

11 Summary of California Law (10th), Husband and Wife

I. INTRODUCTION

A. Governing Law.

- 1. [§1] Family Law Act.**
- 2. Family Code.**
 - (a) [§2] In General.**
 - (a-1) [§2A] (New) Retroactivity of Provisions.**
 - (b) [§3] Statutory Framework.**
 - (c) [§4] Definitions.**
 - (d) [§5] Generally Applicable Procedures.**
 - (e) Temporary Restraining Orders.**
 - (1) [§6] Order in Summons.**
 - (2) [§7] Other Ex Parte Orders.**
 - (f) Attorneys' Fees and Costs.**
 - (1) [§8] In General.**
 - (2) [§9] Payment Directly to Attorney.**
 - (3) [§10] Imposition of Award as Sanction.**
 - (g) [§10A] (New) Ex Parte Communications With Mediator or Evaluator.**
- 3. [§11] Family Law Rules.**
- 3A. [§11A] (New) Generally Applicable Procedures.**
- 4. [§12] Judicial Council Forms.**
- 5. (New) Filing Fees and Costs.**
 - (a) [§12A] (New) In General.**
 - (b) [§12B] (New) Amount of Filing Fees.**
 - (c) [§12C] (New) Waiver of Fees and Costs.**

B. Texts and Commentary.

- 1. [§13] In General.**
- 2. [§14] Principles of the Law of Family Dissolution.**

C. State's Control Over Marital Relationship.

- 1. [§15] In General.**
- 2. [§16] Licensing of Marriage and Family Therapists.**
- 3. [§17] Vital Statistics.**

D. Modern Status of Women.

- 1. [§18] In General.**
- 2. Use of Own Name.**
 - (a) [§19] In General.**
 - (b) [§20] After Judgment of Dissolution or Nullity.**
 - (c) [§21] In Business Transactions.**
- 3. Discriminatory Denial or Offer of Credit.**
 - (a) [§22] Statutory Prohibitions.**
 - (b) [§23] Remedies and Penalties.**
 - (c) [§24] Permissible Evaluations and Credit Reports.**

E. Recognition of Domestic Partnerships.

- 1. Domestic Partner Registration.**

- (a) [§25] In General.
- (b) [§26] California Domestic Partner Rights and Responsibilities Act.
- (c) [§27] Establishment of Domestic Partnership.
- (d) [§28] Registration Procedure.
- (e) [§29] Preemption of Local Laws.

2. Legal Effect of Status.

- (a) [§30] In General.
- (b) [§31] Patient Visitation.
- (c) [§32] Health Care Benefits.
- (d) [§33] Other Rights.

3. [§34] Termination of Status.

F. Duty of Support.

- 1. [§35] Former Law.
- 2. [§36] Mutual Obligations.
- 3. [§37] Spouse Living Apart.
- 4. [§38] Spouse Incompetent.

G. Power To Contract.

- 1. [§39] In General.
- 2. [§40] Agreements Altering Spouses' Legal Relations.
- 3. [§41] Separation Agreements.

II. MARRIAGE

A. Creation and Requisites.

- 1. [§42] In General.
- 2. [§43] Capacity of Parties.
- 3. [§44] Same Sex Marriage.
- 4. [§45] License.
- 5. [§46] Certificate of Registry.
- 6. [§47] Solemnization.
- 7. [§48] Confidential Marriage.

B. Conflict of Laws.

- 1. In General.
 - (a) [§49] California and Restatement Rules.
 - (b) [§50] Illustrations.
- 2. [§51] Valid Marriage Evading Law of Domicile.
- 3. [§52] Marriage Contrary to Fundamental Public Policy of Domicile.

C. Proof of Marriage.

- 1. [§53] In General.
- 2. [§54] Presumption of Valid Marriage From Proof of Solemnization.
- 3. Second Marriage Presumed Valid.
 - (a) [§55] Nature and Effect of Presumption.
 - (b) [§56] Presumption Overcome.

