

**Two Essays on Divorce and One on Utilitarianism**

by

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**A dissertation submitted in partial fulfillment  
of the requirements for the degree of  
Doctor of Philosophy  
(Economics)  
in The University of Michigan  
2015**

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## ABSTRACT

This dissertation's second and third chapters are about divorce. The fourth is about utilitarianism. Each can be read as a self-contained paper.

The second chapter is titled "The Evolution of Fault to No-Fault Divorce and The Contemporaneous Changes in Divorce Rates." I find that the statutory enactment of no-fault was not correlated with an increase in divorce rates. Instead, it was correlated with a *fall* in the growth rates of divorce. I review the historical facts and find that in the previous decades, the fault concept had already been thoroughly eroded. This may explain why no-fault reforms were not correlated with an increase in divorce.

The third chapter is titled "Omnibus Clauses and Contemporaneous Changes in Divorce Rates, 1867-1906." I give a primer on the unusually liberal divorce laws known as *omnibus clauses*. I find that they were significantly correlated with divorce rates.

The fourth chapter is titled "Revealed Relative Utilitarianism." It considers the aggregation of von Neumann-Morgenstern preferences and introduces the concept of revealed marginal rates of substitution. The main result is that the only social welfare function that satisfies a certain set of axioms that is the relative utilitarian welfare function, that is, where the social planner simply adds up all agents' 0-1 normalized utility functions.

## CHAPTER I

### Introduction

This dissertation's second and third chapters are about divorce and, in particular, about the relation between divorce laws and divorce rates. The fourth chapter, which is co-authored with Tilman Börgers, considers the axiomatic foundations for a utilitarian social welfare function. Each of these three chapters can be read as a self-contained paper.

The second chapter is titled "The Evolution of Fault to No-Fault Divorce and The Contemporaneous Changes in Divorce Rates." I revisit the empirical question of whether the introduction of no-fault divorce statutes was correlated with an increase in divorce rates. I do so by reexamining the data. I find that no-fault was not correlated with an increase in divorce rates (in the short term or the long). Instead, it was correlated with a *fall* in the growth rates of divorce. To explain why no-fault was not correlated with an increase in divorce, I review the historical facts. In the decades leading to 1970, the fault concept had already been thoroughly eroded by judiciaries and, to a lesser extent, legislatures. In other words, the divorce law had gradually evolved from fault to no-fault. The enactment of no-fault thus served merely to codify the law in action into the law of the books. This may thus explain why no-fault reforms were not correlated with an increase in divorce.

The third chapter is titled "Omnibus Clauses and Contemporaneous Changes in Divorce Rates, 1867-1906." I give a primer on the unusually liberal divorce laws known as *omnibus clauses*. I then compile annual county-level divorce counts and coding for multiple aspects of divorce laws. Using these newly-compiled data, I examine the correlation between divorce laws and divorce rates. I find that the omnibus clauses were significantly correlated with divorce rates. This provides evidence that divorce laws did matter for divorce rates in the nineteenth century.

The fourth chapter is titled "Revealed Relative Utilitarianism." It is co-authored with Tilman Börgers. We consider the aggregation of individual agents' von Neumann-Morgenstern's utility functions into a societal von Neumann-Morgenstern utility function. We start from Harsanyi's (1955) axiomatization of utilitarianism, and ask under which conditions a social preference order



that satisfies Harsanyi's axiom uniquely reveals society's marginal rates of substitution between the probabilities of any two agents' most preferred alternatives. We then introduce three axioms for these revealed marginal rates of substitution. Our main result is that the only welfare function that satisfies these three axioms is the relative utilitarian welfare function. This welfare function, that was introduced in Dhillon (1998) and Dhillon and Mertens (1999), normalizes all agents' utility functions so that the lowest utility value is 0 and the highest utility value is 1, and then adds up the utility functions. The three axioms that we introduce are closely related to axioms that Dhillon and Mertens used to provide foundations for relative utilitarianism, but our axioms allow a much simpler and more transparent derivation of the main result.

## CHAPTER II

### **The Evolution of Fault to No-Fault Divorce and The Contemporaneous Changes in Divorce Rates**

#### **1 Introduction**

What is the relation between legislation and divorce rates? This question has received much attention, especially from economists of the family. Addressing this question can, for example, help shed light on the broader matter of how the policy-maker can shape the American family.

This question has been most intensively studied in the context of the US no-fault reforms circa 1970. Were these reforms linked to the divorce boom of the 1960s and 1970s (Figure II.1)? Many have addressed this empirical question but without producing any consensus: Some conclude that reforms increased divorce, while others conclude that they did not (see the literature review in section 2). I revisit the matter by reexamining the data. Consistent with some earlier empirical analyses but not with others, I find that statutory reforms are not correlated with an increase in divorce (in the short term or the long). Instead, they are associated with a 0.34 log point drop in crude divorce rates (CDR, divorces per *thousand* persons).

I contribute to the existing empirical literature in several ways. First, I adjust California's divorce numbers. Statutory no-fault took effect in 1970. That year, California had 31,396 more divorces than in 1969. This figure was nearly 5% of 1969's *national* divorce *total*. But much of this spike had nothing to do with no-fault reforms. A contemporaneous reform reduced the interlocutory period by six months and so compressed roughly one-and-a-half years' worth of divorces into the single year of 1970. I calculate the effects of this reform and strip them out of the data.

Second, I transform the dependent variable into log form. States about to enact no-fault tended to have higher CDRs than states that had not enacted no-fault.<sup>1</sup> Moreover, a state's CDR tended to increase more if it was higher to begin with. Together, these imply in turn that reforms would

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<sup>1</sup> One possible explanation for this is that legislators were more likely to act precisely where CDRs were high.

tend to be followed by larger level increases in divorce. To better discern the effects of no-fault reforms, the data are examined with the dependent variable in *both* level and log form.

Third, I propose a precise definition of statutory no-fault divorce. I give the reasons behind my proposal. By this definition, as of 2015, exactly 43 states<sup>2</sup> have enacted no-fault divorce. I document the approval and effective dates of each of these 43 states' first no-fault divorce law.

Fourth, I clean up and extend the divorce and population data to 1922-1990 in order to investigate whether the two earliest no-fault reforms in 1933 and 1935 mattered. It turns out that this fourth step does not materially affect the point estimates.

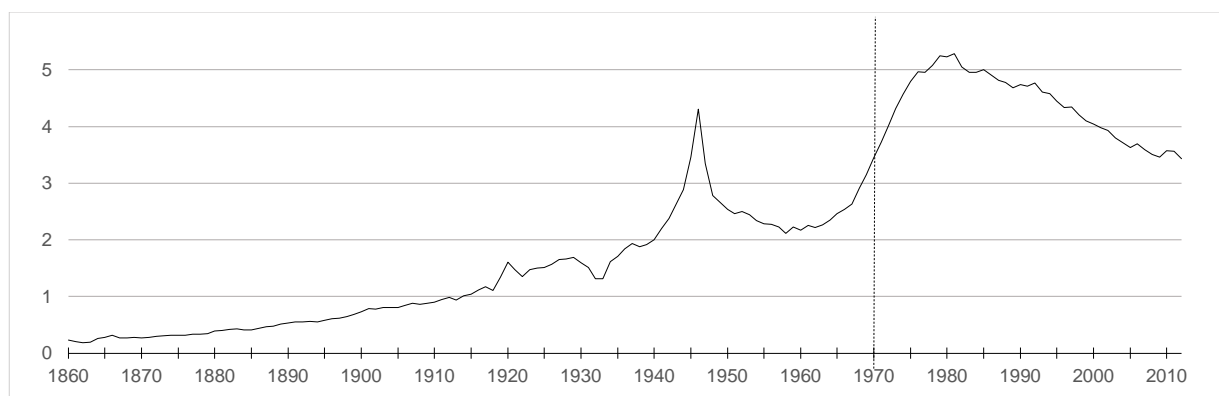


FIGURE II.1. US CDR, 1860-2012

Notes: For sources, see Appendix A.

Any of the first three steps just discussed suffices to reverse an earlier finding that divorce increased immediately after reforms. Together, they actually reveal a *negative* correlation between no-fault and growth rates of divorce. Relative to where no-fault was absent, the CDR was on average 0.34 log point lower where no-fault was in operation, 0.22 log point lower where no-fault was in its first or second year of operation, and 0.63 log point lower where no-fault was in its fifteenth year of operation or beyond. Most would judge these substantial, given that under this specification, the mean of the dependent variable (log CDR) is 1.01.

Lee & Solon (2011) also observe that the earlier finding was fragile to omitting California. They do not however explain why. They suggest in passing (p. 3) the possibility that divorce reforms had larger effects in the more populous states. The correct explanation is that California skews the results because of the interlocutory period reform, as I explain.

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<sup>2</sup> In this chapter, a *state* is any of the 50 states, the District of Columbia, or their predecessors.

Lee & Solon (pp. 3-4) also transform the dependent variable into log form. They “think this sensitivity analysis is [their] most striking of all.” They do not however explain why this should be so. They simply argue that the functional specification used in earlier findings was “not the most natural” and that the log form is “an obvious alternative.” I explain why it is not surprising that this alternative log specification produces such different estimates.

Besides the above empirical contribution, this chapter also makes a separate contribution that is historical in nature. I document that over the course of decades, the overall law of divorce had gradually evolved towards no-fault, thanks to heavy erosion of the fault concept by judiciaries and, to a lesser extent, legislatures. Thus, when many states introduced statutory no-fault circa 1970, this served merely to codify into the law of the books what had already been the law in action. In terms of legal practice, the statutory introduction of no-fault was of little substance. It did not mark a revolutionary leap from a fault-based to a no-fault divorce law.

The historical facts thus offer a possible explanation for my empirical finding that statutory no-fault was not correlated with an increase in divorce. One would not have expected the mere codification of no-fault divorce to have been correlated with any significant changes in divorce rates.

