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Community Property and Family Law

I. Introduction

The year 1969 marked the decade's principal accomplishment in family law, the passage of the Family Law Act. The last several years have seen a sharply rising discontent with our traditional procedures for handling the dissolution of marriages, and numerous reform proposals have been advanced both in this country and abroad.[1] The Family Law Act brings some of these proposals to fruition; it marks the first legislative eradication of marital fault as the governing principle of divorce in any American jurisdiction.

Because the passage of the new law virtually eclipses the past year's decisional developments in family law and community property, this article will attempt to focus on its highlights in summary form, not to provide an exhaustive catalogue of all its points, but rather to set out its structure and indicate some directions of future growth.

II. Background

This full-scale revision of California's divorce laws came nearly 100 years after their framework was laid down in 1872, and had its roots in the work of the Assembly Interim Committee on Judiciary in 1964. With the help of a Citizen's

1. For some recent comparison and discussion of these proposals, see Stone, *Moral Judgements and Material Provision in Divorce,* 3 Family L.Q. 371 (1969); Kay, *A Family Court: The California Proposal,* 56 Cal. L. Rev. 1205 (1968); Bodenheimer, *Reflections on the Future of Grounds for Divorce,* 8 J. Family L. 179 (1968).

Advisory Committee, the Assembly group surveyed several areas of family law and recommended a number of legislative changes.[2] On May 11, 1966, Governor Edmund G. (Pat) Brown convened the Governor's Commission on the Family under the Co-Chairmanship of then-Assemblyman Pearce Young[3] and Richard C. Dinkelspiel of the San Francisco Bar, directing it to prepare a complete revision of the law governing divorce and its consequences, and to develop recommendations for a family court system for California.[4] The Commission's recommendations and proposed drafts were published in December, 1966, and were introduced as proposed legislation in 1967 and 1968.[5] After two years of interim study by the legislature and refinement and reworking by the State Bar Family Law Committee, the proposals were introduced as Senate Bill 252 in the 1969 legislative session by Senator Donald L. Grunsky, chairman of the Senate Committee on Judiciary and a member of the Governor's Commission. A proposal differing on a number of substantive points was introduced in the Assembly as Assembly Bill 530[6] by Assemblyman James Hayes, chairman of the Assembly Committee on Judiciary.

Each proposal, Senate Bill 252 and Assembly Bill 530, passed its house of origin and was then held in committee in the other house. The Senate refused to concur in Assembly amendments conforming the Senate Bill to the Assembly proposal, and consequently the measures were referred to a conference committee composed of three members from each house.[7] The conference committee favored the Assembly

2. See Assembly Interim Committee on Judiciary, *Final Report On Domestic Relations* (1965; hereafter cited as *Assembly Interim Report*).

3. Now Judge of the Superior Court, Los Angeles County.

4. *Report of the Governor's Commission on the Family* 1 (1966) (hereafter cited as *Gov. Comm. Report*). See Kay, supra n.1; Dinkelspiel and Gough, *A Family Court Act for Contemporary California: A Summary of the Report of the Governor's Commission on the Family*, 42 Cal. St. B.J. 363 (1967).

5. 1967: S.B. 826 (Grunsky), A.B. 1420 (Shoemaker); 1968: S.B. 88 (Grunsky).

6. A.B. 530 (1969) was a revised version of an earlier bill which Mr. Hayes introduced in 1968 as A.B. 487.

7. *Assembly Report on Assembly Bill No. 530 and Senate Bill No. 252*, Assembly Daily Journal, California

version on a number of points and the net result was the enactment of a revised version of Senate Bill 252 as Chapter 1608 of the Statutes of 1969, with Assembly Bill 530 enacted in amended form as Chapter 1609, intended as a "trailer measure" to clean up loose ends by amending Chapter 1608. Both enactments received the signature of the Governor on September 4, 1969, and the new Family Law Act is thus an amalgam of the two bills.

III. Marriages—Valid, Voidable and Void

The provisions of the new Act concerning marriage and its solemnization (Sections 4000–4300 of the Civil Code) carry over prior law virtually unchanged.[8]

In the provisions now governing the judicial determination of a void or voidable marriage, some changes have been made and their effects are not entirely clear. Prior law provided that marriages which were knowingly bigamous or incestuous were void *ab initio*.[9] Though they needed no judicial action to render them null,[10] a proceeding by way of declaratory relief could be had to establish the fact of nullity, if it were desired.[11] Section 4400, of the new Act preserves the definition of incestuous marriage and section 4401, makes only minor and insubstantial changes in the definition of bigamy.

However, section 4450 of the Act provides that proceedings "based on void or voidable marriage" shall be commenced by the filing of a petition for a judgment of nullity. When this section is read in parity with section 4500(3), which provides that marriage is dissolved by a judgment of nullity, and section 4429, which provides that the effect of such a judgment

Legislature—1969 Regular Session, August 8, 1969, at page 2. Most of the testimony at the numerous hearings held over three years remains unpublished, and the *Assembly Report* provides the most succinct legislative history and best reflection of legislative intent. It is hereafter cited as 1969 *Assembly Report*.

8. Previously Civ. Code §§ 55–79.09. To minimize confusion with prior sections, citations to the new law are given as Family Law Act § ——.

9. Former Civ. Code §§ 59, 61 and 80.

10. For a discussion of the prior law, see 1 Armstrong, *California Family Law*, pp. 32–41 (1966 Supp.).

11. Former Civ. Code § 80.

is to restore the parties to the status of unmarried persons, some doubt is raised as to whether the legislature intended to make judicial declaration a *sine qua non* to the nullity of a bigamous or incestuous marriage.[12] This interpretation is not required by the language, however, and would run counter both to prior law and to the legislative statement that no substantial departure from it was intended in this area,[13] as well as affronting the plain meaning of sections 4400 and 4401. The favored interpretation would thus be that the judicial declaration of nullity would not dissolve the marriage, but would simply record the ineffectiveness of its attempted formation.

Similar confusion exists with respect to the nullification of voidable marriages, those in which an impediment exists at the time of the ceremony but which are good until annulled. The former provisions establishing the bases for the annulment of voidable marriage have been carried over intact in section 4425, of the Family Law Act.[14] Under prior law, the annulment of a voidable marriage "related back" and made the marriage a nullity from its inception (save for certain specific provisions legitimating children of such marriages).[15] Do sections 4429 and 4500(3) mean the eradication of the doctrine of relation back and the establishment of a new tenet that nullification is effected only prospectively, from the date of the decree?[16] In view of the preceding law and the statement of legislative intent,[17] this seems unlikely.

12. Kay (tape), *The New California Family Law Act,* side 1 (Legal Information Program, Bancroft-Whitney, Inc., 1969). One notes that the standard manuals on legal bibliography are devoid of instruction on the art of citing auditory references (apart from the common "interview with . . ."). In this McLuhanesque age, it is likely that "See" as an introductory signal will have to be supplemented by "Hear." Finding no other reference to taped materials, I have hereby taken the liberty of inventing my own format.

13. 1969 *Assembly Report,* pp. 7–8.