III. DISSOLUTION OF MARRIAGE

A. In General.

- 1. [§57] Methods of Altering Marital Status.
- 2. [§58] Former Fault Requirement for Divorce.
- 3. [§59] Fault Theory Eliminated for Dissolution.

4. [§59A] (New) Capacity To Terminate Marriage.

B. Grounds for Dissolution.

1. Irreconcilable Differences.

- (a) [§60] Nature of Ground.
- (b) [§61] Substantial Reasons for Dissolution.
- (c) [§62] Evidence of Misconduct Is Ordinarily Inadmissible.

2. Incurable Insanity.

- (a) [§63] Nature of Ground.
- (b) [§64] Proof.
- (c) [§65] Support of Insane Spouse.
- (d) [§66] Procedure.

C. Proceedings.

1. [§67] In General.

2. Jurisdiction and Power of Court.

- (a) [§68] In General.
- (b) [§69] Superior Court and Departments.
- (c) [§70] Special Appearance by Respondent.
- (d) [§71] Case Management.
- (e) [§72] Abatement of Proceeding on Death.

3. [§73] Residence and Venue.

4. [§74] Limited Scope Legal Representation.

5. [§75] Process.

6. Parties.

- (a) [§76] In General.
- (b) [§77] Standing of Guardian or Conservator.
- (c) [§78] Joinder of Third Persons.
- (d) Employee Benefit Plan.
 - (1) [§79] In General.
 - (2) [§80] Joinder of Plan.
 - (3) [§81] Proceedings After Joinder.

7. Pleadings.

- (a) [§82] In General.
- (b) [§83] Petition.
- (c) [§84] Response.

8. [§85] Notices Concerning Insurance.

9. Orders Pending Trial.

- (a) [§86] In General.
- (b) [§87] Methods of Obtaining Orders.
- (c) Protective and Restraining Orders.
 - (1) [§88] Order in Summons.
 - (2) [§89] Other Orders.

10. Conciliation.

- (a) [§90] In General.
- (b) [§91] Family Conciliation Courts.
- (c) Counselors and Officers.
 - (1) [§92] Qualifications and Appointment.

- (2) [§93] Powers of Supervising Counselor.
 - (3) [§94] Participation in Domestic Violence Programs.
- (d) Procedure.
 - (1) [§95] Jurisdiction.
 - (2) [§96] Petition.
 - (3) [§97] Hearing.
 - (4) [§98] Orders.
- 11. Trial.
 - (a) [§99] In General.
 - (b) Uncontested Proceeding.
 - (1) [§100] No Requirement of Corroboration.
 - (2) [§101] Entry of Default and Application for Relief.
 - (3) [§102] Requirement of Proof.
 - (4) [§103] Notice of Entry of Judgment.
 - (c) Bifurcation.
 - (1) [§104] Judicial Rule.
 - (2) [§105] Statutory Rule.
 - (3) [§106] Court Rule.
- 12. [§107] Statement of Decision.
- 13. Judgment.
 - (a) Development of Law.
 - (1) [§108] Former Two-Judgment Procedure.
 - (2) [§109] Elimination of Interlocutory Judgment.
 - (b) [§110] Entry of Judgment.
 - (c) [§111] When Judgment Becomes Final.
 - (d) [§112] Contents of Judgment.
 - (e) Effect of Reconciliation.
 - (1) [§113] In General.
 - (2) [§114] What Constitutes Reconciliation.
 - (f) [§115] Setting Aside Judgment.
 - (g) Entry of Judgment Nunc Pro Tunc.
 - (1) [§116] Development of Law.
 - (2) [§117] Power To Enter Judgment.
 - (3) [§118] Who May Seek Entry.
 - (4) [§119] Entry After Death of Party.
 - (h) [§120] Judgment as Determination of Valid Marriage.
- 14. Appellate Review.
 - (a) [§121] In General.
 - (b) [§122] Appeals Where Issues Are Bifurcated.
 - (c) [§123] Certification Procedure for Bifurcated Issues.
- 15. Summary Dissolution.
 - (a) [§124] In General.
 - (b) [§125] Conditions.
 - (c) [§126] Joint Petition.
 - (d) [§127] Revocation of Petition.
 - (e) [§128] Judgment.