It remains a puzzle as to why, as I find, statutory no-fault was correlated with a *fall* in the growth rates of divorce. A possible explanation, which I briefly discuss in the conclusion, is that statutory no-fault reforms tended merely to mark the tail end of the 1960s-1970s divorce boom.

The findings of this chapter tend to support the notion that in divorce law, it is the law in action that matters most. If there is a sudden change to the law of the books without a corresponding sudden change to the law in action, then one would not expect to see changes in divorce rates.

This chapter proceeds as follows. Section 2 reviews empirical studies on the correlation between no-fault and divorce. Section 3 explains the fault and breakdown theories of divorce. Section 4 proposes a definition of statutory no-fault. Section 5 discusses some theoretical reasons for why statutory no-fault might influence divorce rates. Section 6 describes divorce trends across the US and the affluent West. Section 7 discusses the 1970 California timing reform and how the data must be adjusted accordingly. Section 8 presents the results of the empirical analysis. Section 9 reviews the historical facts and uses California and Vermont as examples to illustrate judicial and legislative erosion of the fault concept. Section 10 concludes.

## 2 Review of Empirical Studies

The link between legislation on divorce has been studied since at least the nineteenth century. Here I first list the conclusions made in *empirical* studies on whether *US divorce reforms circa 1970* were correlated with changes in *divorce rates*.<sup>3</sup> This list makes clear that there is no consensus. I then compare the methodology of this chapter's empirical analysis to those of three recent, influential papers.

Several early studies looked only at a single state. Goddard (1972, pp. 408-410), Becker (1991, pp. 333-334 [1981]), and Gallagher (1973) made cursory examinations of data from a single state. The first detailed study Schoen, Greenblatt, & Mielke (1975) found that California's 1970 introduction of no-fault did not increase divorce. The second detailed study Mazur-Hart & Berman (1977) showed that Nebraska's 1972 law "had no reliable effect on the overall divorce rate."<sup>4</sup>

Subsequent studies examine multiple states. Wright & Stetson (1978) find "that law changes have had little effect on increases in the incidence of divorce in most states." Sepler (1981) concludes, "No-fault divorce laws have been ineffective in altering the divorce rates in 87 percent of the thirty-two evaluable states with those laws." Marvell (1989) concludes, "No-fault laws ... had a significant impact on divorce rates." Zelder (1989, 1993) finds that there was "a higher divorce rate under no-fault." Anderson & Shughart (1991) find that "states that do not provide a no-fault divorce option ... tend to have lower divorce rates." Nakonezny, Shull, & Rodgers (1995, 1997, 1999) find that "no-fault divorce law had a significant positive effect on the divorce rate across the 50 states," although this would be contested by Glenn (1997, 1999). Sweezy & Tiefenhaler (1996) report that their "results reject notions that liberal divorce laws ... encourage the breakup of families." Gray (1996, 1998) finds that "no-fault divorce laws have no effect on divorce rates." Ellman & Lohr (1998) conclude that "there is no evidence that divorce laws affect trends in divorce rates." Brinig & Buckley (1998) find that divorce levels are "lower in states that penalize marital fault." Mechoulan (2006) finds that "for couples who married before the changes in the law, there was a significant impact of no fault for property on divorce odds ... The law defining divorce grounds, in contrast, has a more limited impact on divorce probabilities." Matouschek & Rasul (2008) find that "divorce propensity at each marital duration is higher in adopting states." Drewianka (2008)

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<sup>3</sup> I intended this list to be exhaustive, but it is more than likely that I overlooked some studies.

<sup>4</sup> See also Frank, Berman, & Mazur-Hart (1978).

finds that reforms “modestly increased divorce.” Gold (2010) finds that “divorce reform affects the long-term divorce rate, but find no evidence of an immediate impact”.

Three *American Economic Review* articles have been particularly influential. Peters (1986) finds that “divorce rates are not significantly different” in reform and non-reform states.<sup>5</sup> Friedberg (1998) finds that divorce reforms “accounted for 17 percent of the increase in divorce rates between 1968 and 1988.” Wolfers (2006) finds that following reforms, “the divorce rate rose sharply,” but “this rise was reversed within about a decade.”

I now compare the methodology of this chapter’s empirical analysis to those of Friedberg (1998), Wolfers (2006), and Matouschek & Rasul (2008). Friedberg uses a panel of state-level divorce rates. Her regressor of interest is a single dummy indicating whether the new law was in effect. Besides state and year fixed-effects, she also includes state-specific time trends. Wolfers closely follows Friedberg, but makes one key methodological innovation. Instead of one dummy, he has eight: The first indicates whether the new law was in year 1 or 2; the second, whether it was in year 3 or 4; ...; the seventh, whether it was in year 13 or 14; and the eighth, whether it was in year 15 or beyond. The empirical analysis below closely follows Wolfers, except that the data are reexamined, as will be explained in detail.

Matouschek & Rasul (2008) do not use state-level divorce rates as their regressand. Instead, the regressand is divorces where the marriage lasted  $d$  years, per thousand marriages contracted  $d$  years earlier.<sup>6</sup> This variable may be interpreted as marriage-duration-specific divorce propensity. One merit of Matouschek & Rasul’s approach is that such duration-specific divorce propensities can now be examined. Another merit is that the ‘incentive effect’ and the ‘selection effect’ can now be differentiated.<sup>7</sup>

Note though that they use a different data set. For example, it contains no divorce data for eighteen states. Whether because of this or for other reasons, their estimates differ substantially from those of Friedberg. Friedberg (p. 616) estimated that reforms raised the CDR by 0.447, “a substantial impact relative to the average divorce rate over the period of 4.6.” One may interpret

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<sup>5</sup> Peters (1986) is disputed in a comment by Allen (1992): “What evidence there is seems to support the conclusion that no-fault states have higher divorce rates than fault states.” In Peters’s (1992) reply to Allen, it is “shown that Allen’s empirical results are due to a classic problem of omitted-variable bias.”

<sup>6</sup> On p. 81 of their paper, the thousand is incorrectly in the denominator (email communication with Imran Rasul).

<sup>7</sup> Divorce reforms can change the probability that any given married couple divorces (the incentive effect). They can also change the composition of those who do decide to get married (the selection effect).

this to mean that reforms raised the propensity to divorce by 9.7 percent. In contrast, in their baseline estimate that they compare directly to Friedberg, Matouschek & Rasul (p. 90) find that the effect of reforms was “to increase divorce propensity, averaged across marriages of all durations, by 18.5 percent.”<sup>8</sup>

Altogether, it is not obvious whose approach is superior. I have not carefully examined the data set used by Matouschek & Rasul. Nonetheless I have chosen to follow the approach of Friedberg and Wolfers. One possible justification for this is that the latter pair of papers remain the more influential. For example, González-Val & Marcén (2014, p. 1) assert that their “findings have been widely accepted.” Dean (2014, pp. 46-47) writes, “The research is clear that the onset of ‘unilateral’ divorce led to a spike in divorce rates for a period of time in the 1970s and 1980s.” Bronson (2014, p. 8) writes, “As has been widely documented, the reforms were followed by a rapid, immediate increase in the number of divorces (Friedberg (1998), Wolfers (2003)).”<sup>9</sup>

This is despite Dröes & van Lamoen (2010) and Lee & Solon (2011), who show that Friedberg and Wolfers are fragile to any one of the following robustness checks: The dropping of California; the usage of ordinary rather than weighted least squares; the transformation of the dependent variable into log form; the usage of Stata’s *cluster* option to correct for heteroskedasticity and serial correlation. Perhaps Friedberg’s and Wolfers’s findings continue to be “widely accepted” because, as Lee & Solon (pp. 4-5) take great pains to emphasize, “The fragility of the previously published estimates does not prove those estimates are wrong.” These conclusions are not “necessarily wrong.” The true impact of reforms “remains unclear.”

The analysis below will not merely repeat the conclusion that the effects of no-fault are unclear. I reexamine the data and take into account Lee & Solon’s critiques. I find that no-fault was correlated not with a rise in divorce rates, but with a fall in their growth rates. I further explain why Friedberg and Wolfers were fragile to the *specific* robustness checks tried by Lee & Solon.

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<sup>8</sup> When comparing this 18.5 percent figure to Friedberg’s estimates, Matouschek & Rasul (p. 90) state, mistakenly, that Friedberg found that reforms “increase the aggregate divorce rate, measured as the number of divorces per 1,000 population, by 17 percent.” In fact, what Friedberg (p. 608) found was this: “The move towards unilateral divorce accounted for 17 percent of the increase in divorce rates between 1968 and 1988.”

<sup>9</sup> This footnote lists every other 2014 paper on Google Scholar that cites Friedberg and/or Wolfers with specific reference to the issue of whether no-fault reforms had an effect on divorce rates. (I exclude, for example, those papers that cite them only with reference to matters of pure methodology.) Of these papers, only the last two even suggest that the evidence is mixed. Horner (2014, p. 229), Wong (2014, p. 2), Hillier & Barrow (2014, p. 355), Reichman, Corman, & Noonan (2014), Viitanen (2014, p. 26), Rossin-Slater & Wüst (2014, p. 5), Galichon, Kominers, & Weber (2014, p. 4), Matysiak, Styrac, & Vignoli (2014, p. 199), Bellido & Marcén (2014, p. 57), Hassani-Nezhad & Sjögren (2014, p. 117), Lopoo & Raissian (2014, p. 217).

Here I shall mention in passing that most papers, including the present chapter, tend to focus on the CDR, even though it is for good reason called ‘crude’. Ideally, for a more convincing analysis, one would look at more refined measures. For example, one would look at the *refined* divorce rate—divorces per thousand married females. Or, even better, one would control for other characteristics—for example, education levels, age at which the couple married, whether this is a first or higher order marriage, race, etc. The reason why these more-refined measures are not used here (and probably also elsewhere) is that the pertinent state-level data are not available.

