labor Code section 1197.5 which requires equal pay for equal work without regard to the sex of the employee, the trial court granted plaintiff's motion for summary judgment but limited recovery of back wages to a two-year period prior to commencement of the action. Plaintiff had sought recovery of back wages for the entire six-year period during which she was underpaid solely because she was a woman. The court of appeal affirmed, holding that in an action for back pay, a new cause of action accrues with each discriminatory pay day, and the statute of limitations begins to run from that time. Thus, the court held that the two-year period of limitation contained in Labor Code section 1197.5(h) limited recovery to the difference in wages paid within two years of commencement of the action. Further, the court held that an award

† Because the California Supreme Court has granted a hearing in this case, the court of appeal opinion is of no force or effect and is no longer an authoritative statement of any principle of law. 5 CAL. JUR. 2d, Appellate Review § 434 (1952), citing Knouse v. Nimocks, 8 Cal. 2d 482, 66 P.2d 438 (1937). This case appears in the Survey for the sole purpose of familiarizing the reader with issues presently pending before the high court.

Women's Law Forum
of attorney's fees under Labor Code section 1197.5(g) is discretionary in the trial court and the trial court did not abuse its discretion in denying plaintiff's request for attorney's fees.

2. Constitutionality of Affirmative Action Program for Public Employees

Minnick v. Department of Corrections, 95 Cal. App. 3d 506, 157 Cal. Rptr. 260 (1st Dist. 1979), modified on denial of reharing, 96 Cal. 3d 626a, cert. granted, 100 S. Ct. 3055 (1980) (No. 79-1213, 1979 Term). The trial court granted a declaratory judgment in favor of two male Caucasians who had brought an action against the Department of Corrections and the Correctional Officers Association alleging that the defendants had discriminated against employees of the department by carrying out an affirmative action program. The trial court also issued a permanent injunction restraining, with qualification, hiring or promotion based on preference by race of sex. The court of appeal reversed, holding that the department's practices were permissible under both the federal and state equal protection clause to the extent that noncontrolling preferences resulted in some advantage to women and minorities because such practices were necessary to promote the compelling interest of the state in the proper management of its correctional system.

B. Unemployment Insurance Benefits

1. Permissibility of Questions Regarding Pregnancy in Determining Eligibility.

Gunn v. Employment Development Department, 94 Cal. App. 3d 658, 156 Cal. Repr. 584 (2d Dist. 1979). The trial court denied a woman's petition for writ of mandate to direct the Employment Development Board and the Unemployment Insurance Appeals Board to set aside their decision that she was ineligible for unemployment insurance benefits because she refused to answer an interviewer's questions regarding her health and her possible pregnancy. The court of appeal reversed and held that an inquiry into the potential effect of pregnancy on a claimant's health is constitutionally permissible only if conducted in the least intrusive manner possible. At the time of her hearing, the claimant provided the judge with a certificate of good health from her physician, but refused to answer any questions about her physical condition. The court of appeal stated that the cer-
tificate from the woman's physician constituted prima facie proof that she was eligible for benefits, and further questions regarding her pregnancy and health were an unwarranted invasion of privacy.

C. LEGISLATION

1. Employment Discrimination
   A.B. 740 — Chacon
   Chapter 997
   Statutes of 1979
   Unemployment Data. Authorizes the State Employment Development Department to collect data on comparative unemployment rates among various age, sex, and ethnic groups and on the length of time and types of unemployment experienced by the above-named groups.

   S.B. 213 — Greene
   Chapter 1181
   Statutes of 1979
   Jailers. Prohibits sex discrimination in appointments or work assignments in county jails.

2. Wages, Hours and Benefits
   A.B. 58 — Robinson
   Chapter 76
   Statutes of 1979
   Worker's Compensation: Volunteers. Broadens the exclusion of volunteers from workers' compensation to exclude volunteers in all nonprofit organizations and redefines volunteer service for workers' compensation eligibility.