14. The prior law was contained in former Civ. Code § 82.

15. Former Civ. Code § 85; see generally 1 Armstrong, *California Family Law,* pp. 41–84 (1966 Supp).

16. Kay (tape), *The New California Family Law Act* (Legal Information Program, Bancroft-Whitney, Inc. 1969).

17. 1969 *Assembly Report,* pp. 7–8.

I believe that the Family Law Act's preservation of the separate treatment of voidable marriages is a regrettable and needless archaism; the Act's provisions in this regard depart both from the original version of Senate Bill 252 and from the recommendations of the Governor's Commission.[18] The historic differences in consequence between void and voidable marriages have their roots in the property concerns of a far-distant day,[19] and the annulment of a voidable marriage presents the same essential question as the dissolution of a marriage whose formation is whole: namely, is the defect so serious that the marriage has broken down? If its gravity is not of that order to the parties and they can live with it, the marriage is viable. No public policy compels its dissolution. If, on the other hand, the situation cannot be borne by those who find themselves in it, then why should not the matter be treated like any other dissolution of marriage under the new law, by the breakdown-of-marriage standard? To allow the differential treatment of voidable marriages on the old grounds is, in my judgment, to erode the newly-adopted standard of breakdown, and to run the risk of letting in the side door the corpse of the marital fault standard which we have painfully striven to drag out the front.

In section 4452, the Act gives statutory recognition to a concept long-enshrined in California decisional law, the protection of the putative spouse.[20] The section defines a putative spouse as one who enters either a void or voidable marriage in good faith (thus giving some support to the argument advanced above that the new Act does not abolish the doctrine of relation back in cases of voidable marriage). Further, it provides that all property which would have been community property or quasi-community property if the parties had been validly married shall be classified as "quasi-marital property," and divided according to the rules for the division of community property between lawfully married spouses.[1] An

18. *Gov. Comm. Report*, pp. 35–37.

19. See Goda, S.J., *The Historical Evolution of the Concepts of Void and Voidable Marriages*, 7 J. Family L. 297 (1967).

20. See generally 1 Armstrong, *California Family Law*, pp. 862–867, 869–870 (1966 Supp).

1. Family Law Act § 4800.

addition to prior law is found in section 4455, which provides for an order of support in favor of a putative spouse. Though the section is headed "alimony *pendente lite;* innocent party," the statute provides that either during the pendency of the action or upon judgment the court may order support for the putative spouse in the same manner as if the parties had been lawfully wed, provided that other criteria are met.[2] Thus it seems clear that the legislature intended to allow provision for support after a declaration of nullity, which had not been permitted by previous law.[3] On this point, it is significant to note that section 4516, which deals with temporary alimony on dissolution of marriage, omits mention of the phrase "or upon judgment" which is found in section 4455.

IV. Dissolution of Marriage

The chief contribution of the new Family Law Act, and one which the Governor's Commission and virtually all the legislators involved in its passage agreed was critical, was the elimination of the traditional doctrines of marital fault as the determinants not only of divorce and separate maintenance, but of the consequences of property division and

2. These other criteria create their own confusion: 1) The parties must be "putative spouses" (which surely must have been intended to apply only to the spouse seeking support—it hardly makes sense to deprive an innocent spouse of the right to support because her (or his) mate had not acted in good faith); 2) the party seeking support must be innocent of fraud or wrongdoing in entering the marriage; and 3) he or she must be free from knowledge of a prior marriage or other impediment. The last two requirements seem to have been carried rather thoughtlessly from former Civ. Code § 87. If—as § 4452 requires—a putative spouse must have acted in good faith, isn't the third standard (and perhaps the second as well) superfluous?

3. This comports with the recommendations of the Governor's Commission, *Gov. Comm. Report,* p. 75. Even temporary alimony was previously unavailable when the marriage was void, In re Cook, 42 Cal. App. 2d 1, 108 P.2d 46 (1940). Attorney's fees and costs (suit money) could be ordered in an annulment action (i.e., involving a voidable marriage) pursuant to former Civ. Code §§ 87, 137.3 and perhaps in a declaration of nullity action (i.e., involving a void marriage) as well. Cf. Dietrich v. Dietrich, 41 Cal.2d 497, 261 P.2d 269 (1953) cert. den. 346 U.S. 938, 98 L.Ed. 426, 74 S.Ct. 378. Family Law Act § 4456 clarifies this and extends to proceedings to declare a void union null; whether the marriage is void or voidable the applying party must meet essentially the same standards as those discussed above.

support as well.[4] To underscore the point, the terms "divorce" and "separate maintenance" are done away with; the new law substitutes "dissolution of marriage" and "legal separation" in their stead. The Governor's Commission and Senate Bill 252 had proposed a single standard for the dissolution of marriages, namely that dissolution be granted when the court found that the legitimate objects of the particular marriage had been destroyed and there existed no reasonable likelihood of reconciliation.[5] This language was derived from the landmark case of *De Burgh v. De Burgh*,[6] and had the advantage of the gloss of that encyclopedic opinion as to what factors bore on a determination of irremediable breakdown.

Different language prevailed in the enactment, though the purpose was kept, and section 4506 of the new law provides two standards for dissolution of marriage or legal separation, (1) incurable insanity and (2) irreconcilable differences which have caused the irremediable breakdown of the marriage. Incurable insanity is the only ground carried over from prior law,[7] but two changes have been made. First, the old law required that the incurably insane spouse have been confined continuously in an institution for the three-year period immediately preceding the filing of the complaint; the new provision removes the requirement of specified confinement and simply requires that the spouse must have been at the time of filing of the petition, and remain, incurably insane.[8] Second, the new law eliminates the requirement of testimony by a member of the hospital staff of the institution where the insane spouse was confined, and allows proof of insanity by any competent medical testimony.[9] The reasons for retaining the insanity standard are not wholly clear; many have thought

4. 1969 *Assembly Report*, p. 5; *Gov. Comm. Report*, pp. 26–32.

5. Actually, this is not quite an accurate statement. Senate Bill 252 provided that the court would dissolve the marriage unless it found that the legitimate objects of matrimony had not been destroyed because there was a reasonable likelihood that the marriage could be saved. (§ 4615, S.B. 252, 1969).

6. 39 Cal.2d 858, 250 P.2d 598 (1952).

7. Former Civ. Code § 108.

8. Family Law Act § 4510.

9. Family Law Act § 4510.

that the breakdown-of-marriage standard evidenced by irreconcilable differences is sufficiently broad to subsume the few cases brought on this ground in the past.[10] The Assembly Report is not convincing on the point; it merely observes that "one who is incurably insane falls into a wholly different category than one who provokes an irreconcilable difference."[11] This may be true enough, but if we really mean to abolish the fault doctrine it is difficult to see its pertinence.

Section 4507 of the Family Law Act defines the other (and chief) basis for dissolution, irreconcilable differences, as "those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved." Though somewhat solipsistic, the language makes its apparent that the essential question the court must resolve in a dissolution proceeding is whether the marriage has irretrievably broken down, and that breakdown in turn shall be gauged by the evidence of irreconcilable differences.