Here I merely and briefly suggest three reasons why the CDR may exaggerate the rise in the propensity to divorce. First, the CDR is mechanically boosted if there are more extant marriages per capita. This was precisely the case during the mid-1960s, as baby-boomers came of age and the baby boom itself was tapering off. Second, the risk of divorce is greatest early on in a marriage. When annual marriages increase, recent marriages will make up an increasing share of extant marriages. This would tend to boost even the *refined* divorce rate. Third, remarriages and teen marriages are at higher risk of divorce.<sup>10</sup> So if these make up an increasing share of all marriages, then the CDR will mechanically rise.

I give these three reasons merely to emphasize that the use of the CDR in our analyses is not ideal. Ideally, one would use more refined measures of divorce. Unfortunately, it seems that the pertinent state-level data for such an analysis is not available.

### 3 The Fault and Breakdown Theories of Divorce

From the eleventh through the fifteenth centuries, marriage was indissoluble.<sup>11</sup> Thereafter, absolute divorce (i.e. the dissolution of one’s matrimonial bond) became possible in almost all Reformed states.<sup>12</sup>

Absolute divorce was traditionally based on what may be called the fault theory. A divorce could be awarded only if one spouse had committed a fault against the other. It must be emphasized

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<sup>10</sup> Plateris (1978, p. 11) finds that “the divorce rate for the remarried men and women was more than twice that for the first married.” McCarthy (1978, p. 352) suggests that teen marriages are *thrice* as likely to end in divorce as non-teen marriages. Hetzel & Cappetta (1973, pp. 1-2) reports that in 46% of all 1969 divorces, the bride had been teenaged at the time of marriage.

<sup>11</sup> In Western Christendom. The most definitive histories of divorce in Western Christendom are Howard (1904) and Phillips (1988). Excellent supplements are given by Rheinstein (1972) and Blake (1962).

<sup>12</sup> Except notably in England and Wales, which had to wait until 1857. This was curious, given that the English Reformation was catalyzed by Henry VIII’s desire to be unmarried.



that a divorce was awarded not to the couple. Instead, it was awarded *to* the injured spouse as a form of relief and *against* the guilty spouse as a form of punishment.

The classic Protestant divorce grounds were adultery, desertion, and cruelty. When, for example, one spouse committed adultery, he injured his spouse; a divorce could therefore be awarded *to* his spouse as relief and *against* him as punishment. The nineteenth century American legislator would add many more grounds: e.g. intemperance and neglect. The five examples of grounds just given comport with the fault theory. They may thus be called ‘fault-based’ divorce grounds.

The fault theory contains three key elements: guilt, innocence, and malice. The first element, guilt, is *sine qua non*: Unless one spouse has acted wrongfully, there simply cannot be any divorce. The second element, innocence, is that the recipient of a divorce cannot himself have acted wrongfully. This is usually justified by the broader legal principle known as the ‘clean hands doctrine’—he who seeks judicial relief cannot himself have acted wrongfully. The third element, malice, is that there must have been deliberate intent on the part of the wrongdoer. That this could have perverse implications was oft-noted; for example:

The law is thus in the position of saying to a wife whose husband is beating her regularly, “We are sorry, but since your husband is insane and therefore not able to form a specific intent to hurt you, you must continue living with him as his wife.” (Clark, 1968, p. 383.)

The fault theory was buttressed in two important ways. First, divorce proceedings were simply grafted onto the standard adversarial legal system, under which litigants engage in a vigorous battle, whereupon truth and justice are supposed to emerge. Husband and wife were thus pitted against each other as antagonists. This encouraged mutual fault-finding and thus reinforced the fault theory.

Second, there were the special defenses or doctrines. The four most frequently discussed were condonation, collusion, connivance, and recrimination.<sup>13</sup> Given their preoccupation with innocence and guilt, these doctrines tended to reinforce the fault theory. Here is the pith of each: Condonation says that a fault forgiven cannot serve as the basis of a divorce. Collusion says that no divorce shall be granted if a couple cooperates to get it. Connivance says that no divorce shall be granted to a party that actively procured (or even merely acquiesced in) the fault complained of.

Recrimination was an especially important cornerstone of the fault theory of divorce. It explicitly highlights the second element, innocence, by forbidding divorce if both spouses are guilty. As said by Halberstadter (1954), “one may wonder whether a husband and wife can live together for

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<sup>13</sup> Three other special defenses were estoppel, provocation, and laches.

any length of time without supplying each other with grounds for divorce.” If this be true, then a strict application of this doctrine would have barred most divorces. Moreover, as will be shown in section 9.1, one important step taken in the evolutionary path taken from fault to no-fault was the repeal of recrimination. It is thus worth quoting from several venerable rulings, to better illuminate the nature of recrimination:

the parties may live together, and find sources of mutual forgiveness in the humiliation of mutual guilt (*Beeby v. Beeby*, 1 Hag. Eccl. 789, 1799)

If both parties are guilty, neither has any claim to relief; and they are in that case suitable and proper companions for each other (*Wood v. Wood*, 2 Paige 108, 1830, New York).

If both parties have a right to divorce, neither party has (*Hoffman v. Hoffman*, 46 Mo. 547, 1869).

Our conclusion is, that both husband and wife are two miserable wretches, and the case is too disgusting to be longer entertained by the Court (*Horne v. Horne*, 72 N.C. 530, 1875).

This completes the synopsis of the fault theory of divorce. Another theory of divorce is called the breakdown theory. This theory may be considered the modern one because it would be seriously considered by legislators around the world only from the 1960s.<sup>14</sup> It posits that divorce is the mere legal recognition of a failed marriage; moreover, marriages do not fail for the simplistic reason that one guilty spouse has wronged the other innocent spouse. The contrast between the fault and breakdown theories of divorce was well-expressed by one particular group of writers:

A divorce law founded on the doctrine of breakdown ... would have the merit for showing up divorce for what in essence it is—not a reward for marital virtue on the one side and a penalty for marital delinquency on the other; not a victory for one spouse and a reverse for the other; but a defeat for both, a failure of the marital ‘two-in-oneness’ in which both its members, however unequal their responsibility, are inevitably involved together (Archbishop of Canterbury’s Group, 1966, p. 18).

In California, the breakdown theory was put into practice through the 1969 Family Law Act. This Act deleted all of the old fault-based grounds—divorce would no longer be granted on the basis that one spouse had wronged the other. Instead, divorce (now renamed ‘dissolution of marriage’) would be granted on the sole<sup>15</sup> ground of: “Irreconcilable differences, which have caused the irremediable breakdown of the marriage.” This new divorce ground may be referred to as a ‘no-fault’ divorce ground.

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<sup>14</sup> Note though as Hahlo (1975, p. 50) points out, the breakdown theory is much older than that.

<sup>15</sup> If one ignores the retained divorce ground of incurable insanity.

Some states followed California's approach by abolishing all old fault-based divorce grounds and replacing them with a single, similar no-fault divorce ground. Others simply appended a no-fault divorce ground to the pre-existing old fault-based divorce grounds.

#### 4 My Definition of a Statutory No-Fault Divorce Law

The empirical analysis below addresses this question: Was the statutory introduction of no-fault correlated with changes in divorce rates? To address this question, another question must first be answered: When can a state be said to introduce statutory no-fault divorce?

It turns out that this latter question cannot be easily addressed. This is illustrated by the diversity of opinion regarding when Vermont introduced statutory no-fault divorce (see n. 56 below and accompanying text). Vermont is not unrepresentative. Such diversity of opinion is due in large part to the fact that each researcher has a different definition of statutory no-fault. It is thus important, in any study of no-fault, to give a clear and precise definition of what it means for a state to have introduced statutory no-fault.

For the purposes of this chapter, I shall adopt the following definition: A state's statutory divorce law allows no-fault divorce if it contains any one or more of the following exact words or phrases: *incompatibility* (or *incompatible*), *insupportability*, *irretrievably broken* (or *irretrievable breakdown* or *irremediable breakdown* or *broken down irretrievably* or *breakdown of the marriage*), or *irreconcilable differences*. In making this definition of no-fault, I have excluded four important considerations. The reasons for doing so are now explained.

First, I exclude divorce on the ground of insanity, even though, as many noted, this marked a departure from fault. The reason is that such divorces were rare. And so it would not make sense to classify a state as having a no-fault divorce law, simply because it permitted divorce on the ground of insanity.

Second, I exclude the 'living separate and apart' grounds. These 'living apart' clauses varied widely. A few explicitly repudiated any consideration of fault. A few others explicitly required that the separation be voluntary or the petitioner blameless. These clauses might be classified as fault and no-fault, respectively. Unfortunately, the other 'living apart' clauses were ambiguous; that is, they were not explicit about whether fault was relevant.<sup>16</sup> In practice, it would often be left

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<sup>16</sup> For more, see e.g. A.D.C. (1949, pp. 706-709).

to the individual judge to decide whether fault was relevant. Altogether then, it is possible for reasonable people to disagree over whether or not each given ‘living apart’ clause endows a state with a no-fault divorce law. To sidestep such debates, I simply exclude these grounds altogether from my definition of no-fault.

Third, I completely ignore the special defenses discussed above. As said above, these special defenses served to buttress the fault theory, with recrimination being a particularly important cornerstone. One might thus be inclined to adopt the rule that a state with any such defense should not be counted as no-fault. But such a rule would mean that Tennessee in 2015 is not a no-fault state, because its divorce law still lists recrimination, condonation, and connivance as defenses to divorce on the ground of adultery. Yet reason would dictate that Tennessee is in 2015 a no-fault state, because it permits divorce on the ground of irreconcilable differences.<sup>17</sup> Altogether, I am unable to produce a precise and non-arbitrary definition of no-fault that specifically takes into account these defenses and yet still labels Tennessee in 2015 as no-fault, as reason might dictate.