   A.B. 105 — Fenton
   Chapter 222
   Statutes of 1979
   Discontinuance of Health Benefits. Requires public and private employers to give covered employees fifteen days written notice of discontinuance of medical, surgical or hospital benefits.

   S.B. 371 — Mills
   Chapter 751
   Statutes of 1979
Leisure Sharing. Establishes an experimental “leisure sharing” employment program whereby employees are allowed to voluntarily cut back hours of work; federal funds are to be sought for implementation.

3. Consideration of Volunteer Experience

A.B. 866 — Levine
Chapter 544
Statutes of 1979

Employment Applications. Requires all applications for employment with the California State University and Colleges to include a place to list volunteer experience, and for such experience to be considered if it is relevant to the job being applied for; notice of consideration of volunteer experience must be displayed on the application form.
### TABLE OF CASES SUMMARIZED

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. SUPREME COURT</strong></td>
<td></td>
</tr>
<tr>
<td>Henn v. Henn, 26 Cal. 3d 323, 605 P.2d 10, 161 Cal. Rptr. 502 (1980)</td>
<td>1322</td>
</tr>
<tr>
<td>In re Marriage of Carney, 24 Cal. 3d 725, 598 P.2d 36, 157</td>
<td>1304</td>
</tr>
<tr>
<td>In re Marriage of Fink, 25 Cal. 3d 877, 603 P.2d 881, 160</td>
<td>1300</td>
</tr>
<tr>
<td>People v. Saffell, 25 Cal. 3d 223, 599 P.2d 92, 157 Cal. Rptr. 897 (1979)</td>
<td>1291</td>
</tr>
<tr>
<td><strong>II. COURTS OF APPEAL</strong></td>
<td></td>
</tr>
<tr>
<td>Adoption of D.S.C., 93 Cal. App. 3d 14, 155 Cal. Rptr. 406 (4th Dist. 1979), hearing denied, Sep. 12, 1979</td>
<td>1306</td>
</tr>
<tr>
<td>Camp v. Swoap, 94 Cal. App. 3d 733, 156 Cal. Rptr. 600 (3d Dist. 1979)</td>
<td>1313</td>
</tr>
<tr>
<td>Coefield v. Coefield, 92 Cal. App. 3d 959, 155 Cal. Rptr. 335 (2d Dist. 1979)</td>
<td>1318</td>
</tr>
<tr>
<td>Committee to Defend Reproductive Rights v. Myers, 93 Cal. App. 3d 492, 156 Cal. Rptr. 73 (1st Dist. 1979), hearing granted, Sep. 12, 1979</td>
<td>1316</td>
</tr>
<tr>
<td>County of Los Angeles v. Ferguson, 94 Cal. App. 3d 549, 156 Cal. Rptr. 565 (2d Dist. 1979)</td>
<td>1312</td>
</tr>
</tbody>
</table>
County of Ventura v. Castro, 93 Cal. App. 3d 462, 156 Cal. Rptr. 66 (2d Dist. 1979) ........................................ 1331
D.G. v. Superior Court, 100 Cal. App. 3d 535, Cal. Rptr. (4th Dist. 1980) ..................................................... 1332
Estate of Schley, 100 Cal. App. 3d 161, 161 Cal. Rptr. 104 (1st Dist. 1979) ...................................................... 1299
Goins v. Board of Pension Commissioners, 96 Cal. App. 3d 1005, 158 Cal. Rptr. 470 (2d Dist. 1979) .............. 1325
Gunn v. Employment Development Department, 94 Cal. App. 3d 658, 156 Cal. Rptr. 584 (2d Dist. 1979) .... 1337
In re Jacqueline H., 94 Cal. App. 3d 808, 156 Cal. Rptr. 765 (2d Dist. 1979) ...................................................... 1307
In re Jeanette S., 94 Cal. App. 3d 52, 156 Cal. Rptr. 262 (5th Dist. 1979) ......................................................... 1307