The same two bases serve for legal separation, but contrary to the prior law, under the Act a court cannot decree legal separation unless both parties agree thereto, or one party has filed a petition for legal separation and the other fails to make a general appearance.[12] This accords with the view of the Governor's Commission that separate maintenance all too often promotes illicit relationship and the evasion of support obligations.[13] The statute provides that even if a decree of

10. Cf. 1969 *Assembly Report* p. 5; Kay (tape), *The New California Family Law Act,* side 1, (Legal Information Program, Bancroft-Whitney, Inc. 1969). In 1966, the last year for which complete data are available, only 33 divorce complaints out of a total of 95,538 filed were based on the ground of incurable insanity. Bureau of Vital Statistics, Calif. Dept. of Public Health, *Divorce in California—1966,* p. 175, table 63.

11. 1969 *Assembly Report* p. 5.

12. Family Law Act § 4508 (b).

13. *Gov. Comm. Report* p. 33. We viewed this as a forthright recognition of a current problem, and perhaps some even preened a bit at our being progressive thinkers. It is more than a little sobering, as one reflects on the significant progress made by the enactment of the Family Law Act, to read the words of Sir Arthur Conan Doyle upon the subject, written in 1909:

[Judicial separation is a product of casuistical hypocrisy] "promoting illegitimate births, and a wretched attempt to compromise between the crying needs of

legal separation is entered, either party may subsequently file for, and receive, a judgment of dissolution of marriage.[14]

V. Procedure and Evidence

Concomitant with the abolition of the fault grounds, the new law has made substantial changes in the procedure for obtaining a judgment of dissolution of marriage or a judgment of nullity. The change most immediately apparent is in the form of the pleadings: no longer are marital severance cases commenced by a traditional adversary complaint styled "..... vs. ....." Whether the action is for dissolution of marriage, legal separation or to establish nullity, it is now initiated by a neutral petition captioned "In re the marriage of ..... and ....."[15] While the change is of minor effect when viewed against the whole scope of the need for reform, and while alterations in form by wordsmithery will hardly prevent destructive contests, it is nonetheless significant in setting the tone by which the proceedings are to be conducted—more akin to an inquest upon the dead marriage, as the Mortimer Commission of the Church of England put it,[16] than to the traditional adversary trial having as its ostensible point of factual focus the question of whether husband struck wife exactly twice, leaving marks.[17]

As the Bar is by now well aware, the Judicial Council has adopted a standard form of petition, in check-the-box form, to be used throughout the state in all marital severance cases. This document calls for information on relevant vital statistics, the marital property, and the custody of children. It neither calls for nor permits the pleading of specific acts of misconduct.[18] Section 4504 of the Act permits a single

human life and the objection of the theologians."

Doyle, *Divorce Law Reform*, p. 6 (1909), in P. Nordon, *Conan Doyle*, pp. 68–69 (1967).

14. Family Law Act § 4508 (b).

15. Family Law Act § 4503 (petition for dissolution of marriage and legal separation), § 4450 (petition for judgment of nullity).

16. Report of Commission Appointed by the Archbishop of Canterbury, *Putting Asunder: A Divorce Law for Contemporary Society*, p. 67 (1966).

17. See Virtue, *Family Cases in Court*, pp. 86–91 (1956).

18. Family Law Act §§ 4506, 4509.

responsory pleading, which must be filed and served within thirty days of the date when respondent was served with the petition and summons; the demurrer has been removed from this phase of California domestic relations practice by court rule.[19] The Judicial Council has also established other standard forms for use in practice under the Act.[20]

As pointed out above, one of the chief goals of the new Family Law Act was to reduce the adversary aspects of a proceeding which is inherently divisive and too often acrimonious. Thus the Assembly Report on the new law observes, "To eliminate lurid testimony and acrimony, it is essential that the pleadings and evidence and discovery proceedings be strictly controlled."[1]

Unfortunately, it is open to question whether the statutes achieve this desirable stringency of control. Section 4509, provides that evidence of specific misconduct is improper either in pleading or proceedings generally, and section 4520, renders inadmissible in any marital severance action any evidence collected by "eavesdropping" (the term has a kind of quaint flavor in these days of sophisticated "debugging" devices and "bugs" which can outwit them). But section 4509, also provides two exceptions to the rule excluding evidence of particular misbehavior: such evidence may be admitted where child custody is in issue and the Court believes

19. Judicial Council of California, *California Rules of Court,* Rule 1215. The 30-day period for response is extended from the 10 days allowed under previous practice and conforms to the new Jurisdiction Act, Code of Civ. Proc. §§ 410.10–418.10, effective July 1, 1970.

20. The forms are: Petition; Response; Summons; Confidential Questionnaire (for use in counties operating conciliation courts); Order to Show Cause; Request and Declarations re: Default; Interlocutory Judgment of Dissolution of Marriage; Final Judgment; and Notice of Entry of Judgment. In counties where the Confidential Questionnaire is required, petitioner may complete the Bureau of Vital Statistics Divorce Registry Form in lieu of completing questions 1–29 of the Questionnaire. Judicial Council of California, *California Rules of Court,* Rule 1224 (1969). A significant omission seems to be the lack of a form whereby a child or third party (e.g. a grandparent) could bring an Order to Show Cause in re: Contempt for failure to provide support; the Order to Show Cause adopted pursuant to Rule 1285 is couched only in terms of Petitioner and Respondent.

1. 1969 *Assembly Report,* p. 6.

the evidence relevant to the determination of that issue, *or* it may be admitted where it is determined by the Court to be necessary to prove the existence of irreconcilable differences. This latter exception would seem to raise at least two questions.

First, it remains to be seen—as the new law is tested in practice—whether the Bar and Bench will cling to accustomed ways and deem such specific evidence "necessary" to the proof of irreconcilable differences in the majority of cases.

Second, it remains similarly to be seen precisely how the case for irreconcilable differences will be presented, and what the witnesses will say. With the elimination of the time-dishonored requirement of corroboration[2] and the introduction of this new basis for marital dissolution, what Professor Herma Hill Kay has termed "conclusionary testimony"[3] would seem both inevitable and proper. The existence of differences, and especially the irreconcilability of those differences—which is really to say the marriage's breakdown *vel non*—can only be assayed by those two spouses on whom they bear. For the Court to accept these proffered conclusions of irreconcilable differences does not diminish the judicial role; it remains the role of the Court to guard against hasty and ill-conceived decisions about the breakdown of the marriage and the irreparability of the parties' breach. But when it really comes down to it, only the parties can determine whether their union is irremediably broken, and the Court ought to accept as the basis for its judgment their conclusions—or the conclusions of one of them—seriously reached. That this is the intent of the new law is explicitly shown in the Assembly Report.[4]

2. The requirement of corroboration found in former Civ. Code § 130 has been eliminated by Family Law Act § 4511.

3. Kay (tape), *The New California Family Law Act*, sides 1 and 2 (Legal Information Program, Bancroft-Whitney, 1969).

4. 1969 *Assembly Report*, p. 6: ". . . absolute refusal on the part of one spouse to live with the other, despite a conciliatory attitude on the part of the latter, was thought by the great majority of legislators and witnesses considering the question to be a sufficient reason for dissolution. In that situation the court could hardly justify a refusal to grant an order of dissolution since the marriage certainly has broken down. Refusal would amount to a legal perpetuation of a relationship which has ceased to exist in fact."