There is a further complication. These special defenses were often applied, even where they were absent from the statutes; conversely, they were sometimes ignored, even where they were present.<sup>18</sup> Their presence or absence from the statutes thus served as no reliable guide as to whether they were, in practice, applied. Altogether, I shall simply ignore all four of these special defenses. Once again, this is to avoid debates over the matter.<sup>19</sup>

Fourth, I completely ignore the incidents of divorce (e.g. property division, alimony, child custody). For example, a few states explicitly bar fault from being a consideration when it comes to property division; others do not. One might argue that a state which fails to completely banish fault from divorce cases is not a no-fault state. On the other hand, this might be too harsh a view. Yet it is unclear where or how the line should be drawn, when trying to define no-fault. Here again, to sidestep such debates, I will simply exclude this altogether from my definition of no-fault.

Under my definition, Table II.1 lists the approval date and the effective date of each state’s first no-fault divorce law. With digitization and the internet, it was feasible to rely solely on primary legislative material and thereby ensure the veracity of these dates.

Here are a few summary observations. Most states (33) introduced no-fault between 1967 and 1978; of these, 22 did so in the five year period 1970-1974 alone. Another five did so in the 1980s.

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<sup>17</sup> *Tennessee Code Annotated 2015*, §36-4-112 for bars to adultery and §36-4-101-a-14 for irreconcilable differences.

<sup>18</sup> Beamer (1942, p. 244), Dunahoo (1969, p. 149), Clark (1968, p. 375).

<sup>19</sup> Note that in previous studies of the same empirical issues, these special defenses are not even mentioned.

Three early reformers were New Mexico (1933), Alaska (1935), and Oklahoma (1953). Two late reformers were New Jersey (2007) and New York (2010). At the time of writing, eight states still do not have no-fault divorce.

TABLE II.1—APPROVAL AND EFFECTIVE DATES OF EACH STATE’S FIRST NO-FAULT DIVORCE LAW

<b>State</b>	<b>Approval Date</b>	<b>Effective Date</b>	<b>State</b>	<b>Approval Date</b>	<b>Effective Date</b>
			Missouri	1973-08-06	<b>1974-01-01</b>
Alabama	1971-08-12	<b>1971-08-12</b>	Montana	1973-03-03	<b>1973-07-01</b>
Alaska	1935-03-13	<b>1935-06-11</b>	Nebraska	1972-04-08	<b>1972-07-05</b>
Arizona	1973-05-14	<b>1973-08-08</b>	Nevada	1967-04-05	<b>1967-07-01</b>
Arkansas	None, even in 2015		New Hampshire	1971-06-30	<b>1971-08-29</b>
California	1969-09-04	<b>1970-01-01</b>	New Jersey	2007-01-20	<b>2007-01-20</b>
Colorado	1971-06-02	<b>1972-01-01</b>	New Mexico	1933-03-03	<b>1933-03-09</b>
Connecticut	1973-05-29	<b>1973-10-01</b>	New York	2010-08-13	<b>2010-10-12</b>
Delaware	1968-06-11	<b>1968-06-11</b>	North Carolina	None, even in 2015	
District of Columbia	None, even in 2015		North Dakota	1971-03-18	<b>1971-07-01</b>
Florida	1971-06-22	<b>1971-07-01</b>	Ohio	1989-05-26	<b>1989-08-25</b>
Georgia	1973-04-13	<b>1973-07-01</b>	Oklahoma	1953-05-23	<b>1953-09-04</b>
Hawaii	1972-04-11	<b>1972-07-01</b>	Oregon	1971-06-04	<b>1971-10-01</b>
Idaho	1971-02-13	<b>1971-05-19</b>	Pennsylvania	1980-04-02	<b>1980-07-01</b>
Illinois	1983-12-02	<b>1984-07-01</b>	Rhode Island	1975-05-22	<b>1975-05-22</b>
Indiana	1973-04-12	<b>1973-09-01</b>	South Carolina	None, even in 2015	
Iowa	1970-03-20	<b>1970-07-01</b>	South Dakota	1985-03-12	<b>1985-07-01</b>
Kansas	1969-04-18	<b>1969-07-01</b>	Tennessee	1977-04-28	<b>1977-04-28</b>
Kentucky	1972-03-25	<b>1972-06-16</b>	Texas	1969-05-14	<b>1970-01-01</b>
Louisiana	None, even in 2015		Utah	1987-03-16	<b>1987-04-27</b>
Maine	1973-06-19	<b>1973-10-03</b>	Vermont	None, even in 2015	
Maryland	None, even in 2015		Virginia	None, even in 2015	
Massachusetts	1975-11-19	<b>1976-01-01</b>	Washington	1973-04-24	<b>1973-07-14</b>
Michigan	1971-07-29	<b>1972-01-01</b>	West Virginia	1977-04-09	<b>1977-07-08</b>
Minnesota	1974-03-14	<b>1974-03-15</b>	Wisconsin	1977-10-21	<b>1978-02-01</b>
Mississippi	1976-05-20	<b>1976-07-01</b>	Wyoming	1977-03-04	<b>1977-05-27</b>

Notes: See text for definition of no-fault. See Appendix H for sources.

A final note concerns coding. In the analysis below, each state-year observation is coded as either as having no-fault or not. Given the variety of approval and effective dates, there is no obvious way of doing this. This chapter codes a state as not having no-fault divorce in a given year, if and only if that year precedes the year of the effective date of that state’s first no-fault law. Thus,

California and Oregon are coded as having had no-fault from 1970 and 1971. This is in contrast to some who code California as having had no-fault from 1969 (perhaps because its law was approved in 1969) and to others who code Oregon as having had no-fault only from 1972 (perhaps because its law only came into effect late in 1971). The conclusions of the analysis below are not sensitive to alternative coding schemes on this front.

Before proceeding to the empirical analysis, the next section briefly examines trends in divorce rates across the US and the affluent West. One purpose of this is to give the reader a better sense of what divorce trends looked like around this era. Another is to build a *prima facie* case that statutory no-fault was not responsible for the 1960s-1970s boom in divorce.

## 5 Theoretical Reasons Why Statutory No-Fault Might Influence Divorce Rates

The effects of an easier divorce law on divorce rates are considered in Choo (2015b). The historical facts (section 9) suggest that the introduction of statutory no-fault did not make divorce substantially easier. But it may nonetheless have had effects on divorce rates. Some such effects are now considered in purely qualitative terms.

First, the stigma associated with divorce may be reduced. For example, a man's elderly and illiterate mother might have had trouble understanding that her son has not actually performed any act of cruelty, even if he obtains a divorce on the ground of cruelty. With the new law, it becomes easier for him to explain to his mother that he can get a divorce simply because he and his wife are no longer happy together.

Second, the need to commit perjury, however mild, was now eliminated. Consider the script of a typical pre-1970 California divorce case:

Q: And during your marriage with Mr. X, has he on many occasions been cold and indifferent to you? ¶ A: Yes. ¶ Q: And as a result of this conduct on the part of your husband, have you become seriously ill, nervous and upset? ¶ A: Yes. ¶ Q: And was this conduct on the part of your husband in any manner caused by anything you have done? ¶ A: No. ... Q: And have you done everything in your power to preserve the marriage, but without success? ¶ A: Yes. ... Q: And during the marriage, you at all times did your best to be a good wife to Mr. X? ¶ A: Yes. (Governor's Commission on the Family, 1966, pp. 119-120.)

For most couples seeking divorce, the above answers (especially the last three) would likely have been at least mildly disingenuous, if not outright lies. Those unaccustomed to telling nothing but

the truth might have opted to stay in an unhappy marriage rather than to tell even these small lies. With the new no-fault law, such lies were no longer necessary.

Third, the new law may have signaled a symbolic break with the past and the zeitgeist. It made clear—not just to the married but also to those at risk of marriage—that society and the state now had a different view of marriage, divorce, and the family. This symbolic change could have affected divorce rates in a myriad of complex ways. Here is one small example: The new law may signal to a couple that marriage caters to more than merely physiological or economic needs. On the one hand this may decrease the couple’s marital satisfaction and so raise the probability of divorce. On the other, they may now work harder to promote conjugal bliss and so actually decrease the probability of divorce. Altogether, it is unclear whether this symbolism would have increased or decreased divorce rates.

Fourth, the codification of no-fault helped to pass the fact of no-fault divorce into the domain of common knowledge. This could in turn magnify other effects. Consider again stigma. Before the reform, even if everyone knew with absolute certainty that Mr. X had never been cruel to his wife, Mr. X might nonetheless legitimately fear that some did not know. The new law would help diminish such fears.

### 5.1 *The ‘Coase’ Theorem*

The economics literature characterizes the no-fault divorce reforms of the 1970s as a dramatic shift from mutual consent to unilateral divorce.<sup>20</sup> To wit, pre-reforms, to get a divorce, it was necessary to get the consent of both spouses. Post-reforms, this was no longer necessary. According to the economics literature, these no-fault reforms thus “furnish an excellent illustration of the ‘Coase Theorem’” (Becker, Landes, & Michael, 1977).

I briefly explain the argument. There are three possible cases of couples. The first is where both husband and wife do not want a divorce. In this case, it obviously makes no difference whether we have a mutual consent or a unilateral divorce law. Under either law, they will stay married. The second case is where both husband and wife want a divorce. Here again, the law obviously makes no difference—they will get divorced under either law.

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<sup>20</sup> This characterization began implicitly in Becker, Landes, & Michael (1977, p. 1144). It was made more explicit in Becker (1981). These days it is made unabashedly: Dee (2003, p. 163), Gruber (2004, pp. 800, 802), Manzini & Mariotti (2004, p. 944), Rasul (2006, p. 41), Stevenson & Wolfers (2006, p. 267), Wolfers (2006, p. 1802), Stevenson & Wolfers (2007, p. 46), Matouschek & Rasul (2008, p. 1802), Drewianka (2008, p. 486), Hanlon (2012, p. 162), and Reinhold, Kneip, & Bauer (2013, p. 1037).