In re La Shonda B., 95 Cal. App. 3d 593, 157 Cal. Rptr. 280 (2d Dist. 1979) ...................................................... 1307
In re Leonard M., 100 Cal. App. 3d 11, 160 Cal. Rptr. 631 (2d Dist. 1980) ......................................................... 1294
In re Marriage of Ashodian, 96 Cal. App. 3d 43, 157 Cal. Rptr. 555 (2d Dist. 1979), hearing denied, Nov. 8, 1979 ......................................................... 1303
In re Marriage of Brown, 99 Cal. App. 3d 702, 160 Cal. Rptr. 524 (3d Dist. 1979) ...................................................... 1313
In re Marriage of Chala, 92 Cal. App. 3d 996, 155 Cal. Rptr. 605 (2d Dist. 1979) ...................................................... 1314
In re Marriage of DeMore, 93 Cal. App. 3d 785, 155 Cal. Rptr. 899 (1st Dist. 1979) ...................................................... 1311
In re Marriage of Forrest, 97 Cal. App. 3d 850, 159 Cal. Rptr. 229 (4th Dist. 1979) ...................................................... 1328
In re Marriage of Guardino, 95 Cal. App. 3d 77, 156 Cal. Rptr. 883 (1st Dist. 1979) ...................................................... 1330
In re Marriage of Hudson, 95 Cal. App. 3d 72, 156 Cal. Rptr. 849 (1st Dist. 1979) ...................................................... 1311
In re Marriage of Kaufman, 101 Cal. App. 3d 147, 161 Cal. Rptr. 538 (2d Dist. 1980) ...................................................... 1321
In re Marriage of Kilkenny, 96 Cal. App. 3d 617, 158 Cal. Rptr. 158 (4th Dist. 1979) ...................................................... 1315
In re Marriage of Lionberger, 97 Cal. App. 3d 56, 158 Cal. Rptr. 535 (2d Dist. 1979) ........................................ 1327
In re Marriage of Marx, 92 Cal. App. 3d 984, 155 Cal. Rptr. 609 (2d Dist. 1979) .................................................. 1315
In re Marriage of Marx, 97 Cal. App. 3d 552, modified, 98 Cal. App. 3d 533c, 159 Cal. Rptr. 215 (2d Dist. 1979) .................................................. 1315
In re Marriage of Mason, 93 Cal. App. 3d 215, 155 Cal. Rptr. 350 (5th Dist. 1979) ........................................ 1301
In re Marriage of Milhan, 97 Cal. App. 3d 41, 158 Cal. Rptr. 523 (2d Dist. 1979), hearing granted, Nov. 15, 1979 .... 1326
In re Marriage of Moffat, 94 Cal. App. 724, 156 Cal. Rptr. 609 (2d Dist. 1979), hearing granted, Oct. 11, 1979 .... 1309
In re Marriage of Nielsen, 100 Cal. App. 3d 874, 161 Cal. Rptr. 272 (1st Dist. 1980) .......................... 1321
In re Marriage of Oldfield, 94 Cal. App. 3d 259, 156 Cal. Rptr. 224 (1st Dist. 1979) ........................................ 1308
In re Marriage of Orr, 95 Cal. App. 3d 561, 157 Cal. Rptr. 301 (2d Dist.), hearing denied, Oct. 11, 1979 ...... 1327
In re Marriage of Pollard, 97 Cal. App. 3d 535, 158 Cal. Rptr. 849 (2d Dist. 1979) .......................... 1320
In re Marriage of Popenhager, 99 Cal. App. 3d 514, 160 Cal. Rptr. 379 (1st Dist. 1979) .......................... 1310
In re Marriage of Poppe, 97 Cal. App. 3d 1, 158 Cal. Rptr. 500 (4th Dist. 1979) ........................................ 1329