There may be some question as to whether a hearing is actually required, or whether in a default proceeding the decree of dissolution can be granted on affidavits. The prior law provided that evidence of grounds not adduced *in vivo* before the court was to be presented by written questions and answers under oath, but with the requirement of corroboration defaults upon affidavit were effectively barred.[5] In section 4508, the new enactment speaks of a hearing to establish the existence of irreconcilable differences, but talks of proof upon affidavit in section 4511.[6] There is no express requirement for hearing in the statute; the Rules of Court are also silent on the point but provide, in Rule 1249, that if the course of the proceeding is not specifically dictated by statute or rule, the court may adopt any suitable process or mode or proceeding that conforms to the spirit of the law.

Thus it is possible that proof by affidavit might be upheld in default or uncontested matters, though it seems unlikely in view of the prior law and practice, and to my mind would be unwise; the court's responsibility to assess the irreparability of breakdown cannot be fulfilled by reading a formulaic writ-

Family Law Act § 4508 mandates the court to continue the proceedings for a period of not more than 30 days if it finds that there is a reasonable likelihood of reconciliation. At any time thereafter, either party may move the entry of the decree and the court may enter judgment. The legislative history and obvious intent of the act are clear—not to mention the prior law, which held refusal to enter a decree reversible error once a ground for divorce had been proven and absent proof of a defense. Kirkpatrick v. Kirkpatrick, 152 Cal. 316, 92 P. 853 (1907); cf. De Burgh v. De Burgh, 39 Cal.2d 858, 250 P.2d 598 (1952). Therefore it would seem clear that to refuse a decree where reasonable possibilities for reconciliation did not exist, that is to say where the 30-day continuance had proven unproductive of reconciliation, would be to invite appellate overruling. See Code of Civil Procedure § 1770 et seq. for the function of the Court of Conciliation.

Nevertheless, and probably inevitably, "war stories" of aberrant judicial denials are already in circulation. I was informed by one more-than-usually loquacious counsel that he was stunned into a rare silence when the judge announced, in a *pronunciamento* from the bench, that in his view no differences were irreconcilable unless they were based on deep ideological rift—"for example, where you have a communist married to a Catholic." Needless to say, his case didn't fit that model and a hurried continuance was obtained.

5. Former Civ. Code § 130.

6. The section speaks of "proof of the grounds alleged," an unfortunate inadvertence since it hearkens back to the fault grounds now done away with.

ten statement any more than it can by hearing the usual testimonial litany. On any hearing on a question of fact, the court may conduct the proceedings in private if it finds this necessary to protect the "interests of justice and the persons involved."[7]

The new Act preserves procedures for temporary orders in dissolution and child custody cases, but makes several changes. Section 4516, authorizes temporary support but adds to former law[8] a provision that temporary orders operate without prejudice to the rights of parties or children with respect to subsequent orders, an attempt to keep the temporary order from freezing the base of support for future and permanent orders. It also changes the time from which an order of modification or revocation is effective, from the date of the order itself to the date of filing of the notice of motion or order to show cause. Enforcement procedures are covered by section 4540.

Ex parte protective orders are covered by section 4518, which attempts to codify the *ex parte* motion practice developed pursuant to Code of Civil Procedure section 527; two additions are of significant importance. First, it provides that an order of restraint may be directed against all but ordinary and usual expenditures, and if this is done, the respondent spouse must notify the moving spouse of any "proposed extraordinary expenditures" and account therefor to the court. Second, it provides that an order may be made excluding either spouse from the family dwelling or from the dwelling of the other, but only upon a showing that physical or emotional harm would otherwise result; under prior law, the court could make orders of temporary exclusion but was afforded no standard by the empowering statute.[9] This lack worked

7. Family Law Act § 4519; the section is roughly cognate with the closure provisions of the Juvenile Court Law found in Welf. & Instits. Code § 676.

8. Former Civ. Code § 137.2.

9. Former Civ. Code § 157. Curiously, Family Law Act § 4518 appears to apply only to nullity, legal separation, and dissolution proceedings, thus possibly excluding some actions for child support or child custody not connected with dissolution or legal separation (for example, brought pursuant to Family Law Act § 4603). Other sections speak of "any proceeding under

two evils: some courts took the view that a showing of physical jeopardy was required and denied restraining orders unless there was evidence of antecedent physical violence; on the other hand, some courts routinely excluded husbands simply as a precaution even where there were no indications that physical or psychological harm would flow from his continued presence.

Sections 4512–4515, of the new enactment maintain an interlocutory period—now shortened to six months from the date of service of summons and petition or appearance of the respondent party—and the *nunc pro tunc* decree procedures of the prior law. In my judgment, this preservation of an interlocutory period is regrettable, and it ignores the strong recommendations both of the Assembly Interim Committee on Judiciary in 1965, and of the Governor's Commission on the Family.[10] A "cooling-off" period placed *after* the decree effectively terminating the marital relationship is hardly an apt device to conduce reconciliation, and its retention will continue the uncertainty and obstruction of property transfers which have accompanied it in the past.[11]

Section 4530 of the new Act, reduces the residence requirements for procuring a decree of dissolution to six months in the state and three months in the county; like the former law, it provides that jurisdiction may be based on the residence of either party.[12]

Provisions relating to attorney's fees and costs are carried over from the old law in sections 4525 and 4526 of the Act,

this part" (e.g., § 4517, dealing with payment of obligations directly to creditors) and there seems no justifiable basis for the narrower application of § 4518. Compare also cognate provisions on temporary exclusion in Family Law Act § 5102.

10. *Assembly Interim Report,* p. 125; *Gov. Comm. Report,* pp. 23–24.

11. *Assembly Interim Report,* p. 125; *Gov. Comm. Report,* pp. 23–24.

12. Former Civ. Code § 128. The prior law (Civ. Code § 128.1) relating to lack of residential requirements for separate maintenance has been carried over and applied to actions for legal separation in subsection (b) of § 4530, which also provides for conversion of a decree of legal separation into a decree of dissolution upon motion of either party after fulfilment of the requisite residential time. Section 4531 provides for separate domicile, carrying over intact the substance of former Cal. Civ. Code § 129.

without major substantive change.[13] One clarification should be noted, however: the broad enforcement provisions contained in section 4540 apply to any proceeding under the Family Law Act and allow the court to utilize execution, attachment, contempt, the appointment of a receiver and such other remedies as it may deem necessary in aid of its orders. Therefore, they apply to proceedings relating to the enforcement of orders setting attorney's fees, and clarify the implication of prior law that enforcement of such orders was limited to writs of execution.[14]

VI. Child Custody and Support

The law governing child custody and visitation rights is set forth in sections 4600–4603 of the Family Law Act, and it is likely that no California statute has consumed more time, effort, and discussion in its drafting than section 4600, which sets the standards for custody awards. This section maintains the controlling criterion of the "best interests of the child" found in prior law, both decisional and statutory, when the contest as to custody is between parents.[15] It also creates a system of preferences, which the court "should" (not "shall") follow, and whose net effect is largely to continue the three different standards of existing law in three different types of situations.[16] Where the contest is between parents, the "best interests of the child" standard governs, as noted, with subsection (a) of section 4600 giving an apparently absolute preference to maternal custody if the child is of tender years, other things being equal.[17] The old law's preference for

13. See former Civ. Code §§ 137.3 and 137.5.

14. See former Civ. Code §§ 137.3 and 137.5.

15. See former Civ. Code § 138; Crater v. Crater, 135 Cal. 633, 67 P. 1049 (1902). On the standards of child custody generally, see 2 Armstrong, *California Family Law,* pp. 960–992, esp. 968–973 (1966 Supp.).