The third case is the interesting one, where one party (say the wife) wants to stay married, but the other party (the husband) wants to get divorced. According to the layperson untrained economics, pre-reforms, there would have been no divorce (because the wife vetoed it), but post-reforms, there would be a divorce (because the wife couldn't stop it). But according to the economics literature, the layman's intuition is correct only if transaction costs are prohibitively high. If transaction costs are sufficiently low, then the couple will divorce if and only if the husband wants a divorce more than the wife wants to stay married. For, if the husband wanted the divorce more than the wife wanted to stay married, then pre-reforms he could bribe her to get divorced; while post-reforms, he would just have gotten a divorce; under either law, they would have divorced. Conversely, if the wife wanted to stay married more than the husband wanted a divorce, then pre-reforms they would just have stay married; while post-reforms, she would have bribed him to stay married; under either law, they would have stayed married.

Thus, *assuming* the economics literature's characterization of reforms is correct, then reforms would have been followed by an increase in divorce if transaction costs were high and would not have been followed by any increase if transaction costs were low. Thus, if one finds empirically that reforms had no effect, then this is evidence in favor of low transaction costs and widespread 'Coasean' bargaining. On the other hand, if one finds empirically that reforms were followed by an increase in divorce, then this is evidence in favor of high transaction costs and less 'Coasean' bargaining.<sup>21</sup>

My empirical analysis below will indicate that reforms were not followed by an increase in divorce. However, my explanation is not the same as the one given in the economics literature; it has nothing to do with transaction costs. Instead, my explanation is much more mundane—namely that the statutory no-fault reforms lacked substance and merely codified into the law of the books what had already been the law in action. They could thus not have had any effect.

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<sup>21</sup> It was further noted by one member of this dissertation committee that "the 'Coase' Theorem is largely not confirmed by the literature on bargaining, i.e. it is not the case that the equilibria of models of frictionless bargaining are necessarily efficient, nor is it the case that these equilibria are the same regardless of the initial definition of property rights."



## 6 Trends in Divorce

Here is a summary of postwar trends in US CDR (see Figure II.1). The CDR spiked postwar, then went into a lull in the late 1940s and 1950s. It rose steadily from the early 1960s and especially during 1967-1976. It plateaued in the late 1970s and thereafter entered a decades-long decline.<sup>22</sup>

The no-fault 'revolution' is usually dated to 1970, when California's Family Law Act came into effect. It could therefore not have *caused* any of the 1960s rise in divorce. Indeed, since divorce had already begun rising in the early 1960s, it is possible that the continued steep ascent of divorce during the 1970s was a mere continuation of a pre-existing trend, rather than a consequence of statutory no-fault reforms.

The majority (22) of no-fault reforms occurred during the five-year span 1970-1974. Figure II.2 shows the 1940-1990 CDR of each of these five groups of reform states. It also shows the US CDR and the CDR of the group of eight states that do not have no-fault even today. The trends are similar: Postwar spike, lull, rise in the 1960s and 1970s, and then plateau. Moreover, for each group of states, the CDR had already begun its sharp ascent well before 1970. These trends suggest that across the US, certain common underlying forces had been working in concert to increase divorce, well before no-fault reforms.

Moreover, from Figure II.2 alone, it is not obvious that reforms led to any increase in divorce. Indeed, between 1960 and 1980, the CDR of the group of non-reform states increased by about 200 percent, a percentage increase that was larger than that of any group of reform states.

Consider also the CDR of seven other affluent Western countries (Figure II.3). The trends are again broadly similar: In each country, the CDR spiked postwar, lulled, rose in the 1960s and 1970s, then plateaued. This suggests that the forces behind the increase in US divorce rates were also at work across the affluent West.<sup>23</sup>

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<sup>22</sup> But see Kennedy and Ruggles (2014), who point out that data collection deteriorated after 1990 and argue that the post-1990 decline in divorce is much exaggerated.

<sup>23</sup> This is not a novel observation. See e.g. Michael (1978, p. 177; 1988, p. 369).

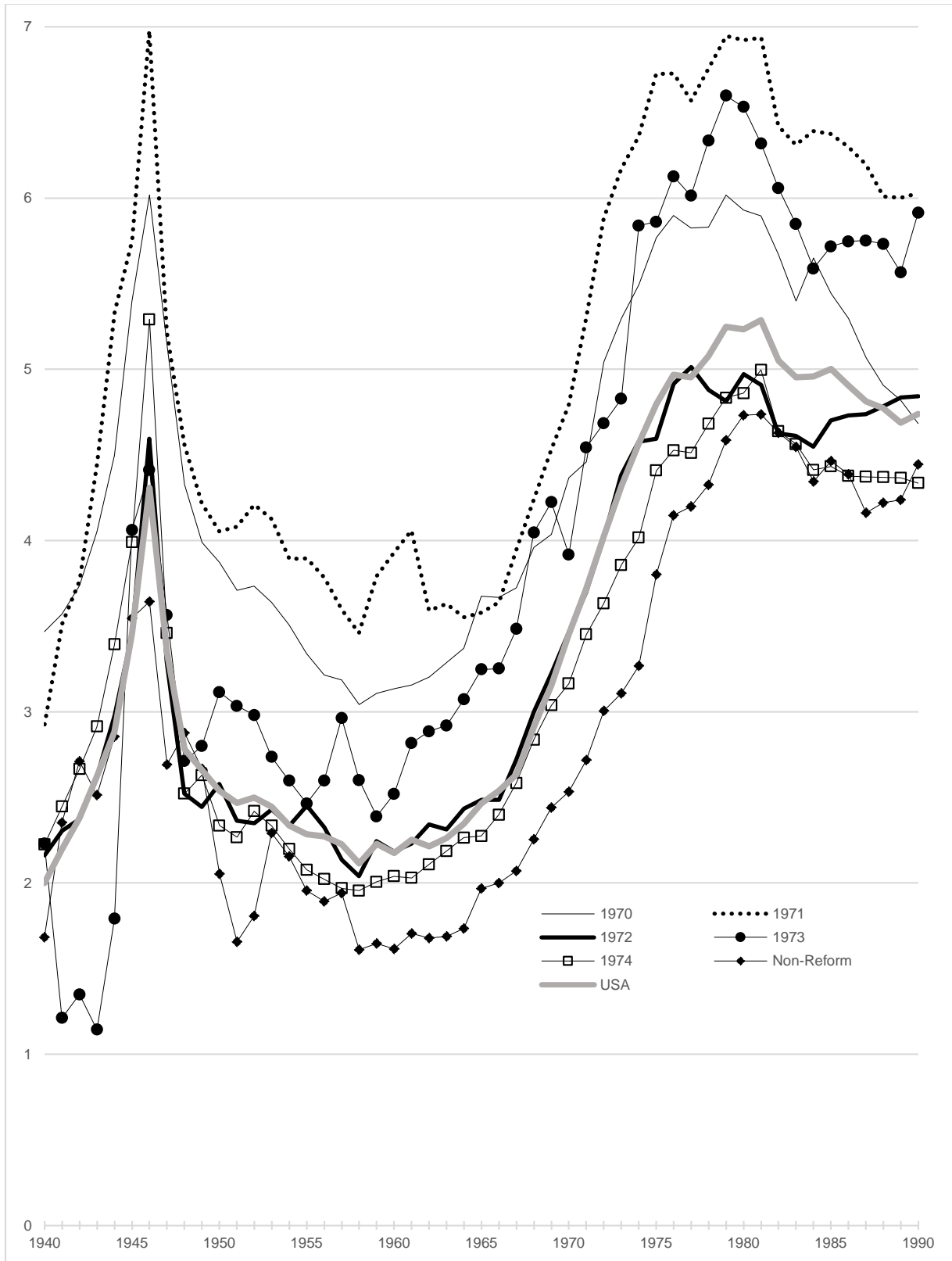


FIGURE II.2. 1940-1990 CDRs OF SEVEN GROUPS OF STATES

Notes: Author's calculations. '1970' for example refers to states that, by my reckoning, introduced statutory no-fault in 1970.