16. [§128A] (New) Collaborative Law Process.

D. Recognition and Effect of Foreign Divorces.

1. Entitlement to Full Faith and Credit.

(a) [§129] Background.

(b) Domicile of One Spouse Is Sufficient.

(1) [§130] General Principle.

(2) [§131] Reexamination of Finding of Domicile.

(3) [§132] Binding Determination of Domicile.

(4) Limited Effect: Divisible Divorce Doctrine.

(aa) [§133] Adjudication of Support or Property Rights Before Divorce.

(bb) [§134] Adjudication of Support or Property Rights After Divorce.

(c) Divorce Without Bona Fide Domicile Is Generally Insufficient.

(1) [§135] Nevada Divorce Based on Temporary Residence.

(2) [§136] Mexican Divorce Without Residence.

(3) [§137] Where Both Spouses Are Present.

(4) [§138] Exception for "Unique Circumstances".

2. [§139] Uniform Divorce Recognition Act.

3. Estoppel To Deny Validity of Divorce.

(a) [§140] In General.

(b) [§141] Procuring Decree.

(c) [§142] Remarriage.

(d) [§143] Doctrine Applied Against Third Person.

IV. LEGAL SEPARATION

A. [§144] In General.

B. [§145] Grounds and Defenses.

C. [§146] Proceedings.

D. [§147] Effect of Judgment.

V. NULLITY OF MARRIAGE

A. Nature and Effect.

1. [§148] In General.

2. [§149] Void Marriage.

3. Voidable Marriage.

(a) [§150] In General.

(b) [§151] Relation Back Theory.

(c) [§152] Survival of Cause of Action.

4. [§153] Dissolution Distinguished.

B. Grounds.

1. [§154] In General.

2. [§155] Incest.

3. [§156] Bigamy.

4. Fraud.

(a) [§157] In General.

(b) [§158] Insufficient Misrepresentations.

(c) [§159] Sufficient Misrepresentations.

5. **[§160] Minority.**
6. **[§161] Insanity.**
7. **[§162] Physical Incapacity.**
8. **[§163] Force.**
- C. **[§164] Conflict of Laws.**
- D. **Proceedings.**
 1. **[§165] In General.**
 2. **Jurisdiction.**
 - (a) **[§166] Subject Matter Jurisdiction.**
 - (b) **[§167] Personal Jurisdiction.**
 - (c) **[§168] Presence Without Domicile.**
 - (d) **[§169] Effect of Foreign Decree.**
 3. **[§170] Venue, Limitations, Parties, and Pleadings.**
 4. **[§171] Hearing, Incidental Orders, and Judgment.**
 5. **[§172] Temporary Support.**
 6. **[§173] Attorneys' Fees and Costs Pending Proceeding.**

VI. SUPPORT

- A. **[§174] In General.**
- B. **Support, Attorneys' Fees, and Costs Pending Proceeding.**
 1. **[§175] Development of Law.**
 2. **[§176] Purpose and Public Policy.**
 3. **Proceedings in Which Award Is Allowed.**
 - (a) **[§177] Types of Actions.**
 - (b) **[§178] Main Proceeding in Trial Court.**
 - (c) **[§179] Main Proceeding on Appeal.**
 - (d) **Subsequent Proceeding.**
 - (1) **[§180] In General.**
 - (2) **[§181] No Award in Unrelated Proceeding.**
 - (3) **[§182] Effect of Failure to Award Spousal Support.**
 4. **Circumstances Affecting Right to Award.**
 - (a) **[§183] Marital Relationship.**
 - (b) **Needs and Ability to Pay.**
 - (1) **[§184] Payee's Needs.**
 - (2) **[§185] Payor's Ability.**
 - (3) **[§186] Effect of Payee's Property, Income, and Earning Capacity.**
 - (c) **[§187] Prior Agreement.**
 - (d) **[§188] Legal Services Already Rendered.**
 - (e) **[§189] Merits of Action Are Immaterial.**
 5. **[§190] Award of Attorneys' Fees and Costs Against Third Party.**
 6. **Determination and Payment of Award.**
 - (a) **Temporary Support.**
 - (1) **[§191] In General.**
 - (2) **[§192] Use of Guidelines.**
 - (b) **Attorneys' Fees and Costs.**
 - (1) **[§193] In General.**