16. For a similar preferential ranking in connection with the appointment of a guardian, see Probate Code § 1407.

17. For discussion of the phrase "other things being equal," see Lawrence v. Lawrence, 165 Cal. App.2d 789, 332 P.2d 305 (1958), Munson v. Munson, 27 Cal.2d 659, 166 P.2d 268 (1946).

paternal custody if the child were old enough to require occupational nurture and training has been abolished.[18] Apparently, maternal preference was made absolute as between parents to deter custody litigation by fathers where there was little likelihood of success.[19]

When the contest is between a parent and a non-parent, the new Act essentially continues—with some change of emphasis—the "dominant parental right" doctrine of the old law. Under prior decisions, a court could deprive a parent of custody in favor of a third person only upon a finding that the parent was unfit.[20] The new law requires a finding that the award of custody to the parent would be "detrimental to the child." This change reflects an uneasy accommodation between the wish to avoid the excessively harsh and stigmatizing requirements of the prior law, and the need to guard against a *Painter* situation in which the court might prefer a "stable" non-parent over a parent, without justifiable basis.[1] Precisely how much good will be accomplished by the alteration in wording remains to be seen, but as Professor Kay has observed, to the extent that it focuses attention upon the quality of the essential parent-child relationship rather than upon the vices of the parent, it will be helpful.[2]

18. Former Civ. Code § 138.

19. 1969 *Assembly Report,* p. 9.

20. Stewart v. Stewart, 41 Cal.2d 447, 260 P.2d 44 (1953). On the "dominant parental right" doctrine generally, see 2 Armstrong, *California Family Law,* pp. 993–1006 (1966 Supp.).

1. Painter v. Bannister, 258 Iowa 1390, 140 N.W.2d 152, (1965); cert. den. 385 U.S. 949, 17 L.Ed.2d 227, 87 S.Ct. 317. The Iowa Supreme Court's preference for the maternal grandparents over the father, who had temporarily placed his son with them after the mother's accidental death and had remarried, was based on its disapproval of the father's "Bohemian" and intellectual mode of life in California; it was even rumored, the court noted, that the father might move to Berkeley! This result was later overturned in the California Superior Court in Santa Cruz County by an order making the father guardian of his son's person and awarding him custody. Order 22077, Super. Ct., Santa Cruz Co., August 28, 1968.

2. Kay, *"Limits of the Current Reform: The California Family Law Act and the English Divorce Reform Bill,"* in P. Bohannon (ed.), *Divorce and After* (publication pending, Doubleday & Co., 1970). Compare *In re A.J.,* 274 Cal. App.2d —, 78 Cal. Rptr. 880 (1969); Nadler v Super. Ct., 255 Cal. App.2d 523, 63 Cal. Rptr. 352 (1967).

Family Law Act § 4600 provides that allegations of parental custody resulting in detriment to the child shall only

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When the contest as to custody is between two third persons, subsections (b) and (c) of section 4600, provide in essence that the "best interests of the child" standard is the determinant, with preference to be given to a person in whose home the child has been living in a stable and wholesome environment.[3]

Ultimately, the controlling standard remains the welfare of the child, and even the maternal preference is subject to it. Prior law permitted the court to take account of the child's wishes regarding custodial placement if the child had sufficient capacity to form an intelligent preference;[4] the new Family Law Act requires the court to consider the child's wishes if it determines that the child has sufficient age and capacity to reason so as to form an intelligent preference. Parental visitation rights are secured by section 4601, unless it is shown that visitation would be detrimental to the child's best interests, and the court is empowered to award in its discretion visitation rights to any third person having an interest in the welfare of the child—a startlingly broad provision.[5] Section 4603 of the Act provides for an action to vest exclusive custody in a parent without the necessity of filing a petition for dissolution of the marriage; this addition is without analogue in the prior law.

Former Civil Code section 138, which enunciated the standards for custody determination, applied only to actions involving a divorce or separate maintenance. The provisions of Family Law Act section 4600 apply to all custody determinations, including those stemming from a petition for declaration of nullity of a void or voidable marriage.

be pleaded by a statement of that ultimate fact. However, in view of the specific exception for child custody matters in the ban on evidence of particular acts of misconduct contained in § 4509, it is doubtful that this safeguard has much meaning or that it will work significant changes in practical emphasis.

3. For discussion of the importance of a stable environment in a custodial contest between parents, see Norton v. Norton, 112 Cal. App.2d 358, 245 P.2d 1108 (1952); Fine v. Denny, 111 Cal. App.2d 402, 244 P.2d 983 (1952).

4. Former Civ. Code § 138.

5. It is far broader than Civ. Code § 197.5, which allows the court to grant visitation rights to a grandparent upon the parent's death. Apparently the old section remains on the books despite the Family Law Act.

Finally, the legislative history, as announced in the Assembly Report (which purported to speak to the final enacted version of the bills), simply does not square with the language of the statute.[6] It states, *inter alia,* that "[l]imitation of the power . . . to award custody of children to persons other than a parent is the primary intent of the provisions in the new act . . .", and goes on to say that the "best interests of the child" standard ". . . was abolished because it is amendable [sic] to the same type of application as occurred in the *Painter* case."[7] This is not only confusing but flatly inaccurate: as shown above, the "best interest" standard is expressly retained by subsection (a) of section 4600, to govern contests between parents, and it did not apply as the governing standard in contests as against a third person.

The new law sets forth no criteria for modification of prior orders of custody, and presumably the "change-of-circumstances" rule enshrined in existing law will continue to govern.[8]

The Family Law Act reenacts, in sections 4700–4703, the substance of the prior law relating to child support without major change. Though the Governor's Commission on the Family had suggested the repeal of section 196 of the Civil Code, because of its unequal allocation of responsibility for support between the father and the mother, its recommendation was not followed and that section remains in force despite the new enactment.[9] Termination of alimony and of child support obligations upon the happening of a specified contingency are treated separately in the new law, rather than conjointly as they were under former Civil Code section 139.8.[10]

Section 4701 adds to the law a provision allowing the court to order wage assignments in child support cases. This provision, based on the Governor's Commission recommenda-

6. 1969 *Assembly Report,* p. 8.

7. 1969 *Assembly Report,* p. 8.

8. Exemplary of the many cases establishing that there must be a change of circumstances before modification of a custody decree is warranted, is Olson v. Olson, 95 Cal. App. 594, 272 P.1113 (1928). See generally 2 Armstrong, *California Family Law,* 973 et seq. (1966).

9. *Gov. Comm. Report,* p. 51.