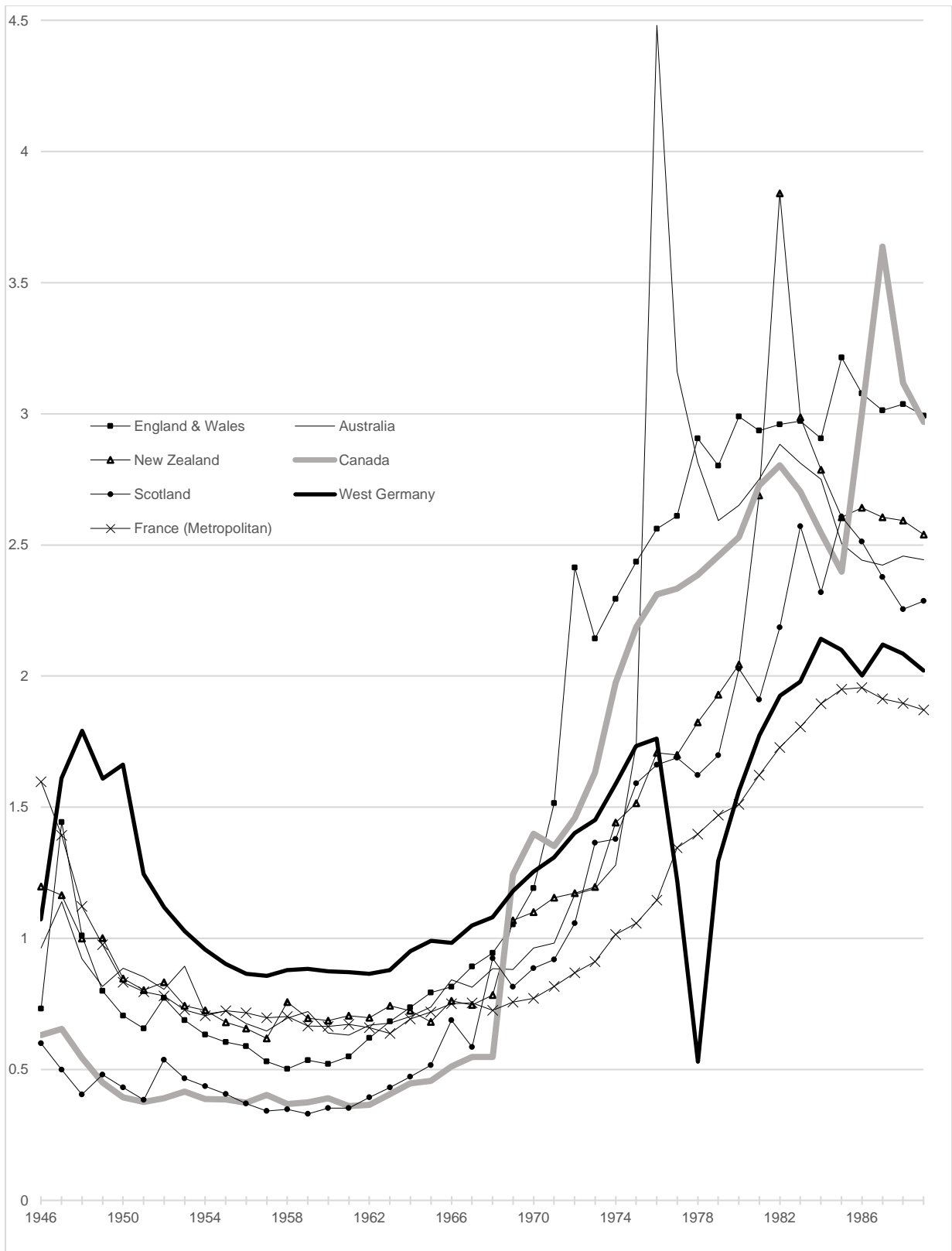


FIGURE II.3. CDR OF SEVEN OTHER AFFLUENT WESTERN COUNTRIES, 1946-1989

Notes: See Appendix C for sources.

## 7 The 1970 California Spike

The California 1969 Family Law Act came into effect on January 1<sup>st</sup>, 1970. This Act contained a variety of reforms, including the introduction of no-fault divorce. In 1970, California had 31,396 more divorces than in 1969. This number was equal to nearly 5% of the 1969 *national* divorce *total*. But this colossal spike was due not to no-fault, but to a contemporaneous ‘timing reform’ that reduced the interlocutory period from one year to six months. To explain briefly, if a divorce petition had merit, the court would first grant the couple an interlocutory divorce decree. Only upon expiration of the interlocutory period could the couple then motion for entry of a final decree. The interlocutory period may thus be considered a waiting period.

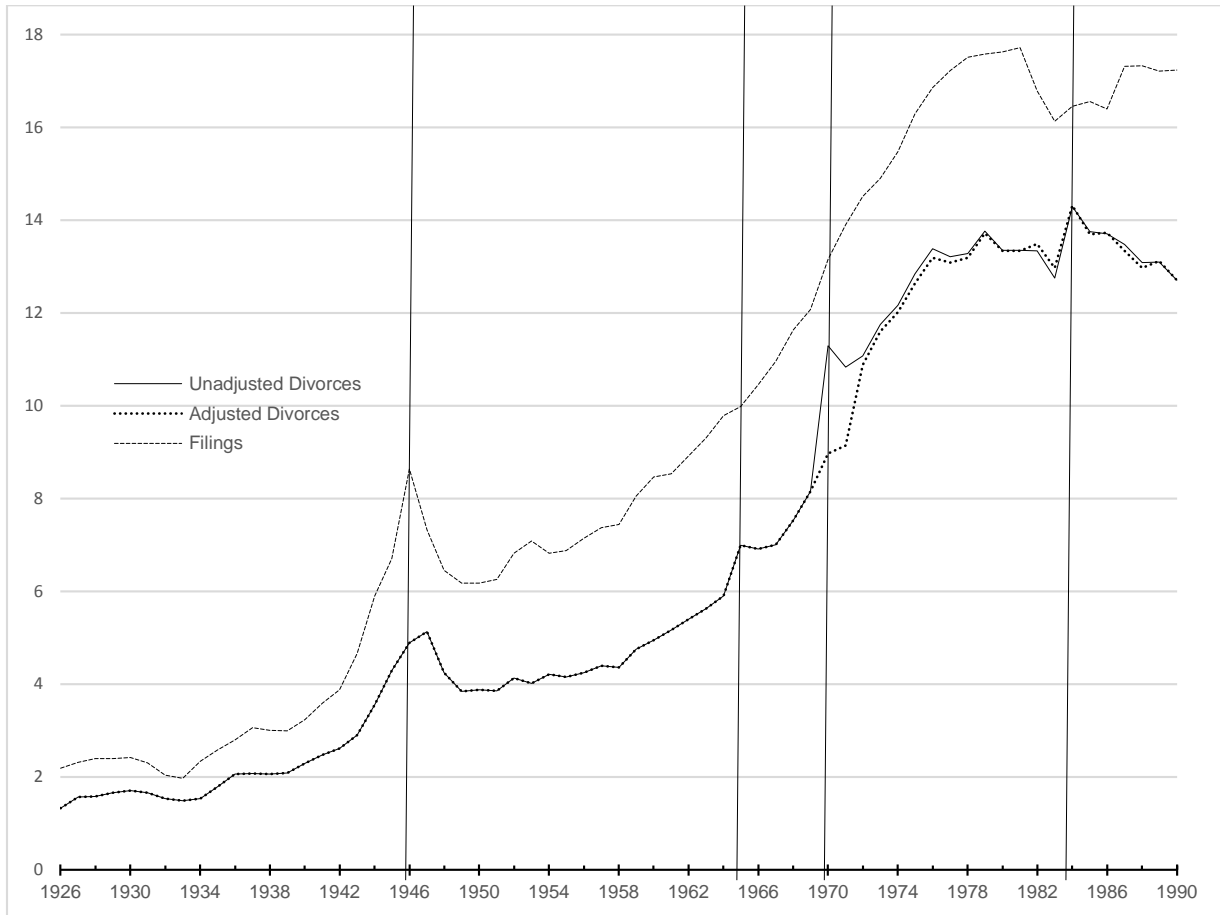


FIGURE II.4. CALIFORNIA TOTAL DIVORCES AND FILINGS (10,000s), 1926-90

*Notes:* See Appendix B for sources. Total divorces are for the calendar year, while total filings are for the *fiscal* year, where the 1926 fiscal year, for example, is 1925-07-01 through 1926-06-30. Total divorces include annulments. Total filings are for divorce, annulment, *and* separate maintenance. These were in 1970 renamed dissolution of marriage, judgment of nullity, and legal separation. The vertical lines mark the years 1946, 1965, 1970, and 1984. As noted in the sources, for total divorces, 1984-86 include legal separations (and are hence biased upwards); 1988 is based on incomplete data (hence biased downwards); and 1989 is based on incomplete data *and* moreover includes approximately 1,000 legal separations.

Schoen, Greenblatt, & Mielke (1975) estimate that compared to their benchmark, the two-year period 1970-1971 had “41-45 thousand ‘excess’ divorces.” They estimate that of these excess divorces, the minimum that can be attributed to the shortened waiting period is 40,051. After taking into account several other factors, they conclude that none of the excess divorces can be attributed to the statutory introduction of no-fault. In Mielke & Smith (1977, p. 21), it is stated in passing that on the basis of later information, Schoen, Greenblatt, & Mielke’s estimates were too conservative and should be revised upwards by 3,100.

Schoen, Greenblatt, & Mielke estimated how many of the excess divorces during the two-year period 1970-1971 could be attributed to the timing reform. I extend their work by calculating how California’s divorce numbers in each individual year from 1970 onwards should be adjusted, had there been no timing reform. This enables us to strip out the effects of this contemporaneous timing reform, before trying to estimate the effects of no-fault on divorce rates. To make these calculations, I use, *inter alia*, information given in Schoen, Greenblatt, & Mielke. (And so the adjustments for the years 1970 and 1971 sum up to their estimate of 40,051.) Footnote 24 contains more details of the adjustment procedure, but here follows a brief description.

Due to the reform, 1970 and every year after ‘gained’ roughly six months’ worth of divorces from the following year.<sup>24</sup> The timing reform thus compressed roughly one-and-a-half years’ worth of divorces into the single year of 1970. In contrast, 1971 and every year after ‘gained’ divorces from the following year but also ‘lost’ divorces to the preceding year. The timing reform

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<sup>24</sup> Since the reform reduced the interlocutory period by half a year, it is reasonable to assume that a final divorce decree that was actually entered in year  $y$  would, absent the timing reform, have been entered either in year  $y$  or in year  $y + 1$ , and not any later. Let  $a(x, y)$  denote the number of year  $y$  final divorces that were first filed in year  $x$ , but which would have—absent the timing reform—instead been entered as final divorces in year  $y + 1$ .

I assume that  $a(x, y) = 0$  for  $x \leq 1969$ . That is, filings in 1969 or before were not affected by the timing reform. This assumption is certainly false, because for one, the 1970 Family Law Act was retroactive with regards to the interlocutory period (see California Legislature, 1969, p. 8063). In making this assumption, I am merely following Schoen, Greenblatt, and Mielke and erring on the conservative side of understating the effects of the timing reform.