- (2) [§194] Factors To Be Considered.
- (3) [§195] Considerations Justifying Large Award.
- (4) [§196] Excessive Award.

7. Procedure.

- (a) [§197] In General.
- (b) [§198] Order To Show Cause or Motion.
- (c) [§199] Supporting Documents.
- (d) [§200] Response.
- (e) [§201] Case Management Plan.
- (f) [§202] Hearing and Determination.
- (g) [§203] Review.
- (h) [§203A] (New) Attorneys' Fees and Costs.

8. Enforcement.

- (a) [§204] In General.
- (b) [§205] Contempt.
- (c) [§206] Other Remedies.

9. [§207] Modification.

C. Permanent Support.

1. In General.

- (a) [§208] Basis of Award.
- (b) [§209] Money Judgment Distinguished.
- (c) Forms of Award.
 - (1) [§210] In General.
 - (2) [§211] Lump-Sum Payment.
 - (3) [§212] Automatic Reduction.
 - (4) [§213] Indefinite Duration.
 - (5) [§214] Payments for Insurance, Annuity, or Trust.
 - (6) [§215] Provision for Creditors.
- (d) [§216] Where Judgment Does Not Include Award.
- (e) Waiver of Right.
 - (1) [§217] In General.
 - (2) [§218] Express Advance Waiver.
 - (3) [§219] Waiver After Judgment.
- (f) [§220] Laches Defense Limited.
- (g) [§221] Tax Aspects of Award.
- (h) [§222] Source of Payments.

2. Amount of Payments.

- (a) In General.
 - (1) [§223] Statutory Standard.
 - (2) [§224] Marital Standard of Living As Point of Reference.
 - (3) [§225] Statutory Factors.
 - (4) [§226] Reliance on Temporary Guidelines or Awards Is Improper.
 - (5) [§227] Discretion of Court.
 - (6) [§228] Use of Percentages.
 - (7) [§229] Advice to Supported Spouse.

(b) Supported Spouse's Needs.

- (1) [§230] In General.**
- (2) [§231] Denial or Small Award Upheld.**
- (3) [§232] Denial or Small Award Reversed.**
- (4) [§233] Separate Property.**
- (5) [§234] Marital Savings History.**
- (6) [§235] Postseparation Lifestyles.**
- (7) [§235A] (New) Gifts From Third Parties.**

(c) Supporting Spouse's Ability To Pay.

- (1) [§236] In General.**
- (2) [§237] Ability Shown.**
- (3) [§238] Ability Not Shown.**
- (4) [§239] Retirement Plan Contributions and Accruals.**
- (5) [§240] Earning Capacity.**

(d) [§241] Cohabitation of Spouses Before Marriage.

(e) [§242] Prior Marriage of Spouses.

3. Procedure.

(a) [§243] Request in Petition.

(b) [§244] Reference.

(c) [§245] Examination By Vocational Training Counselor.

(d) [§246] Motion for New Trial.

(e) [§247] Appeal.

4. Enforcement.

(a) [§248] In General.

(b) Earnings Assignments.

- (1) [§249] In General.**
- (2) [§250] Definitions.**
- (3) [§251] Issuance of Order.**
- (4) [§252] Stay of Service.**
- (5) [§253] Rights and Obligations of Employer.**
- (6) [§254] Priorities.**
- (7) [§255] Motion To Quash.**
- (8) [§256] Termination of Order.**
- (9) [§257] Alternative Procedure in Title IV-D Cases.**

(c) Contempt.