10. Family Law Act § 4700(b) (child support); § 4801(d) (alimony).

tions, follows closely the provisions of Wisconsin law, where the experiment has apparently proven quite successful.[11] In a similar vein and also following the Governor's Commission recommendations, the Act requires, in section 4702, that in any case where the custodial parent is receiving welfare support, the court shall direct payment of child support to a designated county official and shall direct the district attorney to appear in behalf of the welfare recipient in any proceeding to enforce the order.[12] The new statute removes the 5 percent collection fee allowed by existing law.[13]

VII. Property Rights of the Parties: Division of Property and Support

Of all the provisions of the Family Law Act, section 4800, on the division of property, is likely to prove the most cumbrous in practice and the most productive of vexing litigation. Under prior law, community property could be divided unequally, with the lion's share going to the "innocent" spouse if the divorce were granted on the ground of extreme cruelty, adultery, or incurable insanity.[14] Since the ground of extreme cruelty alone accounted for roughly 96% of all divorce filings, punitive allocation was the rule rather than the exception (absent a property settlement agreement, and often even with one).[15] This division based on marital misconduct is antagonistic to basic community property theory, and has impelled countless spouses to tout about for evidence of their mate's misdeeds in order to secure for themselves the greater portion, while at the same time it has moved an equally countless number to agree to extortionate and unrealistic demands in order to fend off that proof. Because of these conditions, and having in mind the fact that a mathematically equal division is seldom possible and probably less often desirable, both the Governor's Commission and the earlier version of the

11. *Gov. Comm. Report,* p. 52; Wisc. Family Code § 247.265 (1969 Supp.).

12. *Gov. Comm. Report,* p. 53.

13. Former Civ. Code § 139.5.

14. Former Civ. Code § 146(1).

15. Bureau of Vital Statistics, Calif. Dept. of Public Health, *Divorce in California*—1966, p. 175, table 63.

Senate Bill called for an equal division except where the court should find that economic circumstances made such equal division impracticable or unjust, and then permitted unequal division upon specific findings delineating the warranting economic factors.[16] Even the earlier Assembly version of the Family Law Act called for essentially equal division unless the court found it unreasonable or impracticable, and allowed the family residence to be set aside to the wife who won custody of minor children.[17]

These measures were not adopted, however, and in my judgment our movement from those points has been retrograde rather than progressive. As enacted, the new law calls for equal division of the community property and quasi-community property, with two exceptions. The court may award any asset on such conditions as it may deem proper to effect a substantially equal allocation,[18] and further, it may make an award by way of offset from existing property in any amount it determines to have been "deliberately misappropriated" to the exclusion of the other party's community interest.[19] The phrase "deliberately misappropriated" is not further defined, and seems unfortunately susceptible to a wide stretch of meanings, most based upon attempted proof of fault which allows much undercutting of the spirit of the new law and may restore the motivation for fixing blame which we have sought to remove.

It will be immediately apparent that the application of this section raises far more questions than the section provides answers for, and indeed, even the bounds of the questions are now only dimly perceived. What is the court to do when the only real assets consist of a miniscule equity in a tract home,

16. *Gov. Comm. Report*, pp. 44–46, 111; S.B. 252 § 4900(a), as amended 3/17/69.

17. A.B. 530, § 4800, as amended 4/10/69.

18. Family Law Act § 4800(1). The phrase "if the division of property is in issue," found in the introductory paragraph to section 4800 and referring to the court's power to make a property division after the interlocutory judgment upon proper reservation of jurisdiction, is ambiguous and unclear. Presumably, it means "to the extent that there is property subject to the disposition of the court."

19. Family Law Act § 4800(2).

a battered car worth perhaps one fourth of that amount, and a few meagre furnishings on which much yet remains to be paid? It is hardly feasible to argue that the court might hold open the proceedings for an indefinite time and assign the use of the residence to the wife during the minority of the children, nor is it any more satisfactory to say that the wife be given the home outright and then required to reimburse the husband over a period of time for his share. One thousand dollars paid over time is hardly the same thing as one thousand dollars paid in hand, and this form of division is not equal. In the great majority of cases, it would seem to me, forced sale of the residence is likely to be the least desirable alternative in terms of social consequences to the wife and minor children.

I believe that this problem of the family home is one of the most pressing difficulties presented by the new enactment. Several routes of solution suggest themselves. First, the court could make a presently unequal award (*e.g.* 60%–40%) of the equity in order to compensate for the deferred realization of the husband's share in a time-reimbursement scheme, in effect using a "real present value" basis which would take account of the interest factor. Or the court could give the equity in the home to the husband in return for a present right of occupancy given to the wife until the youngest child reached majority and some mandate that he sustain the payments and not sell or otherwise transfer his interest in the premises without her consent. Or the wife could be given the right of immediate possession and continued occupancy of the home as security for the husband's obligation to pay child support, pursuant to the provisions of section 4700 of the Act, if good cause for the giving of security were shown. Also, as at least one commentator has suggested, the provisions of the new law may bring a far greater use of the homestead process, since section 4808(a) provides that a homestead selected from community or quasi-community property may be set aside either absolutely or for a limited period to either party, and section 4808(b) provides that a separate property home-

stead may be set aside to the spouse other than its owner for a limited period.[20]

Of course, the parties may agree to an unequal division of the community in a property settlement agreement, so that the equity in the home could be set over to the wife even though its value exceeds the aggregate worth of the remaining assets. The property settlement agreement would appear to be the best answer to the problems presented by the present form of the statute, but it has at least two drawbacks: it will make dissolution proceedings more costly, and this will probably hit hardest against those who are least able to pay for the additional lawyering involved in the drafting of the agreement; and it obviously will not work where the parties cannot agree. (Based on a very limited experience, I believe that it is at least as difficult to draft a workable property settlement agreement, and often harder to achieve agreement between the parties, where the assets are scant than where they are fairly substantial.)

Other problems obtrude. For example, what of the case where the principal assets are an equity in the home worth $20,000 and a new closely held business with a capitalization of $40,000, present indebtedness of $80,000, and great prospects for the future? Does the term "community property" subsume debts for the purpose of the Act's provisions on property division? Presumably so. But how can we justify the allocation of an equal share of debt to a wife who still has minor children with her, has not worked in some time and cannot readily reenter the labor market, and who will be subsisting for at least a time on the alimony and child support monies she received from the husband? Is she to be expected to make up her share of the debt from those payments? And if we say no, and attempt to work some reduction in alimony to compensate for not saddling her with the debt, are we doing any better?

It is quite clear that at least some judges view the requirement of precisely equal division of community interests as

20. Kay (tape), *The New California Family Law Act,* side 4 (Legal Information Program, Bancroft-Whitney, 1969).

virtually an absolute requirement, and an accurate and objective evaluation of each item of the community property as a necessary concomitant of that division.[1] Some are of the opinion that formal appraisals will be required, and have instructed counsel to so advise their clients.[2] The reverse of the standard Judicial Council Form for Request and Declarations re: Default (Marriage) contains a schedule and financial statement calling for the value of each asset and the amount of each obligation subject to the court's disposition.[3]

The requirement of formal appraisal will obviously add greatly to the cost of many marital dissolution proceedings, and it seems most unreasonable for the court to reject a valuation agreed to by the parties in the absence of some indications of fraud or overreaching, or a wholly inappropriate basis of calculation. Similarly, it is stupefying to consider that a court might require that each asset and piece of property be scheduled and valued; I strongly suspect that the courts of California will accept lump evaluations of household furnishings at sums ascribed by the parties, and will not devote themselves to an extended calculus of the worth of the bath towels.