Assuming also that  $a(x, y) = 0$  if  $y - x \geq 2$ , 1970 ‘gained’  $a(1970, 1970)$  divorces from 1971; 1971 ‘gained’  $a(1970, 1971) + a(1971, 1971)$  from 1972; 1972 ‘gained’  $a(1971, 1972) + a(1972, 1972)$  from 1973; etc. Schoen, Greenblatt, & Mielke (1975) estimate that  $a(1970, 1970) = 23,218$ ;  $a(1970, 1971) = 15,544$ ; and  $a(1971, 1971) = 24,507$ .

It would be ideal to use their procedure to estimate the other  $a(x, y)$ . Unfortunately, their procedure required the use of divorce records obtained from the California State Department of Health. Even if these records still exist, it would not be feasible for me to access them. Instead, I use the following crude but not unreasonable estimation procedure. Assume that for  $t \geq 1969$ , the ratio of  $a(t, t)$  to year  $t$  filings is constant. Assume also that the ratio of  $a(t, t + 1)$  to year  $t$  filings is constant. It turns out that this crude estimation procedure does very well for the pair of SGM estimates to which it may be applied. This gives us some reassurance that the proposed calculation procedure is not wildly misguided.

would thus have had a small net effect on 1971 and every year after. This point seems to have been overlooked by Becker (1981, 1991) and Zelder (1989) in their critiques of Schoen et al.<sup>25</sup>

The solid line in Figure II.4 shows annual California divorces before these adjustments are made. The dotted line shows annual California divorces, after these adjustments are made. These two graphs coincide through 1969, because 1970 is the first year for which adjustments must be made for the timing reform.

TABLE II.2—YEAR-ON-YEAR INCREASES IN CA DIVORCES AND FILINGS, 1963-72 AND 1981-86

<b>Year</b>	<b>1963</b>	<b>1964</b>	<b>1965</b>	<b>1966</b>	<b>1967</b>	<b>1968</b>	<b>1969</b>	<b>1970</b>
<b>Divorces</b>	+2,262	+2,821	+10,832	-781	+898	+5,369	+6,132	+31,398
<b>Filings</b>	+3,839	+4,813	+1,963	+4,724	+5,038	+6,792	+4,359	+10,831
<b>Year</b>	<b>1971</b>	<b>1972</b>	<b>1981</b>	<b>1982</b>	<b>1983</b>	<b>1984</b>	<b>1985</b>	<b>1986</b>
<b>Divorces</b>	-4,633	+2,409	+37	-211	-5,835	+15,440	-5,448	-391
<b>Filings</b>	+7,448	+6,129	+976	-9,353	-6,511	+3,174	+1,048	-1,651

Notes: Notes for Figure II.4 apply here.

To underscore the point that such timing reforms can have large effects, I now examine also 1965 and 1984. After 1970, these two years had the largest year-on-year percentage and absolute increases in divorce. These two spikes were wildly anomalous (see Table II.2). It turns out that once again, these spikes were caused by timing reforms, whose effects I now crudely quantify.<sup>26</sup> (Note that in the empirical analysis below, no effort is made to adjust for the 1965 and 1984 reforms. The reason is that I have only very crude estimates of the effects of these reforms.)

Before 1965, the start date of the interlocutory period was, naturally enough, the date of the interlocutory decree. The 1965 reform moved this start date to the date of service.<sup>27</sup> A crude calculation suggests that this boosted 1965 divorces by perhaps a sixth,<sup>28</sup> which would explain most of the 1965 spike.

<sup>25</sup> Becker (1981, p. 229; 1991, p. 334): “Schoen and his associates (1975) claim that the jump in divorce rates in 1970 and 1971 can be almost entirely explained by these changes in timing ... If, however, timing is the main explanation, the predicted rates in 1972-1974 should have been much above the actual rates; in fact this was not the case.” Zelder (1989, p. 13): “Their calculation that 40,000 1971 divorces were an artifact of timing implies that there must have been 40,000 fewer 1972 divorces as a result of the change in waiting period.”

<sup>26</sup> I have encountered remarks that the 1965 reform likely boosted divorces that year. However, I have not come across similar remarks regarding the 1984 reform or any attempts, however crude, to quantify the effects of either of these reforms.

<sup>27</sup> This is when “a copy of the summons and complaint had been served on the defendant” (Mielke & Smith, 1977, p. 3).

<sup>28</sup> First, note that although this amendment became effective only on 1965-09-17, it was retroactive (46 Ops.Cal.Atty.Gen. 24 – Attorney General of California, 1965). In 1966, the median interval between an initial complaint and the entry of an interlocutory decree was 4.8 months (Greenblatt & Cohen, 1967, p. 11). Since the interval between an initial complaint and service did not usually take more than a few weeks, a rough estimate is that the 1965 reform enabled the median couple to get their final decree about four months sooner. The six month ‘forward-shift’ in 1970 boosted divorces by about a quarter. A rough estimate might thus be that the four-month ‘forward shift’ in 1965 boosted divorces by about a sixth.

Before 1984, upon expiry of the interlocutory period, couples had to motion to enter the final decree. The 1984 reform eliminated this hassle—henceforth, the final decree was automatically entered. Section 11 calculates that this reform added at least 34,460 divorces to 1984.

Now consider one final piece of evidence: divorce *filings*. The annual divorce data usually examined are the final decrees issued each year. But due to reforms and other peculiarities of the law, this may not be the best indicator of the demand for divorce. Some years it may be that a simplification of the divorce process rapidly converts a backlog of cases into final decrees, creating the illusion that demand for divorce has risen. Conversely, in other years, it may be that demand for divorce has risen, but courts are unable to cope with overwhelming demand, so that the rise in final decrees issued understates the rise in demand for divorce.<sup>29</sup> Filings for divorce are perhaps a better indicator of the demand for divorce.<sup>30</sup>

Figure II.4 also shows annual filings in California. In 1970, divorces increased by 38.5%, while filings increased by merely 9.0%. Similarly, divorces in each of 1965 and 1984 spiked anomalously, but not filings. A mere examination of divorce numbers might tempt one to conclude that the demand for divorce spiked in each of 1965, 1970, and 1984. An examination of divorce filings reveals that this is a mistake.

## 8 Results of the Empirical Analysis

I run the same regression as Wolfers (2006). The eight no-fault indicators indicate whether the no-fault divorce law is in year 1 or 2, year 3 or 4, ..., year 13 or 14, and year 15 or beyond.

$$CDR_{s,t} = \beta_0 + \sum_k \beta_{1,k} \text{No-Fault Indicator}_k + \sum_s \beta_{2,s} \text{State}_s + \sum_t \beta_{3,t} \text{Year}_t + u_{s,t}$$

Table II.3 reports the results. Standard errors are reported in parentheses. Following Lee & Solon's (2011) critique of Wolfers, robust standard errors (clustered at the state level) are reported in brackets. *P*-values based on these robust standard errors below 0.1 are reported in superscript as  $1000 \times p$ .

The first column 'Wolfers' simply reprints the results of Wolfers's preferred specification (p. 1808). Wolfers had used these results to conclude that reforms increased divorce in the short term.

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<sup>29</sup> This phenomenon was perhaps on display in 1946. California divorces increased by 13.9% in 1946 and by another 5.0% in 1947. In contrast, filings spiked up by 28.8% in the 1946 fiscal year, but *fell* by 15.2% in the 1947 fiscal year.

<sup>30</sup> This is not a novel observation. See e.g. Chester (1977, p. 76).

But as Lee & Solon (2011, p. 2) already showed, once one uses Stata’s *cluster* option to correct for both serial correlation and heteroskedasticity, thereby producing larger standard errors, “the statistical significance of the coefficient estimates for lags up to eight years becomes less compelling.” Indeed, Wolfers’s estimates now suggest that reforms only had statistically significant effects in the long term; moreover, these effects were *negative*.

TABLE II.3—THE CORRELATION BETWEEN NO-FAULT REFORMS AND DIVORCE

(For all specifications except (6) and (7), the dependent variable is the CDR. For (6) and (7), it is log CDR.)