- (1) [§258] Nature of Remedy.**
- (2) [§259] Procedure.**
- (3) [§260] Improper Service on Attorney.**
- (4) [§261] Defense of Inability To Pay.**

(d) Execution.

- (1) [§262] In General.**
- (2) [§263] Period of Enforcement.**
- (3) [§264] Enforcement Against Employee Benefit Plan.**

(e) Other Enforcement Remedies.

- (1) [§265] Security for Payment.**
- (2) [§266] Appointment of Receiver.**

- (3) [§267] Judgment Lien.**
- (4) [§268] Charging Order Against Interest in Partnership or Limited Liability Company.**

(f) Intercounty Enforcement.

- (1) [§269] In General.**
- (2) [§270] Registration by Local Child Support Agency.**
- (3) [§271] Registration by Obligee.**
- (4) [§272] Vacation of Registration.**

5. Modification.

(a) Power To Modify.

- (1) [§273] Continuing Jurisdiction.**
- (2) [§274] Default Award.**
- (3) [§275] Discretion of Court.**
- (4) [§276] Retroactive Modification.**
- (5) [§277] Effect of Past Contempt.**

(b) Change in Circumstances.

- (1) [§278] Necessity of Showing.**
- (2) [§279] Considerations Generally.**
- (3) Supporting Spouse's Reduced Circumstances.**
 - (aa) [§280] In General.**
 - (bb) [§281] Career Change or Retirement.**
- (4) [§282] Supporting Spouse's Improved Circumstances.**
- (5) [§283] Income of Supporting Spouse's New Spouse or Nonmarital Partner.**
- (6) [§284] Supported Spouse's Changed Circumstances.**
- (7) [§285] Supported Spouse's Discharge in Bankruptcy.**
- (8) [§286] Supported Spouse's Nonmarital Cohabitation.**
- (9) [§287] Change in Cost of Child Support.**
- (10) [§288] Consideration of Circumstances Predating Last Order.**
- (11) [§288A] (New) Activation and Out-of-State Deployment of Military Service Member.**

(c) Procedure.

- (1) [§289] In General.**
- (2) [§290] Service on Party.**
- (3) [§291] Discovery.**
- (4) [§292] Simplified Procedure.**

6. Termination.

(a) [§293] Change in Circumstances.

(b) [§294] Death of Spouse.

(c) Remarriage of Spouse.

- (1) [§295] In General.**
- (2) [§296] Agreement To Continue Support.**

(d) Self-Terminating Judgment.

- (1) [§297] In General.**
- (2) [§298] Order for Contingent Period.**

(3) Reservation of Jurisdiction To Extend Term.

(aa) [§299] In General.

(bb) [§300] Jurisdiction Reserved.

(cc) [§301] Jurisdiction Not Reserved.

(4) Court's Duty To Reserve Jurisdiction.

(aa) [§302] In General.

(bb) [§303] Contingent Termination of Jurisdiction As Alternative.

(cc) [§304] Marriage of Short Duration.

(5) [§305] Statutory Jurisdiction After Lengthy Marriage.

7. Setting Aside Award.

(a) [§306] In General.

(b) [§307] Grounds and Time Limits.

8. Governmental Enforcement.

(a) In General.

(1) [§308] Background and Scope.

(2) [§309] State Department of Child Support Services.

(3) [§310] Local Child Support Agency.

(4) [§311] Duties of Public Assistance Recipient.

(5) [§312] Referral to Agency by County Welfare Department.

(6) [§313] Payment to County by Court and Referral.

(7) [§314] Acquisition and Confidentiality of Information.

(8) [§315] Complaint Resolution by Agency.

(9) [§316] Rules and Forms.

b) Judicial Proceedings.

(1) [§317] Nature of Proceedings.

(2) [§318] Agency's Representation of Public Interest.

(3) [§319] Venue.

(4) Determinable Issues.

(aa) [§320] In General.

(bb) [§321] Custody and Visitation.

(cc) [§322] Allocation of Dependency Exemption.