In re Marriage of Reyes, 97 Cal. App. 3d 876, 159 Cal. Rptr. 84 (5th Dist. 1979) ........................................ 1324
In re Marriage of Samuels, 96 Cal. App. 3d 122, 158 Cal. Rptr. 38 (1st Dist. 1979) .......................... 1323
In re Marriage of Sanabia, 95 Cal. App. 3d 483, 157 Cal. Rptr. 56 (4th Dist. 1979) ........................................ 1318
In re Marriage of Shanahan, 95 Cal. App. 3d 295, 157 Cal. Rptr. 30 (2d Dist. 1979) .......................... 1320
In re Marriage of Slater, 100 Cal. App. 3d 241, 160 Cal. Rptr. 686 (1st Dist. 1979) .......................... 1301
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Decision Info</th>
</tr>
</thead>
<tbody>
<tr>
<td>In re Marriage of Snyder</td>
<td>95 Cal. App. 3d 636, 157 Cal. Rptr. 196 (4th Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Sparks</td>
<td>97 Cal. App. 3d 353, 158 Cal. Rptr. 638 (4th Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Stallcup</td>
<td>97 Cal. App. 3d 294, 158 Cal. Rptr. 679 (3d Dist. 1979) modified on denial of rehearing, 98 Cal. App. 3d 533d</td>
</tr>
<tr>
<td>In re Marriage of Thompson</td>
<td>96 Cal. App. 3d 621, 158 Cal. Rptr. 160 (4th Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Thweatt</td>
<td>96 Cal. App. 3d 530, 157 Cal. Rptr. 826 (4th Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Trantafello</td>
<td>94 Cal. App. 3d 533, 156 Cal. Rptr. 556 (2d Dist.), hearing denied Aug. 22, 1979</td>
</tr>
<tr>
<td>In re Marriage of Webb</td>
<td>94 Cal. App. 3d 335, 156 Cal. Rptr. 334 (1st Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Williams</td>
<td>101 Cal. App. 3d 507, 161 Cal. Rptr. 808 (2nd Dist. 1980)</td>
</tr>
<tr>
<td>In re Marriage of Winn</td>
<td>98 Cal. App. 3d 363, 159 Cal. Rptr. 554 (2d Dist. 1979)</td>
</tr>
<tr>
<td>In re Marriage of Wyatt</td>
<td>98 Cal. App. 3d 898, 159 Cal. Rptr. 784 (1st Dist. 1979)</td>
</tr>
<tr>
<td>Lantis v. Condon</td>
<td>95 Cal. App. 3d 152, 157 Cal. Rptr. 22 (1st Dist.), hearing denied, Nov. 2, 1979</td>
</tr>
<tr>
<td>Littlefield v. Superior Court</td>
<td>98 Cal. App. 3d 652, 160 Cal. Rptr. 175 (2d Dist. 1979)</td>
</tr>
<tr>
<td>Minnick v. Department of Corrections</td>
<td>95 Cal. App. 3d 506, 157 Cal. Rptr. 260 (1st Dist. 1979), modified on denial of rehearing, 96 Cal. App. 3d 626a</td>
</tr>
<tr>
<td>Morales v. Superior Court</td>
<td>99 Cal. App. 3d 283, 160 Cal. Rptr. 194 (5th Dist. 1979)</td>
</tr>
<tr>
<td>Case</td>
<td>Volume</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Palm v. Superior Court</td>
<td>97</td>
</tr>
<tr>
<td>People v. Compellebee</td>
<td>99</td>
</tr>
<tr>
<td>People v. Delph</td>
<td>94</td>
</tr>
<tr>
<td>People v. Hall</td>
<td>95</td>
</tr>
<tr>
<td>People v. Jaramillo</td>
<td>98</td>
</tr>
<tr>
<td>People v. Kent</td>
<td>96</td>
</tr>
<tr>
<td>People v. King</td>
<td>94</td>
</tr>
<tr>
<td>People v. St. Andrew</td>
<td>101</td>
</tr>
<tr>
<td>People v. Thomas</td>
<td>96</td>
</tr>
<tr>
<td>People v. Wall</td>
<td>95</td>
</tr>
<tr>
<td>Planck v. Hartung</td>
<td>98</td>
</tr>
<tr>
<td>W.E.J. v. Superior Court</td>
<td>100</td>
</tr>
</tbody>
</table>

Women's Law Forum