Yet, one cannot discount the possibility that the court might require outside appraisal on its own motion where the assets are sufficiently complex, and it appears that the practicing Bar will have to take account of this contingency. We may have substituted for (or rather, added to) the open warring of spouses and the occasional skirmishing of psychiatric witnesses what Assemblyman Hayes has termed the disputing of two appraisers—a doubtful gain indeed. At the least, the statute would be improved by emendation expressly permitting a substantially equal division of the property; whether so

1. See, e.g., the remarks of Judge William MacFaden of the Superior Court in Los Angeles County, quoted in the news report of a *Family Law Act Seminar* in the *Los Angeles Daily Journal,* October 14, 1969, pp. 1 and 7.

2. The same news story (see note 1, supra) reports Assemblyman James Hayes, author of Assembly Bill 530, as agreeing with Judge MacFaden on this point.

3. Form adopted by the Judicial Council of California, *California Rules of Court,* Rule 1286, effective January 1, 1970.

amended or not, the provisions of the new law make proper tax planning critically important.

The substantive provisions of existing law relating to community property and quasi-community property are carried over fundamentally intact in Title 8 of the Act, sections 5100–5138. Also essentially unchanged is the law relating to property settlement agreements; as remarked above, the equal division requirements of section 4800 do not appear to apply to property settlement agreements in the face of section 4802, empowering the spouses' concurrence with respect to the division of the property of their marriage upon its dissolution.[4]

There are two other relatively minor changes in the law relating to the property rights of husbands and wives. Section 5113.5 of the Act, originally added as section 164.8 of the Civil Code in the 1969 session, provides that transfers made *inter vivos* to certain revocable trusts shall remain community property and was presumably added to deal with the problems raised by the *Katz* cases.[5] Then, doubtless as a reflection on (or of) our Aquarian age, the new Family Law Act adds section 5108, which has best been described as a "Married Man's Separate Property Act."[6] Former Civil Code section 162, enacted in 1872 and now embodied in section 5107 of the new law, had long secured the woman's right to convey her separate property, but there was no cognate provision for the male of the species because his power was never doubted. Now that it, too, has been secured, has it by that process been called into question? As Shakespeare put it, the "equality of two domestic powers breed scrupulous faction!"[7]

4. The new enactment does not change the prior statute, former Civ. Code § 159.

5. Katz v. U.S., 382 F.2d 723 (9th Cir. 1967) reversing Katz v. U.S., 255 F. Supp. 642 (S.D. Calif. 1966). See Comment, *Status of Community Property in the Revocable Inter Vivos Trust,* 7 Santa Clara Law 148 (1966).

6. Kay (tape), *The New California Family Law Act,* side 4 (Legal Information Program, Bancroft-Whitney, Inc., 1969).

7. *Antony & Cleopatra,* Act I, scene 3, line 47.

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The substantive provisions of the old law relating to alimony and the determination of the award have also been transferred to the new, in section 4801, with only minor changes.[8] The new law mandates the court to consider two matters not specifically required to be taken into account under prior law, (1) the duration of the marriage and (2) the ability of the supported spouse to engage in gainful employment without jeopardizing the interests of any children in her custody.[9] Though these criteria were not spelled out in the prior statute, they have long been recognized as proper for the court's consideration in fixing the alimony award and it seems unlikely that the new enactment will work any substantial change in practice, though the new law should provide some curb to the occasional aberrational judgment and provide a readier hinge for a finding of abused discretion upon appeal.[10] Though the Family Law Act sections on alimony, like those on child custody, are silent as to criteria for modification of prior awards, it seems certain that the existing law requiring a change of circumstances will apply.[11] The new law does change the effective date of modification or revocation from the date of the order to the date of filing of the notice of motion or order to show cause to modify.[12] Section 4801(a) of the Act speaks of modification or revocation "as the court may deem just and reasonable," rather than "at the discretion of the court," as prior law had it.[13] The change is not thought to be significant, and if anything would restrict rather than enlarge the court's power.

8. Former Civ. Code § 139 (Family Law Act § 4801(a), (b) and (c)); § 139.8 (Family Law Act § 4801(d)); § 139.7 (Family Law Act § 4801(e)).

9. Family Law Act § 4801(a).

10. Although the case law has recognized these factors as material, accuracy would probably demand the statement that they have been applied protectively more often than not. See, e.g., Brawman v. Brawman, 199 Cal. App.2d 876, 19 Cal. Rptr. 106 (1962); Mueller v. Mueller, 144 Cal. App.2d 245, 301 P.2d 90 (1956).

11. Snyder v. Snyder, 219 Cal. 80, 25 P.2d 403 (1933). On the modification of alimony awards under previous law, see 1 Armstrong, *California Family Law,* pp. 371–385.

12. Family Law Act § 4801(a).

13. Former Civ. Code § 139.

VIII. Application of the Law

Inevitably, one of the most immediate problems of the Family Law Act is the matter of its application. The statute provides that its effective date was January 1, 1970, and that it would apply: (1) to all proceedings filed on or after that date; (2) to all proceedings held after that date in actions in which an interlocutory or final decree had not been rendered; and (3) to all proceedings in progress on or commenced after that date for the modification or revocation of prior orders.[14] Challenges to the constitutionality of these provisions have not been long in coming, but no problems of retroactive divestment of rights in deprivation of due process or equal protection appear to be seriously presented.[15]

IX. Epilogue

Taken in sum, California's new Family Law Act is a distinctly significant step in the quest for a rational system of state intervention in the marriage relationship. The decisions in *Griswold v. Connecticut*,[16] *Loving v. Virginia*,[17] and in an important and controversial California case during the last year in the field of abortion, *People v. Belous*,[18] are a reminder that the rights to privacy inhering in the commitment of persons to each other, particularly in the bond of matrimony, are of a very high order; as the Governor's Commission expressed it, the family is the essential basis of our society and marriage is a commitment in depth and complexity between two freely consenting parties.[19] The law must intervene only upon a compelling ground of interest, and with great care. The Family Law Act attempts, not always successfully but

14. Stats. 1969, Ch. 1608, § 37, as amended by Stats. 1969, Ch. 1609, § 29. See also 1969 *Assembly Report*, pp. 10–11.

15. The press informed us that perhaps the first attack on the new law was made by Mrs. Robert Cummings, wife of the actor. *San Francisco Chronicle*, January 20, 1970, p. 5.

16. 381 U.S. 479, 14 L.Ed.2d 510, 85 S.Ct. 1678 (1965).

17. 388 U.S. 1, 18 L.Ed.2d 1010, 87 S.Ct. 1817 (1967).

18. 71 Cal.2d —, 80 Cal. Rptr. 354, 458 P.2d 194 (1969).

19. *Gov. Comm. Report*, p. 60.

certainly more gainfully than the prior law, to balance the tension between these individual rights to privacy and the constraining interests of the state in enhancing the family unit and in seeing that children are minimally harmed by its dissolution.