(5) [§323] Party Status of Parents.

(6) [§324] Pleadings.

(7) [§325] Consolidation of Claims.

(8) [§326] Time and Notice Requirements.

(9) [§327] Hearing.

(10) [§328] Agreement, Stipulation, or Compromise.

11) Default and Relief From Default.

(aa) [§329] Entry of Default.

(bb) [§330] Relief From Order Based on Presumed Income.

(cc) [§331] Relief From Order Based on Mistaken Identity.

(12) [§332] Appeal.

(13) [§333] Temporary Support.

c) Recovery of Arrearages.

- (1) [§334] In General.**
- (2) [§335] Levy by Agency.**
- (3) [§336] Lien on Personal Property.**
- (4) [§337] Collection by Department.**
- (5) [§338] Nonissuance, Nonrenewal, or Suspension of License.**

(d) Reimbursement of Public Assistance.

- (1) [§339] In General.**
- (2) [§340] Aid to Aged, Blind, and Disabled.**
- (3) [§341] Aid to Indigents.**
- (4) [§342] Aid to Mentally Ill.**
- (5) [§343] CalWORKs Aid.**

9. Enforcement of Foreign Support Obligations.

- (a) [§344] In General.**
- (b) [§345] Proceedings Under UIFSA.**

VII. MARITAL SETTLEMENT AGREEMENTS

A. In General.

- 1. [§346] Nature and Validity.**
- 2. [§347] Incidents.**
- 3. [§348] Interpretation.**
- 4. [§349] Approval of Court.**
- 5. Incorporation in Judgment and Merger.**
 - (a) [§350] Purposes of Incorporation.**
 - (b) [§351] When Agreement Is Merged.**
- 6. Setting Aside Incorporated Agreement.**
 - (a) [§352] In General.**
 - (b) [§353] Illustrations: Relief Granted.**
 - (c) [§354] Illustrations: Relief Denied.**

B. Modification.

- 1. [§355] Pure Property Settlement Is Nonmodifiable.**
- 2. Agreement With Support Provisions.**
 - (a) [§356] General Rule: Support Provisions Are Modifiable.**
 - (b) [§357] Agreement Made Expressly Nonmodifiable.**
 - (c) [§358] Purely Private Agreement.**

C. Enforcement.

- 1. [§359] Action on Agreement.**
- 2. [§360] Execution and Receivership.**
- 3. Contempt.**
 - (a) [§361] Agreement Not Merged.**
 - (b) [§362] Integrated Agreement.**

D. Termination.

- 1. Death of Spouse.**
 - (a) [§363] In General.**
 - (b) [§364] Agreement That Obligations Survive.**
- 2. Remarriage of Spouse.**
 - (a) [§365] In General.**

(b) [§366] Annulment of Voidable Marriage.

3. Bankruptcy.

(a) [§367] Federal Statute.

(b) [§368] California Statute.

4. [§369] Occurrence of Condition Subsequent.

VIII. DOMESTIC VIOLENCE

A. Available Remedies.

1. [§370] In General.

2. [§371] Civil Remedies.

3. [§372] Criminal Proceedings.

B. Domestic Violence Prevention Act.

1. [§373] In General.

2. [§374] Definitions.

3. Emergency Orders.

(a) [§375] In General.

(b) [§376] Issuance and Effect.

(c) [§377] Duties of Law Enforcement Officer.

(d) [§378] Antistalking Order.

4. Protective and Related Orders.

(a) [§379] In General.

(b) [§380] Support Person for Victim.

(c) [§381] Criminal Background Search.

(d) Issuance of Orders.

(1) Ex Parte Orders.

(aa) [§382] In General.

(bb) [§383] Temporary Custody and Visitation.

(2) [§384] Orders After Notice and Hearing.

(3) [§385] Orders Included in Judgment.

(e) Registration and Enforcement.

(1) [§386] In General.

(2) [§387] Electronic Transmission and Recording of Data.

(3) [§388] Service of Order.

(4) [§389] Foreign Orders.