I believe that much remains to be done, and that the Family Law Act is a beginning point rather than a terminus. The Governor's Commission recommendations for the creation of a family court division in each county's Superior Court, to be equipped with a professional staff, would have centralised litigation on family matters that are now spread over several judicial calendars. The family court division proposal not only expanded the geographic coverage of the Courts of Conciliation, but their scope and function as well, since the professional staff was empowered under the proposal to undertake dissolution counseling as well as counseling directed toward reconcilement.[20] (That is to say, counseling of the parties when dissolution appeared inevitable but the parties wished assistance in reducing their areas of problem or disagreement and in adjusting to their new roles in life). These proposals were not adopted, but it is to be hoped that attention will be given to them in coming legislative sessions. One hopes, too, that the provisions regarding the annulment of voidable marriages will be coalesced into the process for dissolution provided in the Act, that the ineptitude of the interlocutory period will be abandoned, and that the standard of property division can be brought round to a more adroit expression. These are perhaps the most obvious needs.

20. *Gov. Comm. Report,* pp. 11–14, 20–22, 24–25. Perhaps it is appropriate here to set at rest a prevalent misconception: neither the suggestions of the Governor's Commission nor the provisions of the Senate Bill contemplated mandatory counseling, as has frequently been charged. The initial recommendations called only for a required initial evaluative interview, so that the parties could be informed of the available resources; this was later modified to include only families with children under 18. All counseling was to be voluntarily undertaken, and the 1969 Assembly Report's conclusion (at page 3) that the report of the counselor would be determinative on the question of dissolution flies directly in the face of the language of the Governor's Commission: "[I]t must be stressed that we regard it as absolutely essential that the decisional process be kept the province of the court, not the counselor." *Gov. Comm. Report,* pp. 20–21.

Nevertheless, the Act remains a good step. Appellate gloss and legislative reworking will doubtless dampen even more the stimuli for bitterness and acrimonious exchange with which the prior law was so fraught, and which the new Act strives—in large measure successfully—to remove. The Family Law Act is a massive venture; in terms of its complexity and of the number of people it affects, it is perhaps the largest legislative reform effort successfully undertaken in the history of this State. It is a safe prediction that progress will continue to be made.

APPENDIX A

CROSS-REFERENCE TABLES

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FAMILY LAW ACT (Chapters 1608 and 1609, Statutes of 1969)

TABLE I. Correlation of Former to New Sections

NOTE: In the following table, sections marked with an asterisk (*) have been carried over in the new law without substantive change. Where the letter "N" appears, the section was repealed without adding any comparable provision in the new law.

Former Section Civ.C	New Section Civ.C	Former Section Civ.C	New Section Civ.C
55*	4100	79*	4213
56	4101	79.1*	4214
56.1*	4102	79a*	4215
57*	4103	79.01*	4300
59*	4400	79.02*	4301
61	4401	79.03*	4302
62	N	79.03a*	4303
63*	4104	79.04*	4304
68*	4200	79.05*	4305
69	4201	79.06*	4306
69a*	4202	79.07*	4307
69b*	4203	79.08*	4308
69.5*	4204	79.09*	4309
70*	4205	80	4450
71*	4206	82	4425
72*	4207	83*	4426
73*	4208	84	4453; 4454
74*	4209	85*	4453
76*	4210	86*	4451
77*	4211	87*	4456
78*	4212	88*	4457

Former Section Civ.C	New Section Civ.C
90*	4500
91*	4501
92	4506
93	N
94	N
95	N
96	N
97	N
98	N
99	N
100	N
101	N
102	N
103	N
104	N
105	N
106	N
107	N
108	4510
111	N
112	N
113	N
114	N
115	N
116	N
117	N
118	N
119	N
120	N
121	N
122	N
123	N
124	N
125	N
126	N
127	N
128	4530 (a)
128.1	4530 (b)
129*	4531
130	4511
131*	4512; 4521
131.5*	4513
132	4514
133	4515
136	4502
137	4503
137.1*	4703
137.2	4516; 4540
137.3	4456; 4525
137.5*	4526
137.6*	4517; 4540
138	4600
139	4540; 4700(a); 4801(a), (b) & (c); 4811
139.1*	4700(c); 4812
139.5	4702(b) & (c)
139.7*	4801(e)
139.8*	4700(b); 4801(d)
140*	4700(a); 4800; 4801(a); 4540
140.5*	4803
140.7*	4804
141*	4805
142	4806
143*	4807
144	N
145	N
146	4800; 4808
147*	4809
148*	4810
149	149
150*	5000
150.1*	5001
150.2*	5002
150.3*	5003
150.4*	5004
155*	5100
156*	5101
157	4518(3); 5102
158*	5103
159*	4802
160*	4802
161*	5104
161a*	5105
161b*	5106
162*	5107
163	5108
163.5*	5109
164*	5110
164.5*	5111
164.6*	5112
164.7*	5113
165*	5114
166*	5115

Former Section Civ.C	New Section Civ.C
167*	5116
168*	5117
169*	5118
169.1*	5119(a)
169.2*	5119(b)
169.3	5126
170*	5120
171*	5121
171a*	5122
171b*	5123
171c*	5124
172*	5125
172a*	5127
172b*	5128
173*	5129
174*	5130
175	5131
176	5132
177*	5133
178*	5134
179*	5135
180*	5136
181*	5137
182*	5138
199*	4603

TABLE II. Derivation of New Sections

New Section Civ.C	Former Section Civ.C
4000	(new)
4001	(new)
4100	55
4101	56
4102	56.1
4103	57
4104	63
4200	68
4201	69
4202	69a
4203	69b
4204	69.5
4205	70
4206	71
4207	72
4208	73
4209	74
4210	76
4211	77
4212	78
4213	79
4214	79.1
4215	79a
4300	79.01
4301	79.02
4302	79.03
4303	79.03a
4304	79.04
4305	79.05
4306	79.06
4307	79.07
4308	79.08
4309	79.09
4400	59
4401	61
4425	82
4426	83
4429	(new)
4450	80
4451	86
4452	(new)
4453	84; 85
4454	84
4455	(new)
4456	87; 137.3
4457	88
4500	90
4501	91
4502	136
4503	137
4504	(new)
4505	(new)
4506	92
4507	(new)
4508	(new)
4509	426b CCP Civ.C

New Section Civ.C	Former Section Civ.C
4510	108
4511	130
4512	131
4513	131.5
4514	132
4515	133
4516	137.2
4517	137.6
4518	157 CCP
4519	125
4520	(new) Civ.C
4521	131
4525	137.3
4526	137.5
4530	128; 128.1
4531	129
4540	137.2; 137.6; 139
4600	138
4601	(new)
4602	(new)
4603	199
4700	139; 139.1; 139.8; 140
4701	(new)
4702	139.5
4703	137.1
4800	146
4801	139; 139.7; 139.8; 140
4802	159; 160
4803	140.5
4804	140.7
4805	141
4806	142
4807	143
4808	146
4809	147
4810	148
4811	139
4812	139.1
5000	150
5001	150.1
5002	150.2
5003	150.3
5004	150.4
5100	155
5101	156
5102	157
5103	158
5104	161
5105	161a
5106	161b
5107	162
5108	163
5109	163.5
5110	164
5111	164.5
5112	164.6
5113	164.7
5113.5	(new)
5114	165
5115	166
5116	167
5117	168
5118	169
5119	169.1; 169.2
5120	170
5121	171
5122	171a
5123	171b
5124	171c
5125	172
5126	169.3
5127	172a
5128	172b
5129	173
5130	174
5131	175
5132	176
5133	177
5134	178
5135	179
5136	180
5137	181
5138	182

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