	Wolfers Reprinted	(1) Wolfers replicated	(2) Same as (1), but data ex- tended to 1922-90	(3) Same as (2), but re- form years corrected	(4) Same as (3), but California data cor- rected	(5) Same as (4), but OLS	(6) Same as (4), but CDR in log form	(7) Same as (6), but OLS	(8) Same as Wolfers, but Re- form Year - 5	(9) Same as Wolfers, but Re- form Year + 5
First 2 years (of no-fault)	0.267 (0.085) [0.188]	0.277 (0.083) [0.189]	0.282 (0.152) [0.205]	0.051 (0.123) [0.158]	-0.071 (0.123) [0.097]	-0.503 (0.481) [0.527]	-0.221 (0.025) [0.105]	-0.108 (0.031) [0.053]	0.060 (0.093) [0.121]	0.115 (0.080) [0.120]
Years 3–4	0.210 (0.085) [0.159]	0.249 (0.084) [0.162]	0.245 (0.153) [0.187]	0.069 (0.129) [0.140]	0.044 (0.129) [0.127]	-0.575 (0.50) [0.655]	-0.236 (0.026) [0.129]	-0.123 (0.033) [0.065]	0.000 (0.093) [0.126]	-0.037 (0.081) [0.118]
Years 5–6	0.164 (0.085) [0.171]	0.204 (0.084) [0.174]	0.152 (0.152) [0.194]	0.034 (0.130) [0.134]	0.010 (0.130) [0.123]	-0.845 (0.502) [0.858]	-0.282 (0.026) [0.140]	-0.163 (0.033) [0.079]	0.103 (0.092) [0.195]	-0.263 (0.081) [0.146]
Years 7–8	0.158 (0.084) [0.174]	0.187 (0.084) [0.176]	0.153 (0.153) [0.193]	0.008 (0.135) [0.146]	-0.017 (0.134) [0.137]	-1.143 (0.521) [1.117]	-0.315 (0.027) [0.152]	-0.208 (0.034) [0.097]	0.273 (0.090) [0.195]	-0.481 (0.081) [0.168]
Years 9–10	-0.121 (0.084) [0.163]	-0.100 (0.083) [0.162]	-0.117 (0.152) [0.198]	-0.078 (0.140) [0.160]	-0.097 (0.140) [0.157]	-1.405 (0.547) [1.333]	-0.368 (0.028) [0.166]	-0.258 (0.036) [0.114]	0.150 (0.089) [0.197]	-0.507 (0.083) [0.185]
Years 11–12	-0.324 (0.083) [0.180]	-0.297 (0.083) [0.177]	-0.347 (0.152) [0.208]	-0.235 (0.143) [0.193]	-0.250 (0.143) [0.193]	-1.626 (0.553) [1.513]	-0.443 (0.029) [0.177]	-0.291 (0.036) [0.122]	0.191 (0.089) [0.205]	-0.573 (0.099) [0.235]
Years 13–14	-0.461 (0.084) [0.199]	-0.445 (0.083) [0.198]	-0.515 (0.149) [0.224]	-0.357 (0.147) [0.224]	-0.354 (0.147) [0.222]	-1.716 (0.561) [1.659]	-0.519 (0.030) [0.187]	-0.311 (0.037) [0.133]	0.015 (0.088) [0.183]	-0.894 (0.129) [0.304]
Year 15 onwards	-0.507 (0.080) [0.233]	-0.469 (0.079) [0.240]	-0.451 (0.116) [0.259]	-0.611 (0.124) [0.345]	-0.620 (0.124) [0.345]	-2.239 (0.463) [2.402]	-0.634 (0.025) [0.201]	-0.359 (0.030) [0.186]	-0.389 (0.066) [0.209]	-0.413 (0.219) [0.231]
Observations	1,631	1,631	2,988	2,988	2,988	2,988	2,988	2,988	1,631	1,631
Mean DV	3.909	3.891	3.357	3.357	3.352	3.790	1.009	1.005	3.909	3.909
R <sup>2</sup>	0.9348	0.9342	0.7945	0.7943	0.7947	0.6336	0.9109	0.8948	0.9343	0.9347
No-fault law in operation	-0.055 (0.050) [0.151]	-0.029 (0.050) [0.150]	-0.103 (0.076) [0.182]	-0.080 (0.076) [0.155]	-0.122 (0.076) [0.145]	-1.102 (0.290) [1.103]	-0.335 (0.016) [0.159]	-0.203 (0.019) [0.092]	-0.044 (0.055) [0.149]	-0.259 (0.050) [0.148]
R <sup>2</sup>	0.9305	0.9298	0.7921	0.7920	0.7926	0.6320	0.9028	0.8926	0.9305	0.9316

Notes: See text for a fuller description of each specification. Standard errors are in parentheses and robust standard errors (clustered at the state level) are in brackets.

I conduct simple placebo tests. I take Wolfers’s original data and coding, but replace each state’s *reform year* with *reform year + x*. I then rerun Wolfers’s regressions. The results of two such placebo tests, where  $x = -5$  and  $x = 5$ , are reported as specifications 8 and 9. Under the first placebo



test, only one estimate turns out to be statistically significant at the 10% level. Hence, this first placebo test tends not to injure Wolfers's claim that reforms had a causal effect on CDR. However, under the second placebo test, seven of the nine coefficient estimates are statistically significant at the 10% level. And of these seven, three are significant at the 1% level. We have thus estimated a significant effect of a hypothetical policy change, even though there was actually no policy change. Hence, this second placebo test tends to cast doubt on Wolfers's claim that reforms had a causal effect on CDR.

Specification 1 replicates Wolfers, using his reform dates. Moreover, the observations are restricted to 1956-1988, as done in Wolfers. However, I use cleaned-up divorce and population data. It is seen that this clean-up produces estimates that are very similar to Wolfers's.

Specification 2 is exactly the same as 1, except that the data are extended to 1922-1990. It is conceivable that the extension of the data back to 1922 could change our estimates, because the earliest no-fault laws were in 1933 and 1935. It turns out though that this extension has little effect on our estimates.

Specification 3 is exactly the same as 2, except that the no-fault reform years in section 4 are used instead. With this adjustment, the estimated short term effects of reforms are close to zero. It is striking that a move from Wolfers's reform year coding (specification 2) to mine (specification 3) results in such different coefficient estimates. It is thus worth investigating which states' coding accounts for the bulk of this move.

There are fifteen states in which my coding disagreed with Wolfers's by at least 2 years.<sup>31</sup> By playing around with these, I find that it is Illinois and Pennsylvania which account for the bulk of the change: When I use Wolfers's coding for all states except those two, the resulting coefficient estimates are quite similar to those produced in specification 3. Wolfers codes both of these states as not having reformed the divorce law by 1998. In contrast, I code Illinois and Pennsylvania as having done so in 1984 and 1980.

Note that Wolfers's coding of the reform years were taken from Friedberg (1998), who in turn took her coding from other secondary sources. In contrast, my coding is derived entirely from primary sources and is fully documented in Appendix H.

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<sup>31</sup> Delaware (coded by Wolfers as 'None by 1998'; and by me as '1968'); Illinois (None by 1998; 1984); Mississippi (None by 1998; 1976); Missouri (None by 1998; 1974); Montana (1975; 1973); Nevada (1973; 1967); New Mexico (1973; 1933); Ohio (None by 1998; 1989); Oregon (1973; 1971); Pennsylvania (None by 1998; 1980); Tennessee (None by 1998; 1977); Texas (1974; 1970); Utah (None by 1998; 1987); West Virginia (None by 1998; 1977); Wisconsin (None by 1998; 1978).

Specification 4 is exactly the same as 3, except that the section 6 adjustments to California divorce numbers are made. With this adjustment, the estimated short term effects of reforms are even closer to zero.

Specification 6 is exactly the same as 4, except that the dependent variable is transformed to log form. Lee & Solon (2011, pp. 3-4) also did the same. They justified this by simply arguing that Wolfers’s functional specification was “not the most natural” and that the log form was “an obvious alternative.” I now explain why it is especially sensible to log-transform the dependent variable, specifically in the present context.

First, states about to introduce no-fault had higher CDR than those that had not done so. This is suggested by Table II.4, which says, for example, that the 1969 CDR of the three 1970 reform states was 4.0, while that of the states that had not reformed by 1970 was 3.1.

TABLE II.4—CDR OF REFORM STATES VS. NON-REFORM STATES IN THE YEAR BEFORE REFORM

<i>x</i>	Reform States	CDR in Year <i>x</i> – 1 of	
		Reform States	Non-Reform
1970	CA, IA, TX	4.0	3.1
1971	AL, FL, ID, NH, ND, OR	4.8	2.9
1972	CO, HI, KY, MI	3.8	3.0
1973	AZ, CT, GA, IN, MT, WA	4.7	3.2
1974	ME, MN, MO	3.9	3.4

*Notes:* Author’s calculations. ‘Reform States’ are those states that introduced statutory no-fault in year *x*. ‘Non-Reform States’ are those that had not done so by year *x*. The CDRs computed are population-weighted.

Second, a state’s CDR tended to experience larger increases if it was higher to begin with. This assertion is supported by a casual inspection of Figures II.1 and II.2 and also by earlier findings that the historical growth trend of divorce rates was exponential.<sup>32</sup> This assertion can moreover be tested formally, by running the regression below. It turns out that the CDR and changes in the CDR are positively correlated (as given by the positive estimate of  $\beta_1$  in the regression below)<sup>33</sup> and that this correlation is highly statistically significant. This provides evidence that a state’s CDR tended to experience larger increases if it was higher to begin with.

$$CDR_{s,t} - CDR_{s,t-1} = \beta_0 + \beta_1 CDR_{s,t-1} + \sum_s \beta_{2,s} State_s + \sum_t \beta_{3,t} Year_t + u_{s,t}$$

<sup>32</sup> Cahen (1932, p. 21), Hart & Bowne (1943, p. 191), and Preston & McDonald (1979, p. 13).

<sup>33</sup> This regression is run with (1) the full sample, (2) Nevada dropped, (3) only state-year observations in which no-fault was not yet in place, (4) the sample restricted to years between 1950 and 1970. The estimates of  $\beta_1$  obtained are between 0.06 and 0.25.

Altogether, reform states tended to have higher CDR; moreover, CDR tended to experience larger increases if it was higher to begin with. Thus, reforms would tend mechanically to be followed by larger increases in the CDR. This would be so even if reforms had no substance whatsoever. Thus, a failure to appropriately transform the dependent variable may bias upwards the estimated effects of reforms. One possible remedy is to transform the dependent variable into log form. This has the additional benefit of allowing the estimated effects of reforms to be interpreted as effects on the growth rates of divorce.

Under Specification 6, it is seen that where a no-fault divorce law was in its first two years of operation, the CDR was 0.22 log point *lower* than where no-fault had not been introduced. This is diametrically opposed to Wolfers's finding that reforms increased divorce in the short term. It is also found that where no-fault had been in operation for more than 14 years, the CDR was 0.63 log point lower than where it had not been introduced.

For each specification, I run in addition the regression below. It differs only in that instead of having eight no-fault indicators, there is now only one indicator for whether there was a statutory no-fault divorce law at all. This facilitates a simple comparison of CDR between states that had no-fault and states that did not. The results of these regressions are reported at the bottom of Table II.3. Specification 6 shows that the CDR of states where there was no-fault was 0.34 log point was lower than states where there was not no-fault.

$$\text{Dependent Variable}_{s,t} = \beta_0 + \beta_1 \text{No-Fault Indicator} + \sum_s \beta_{2,s} \text{State}_s + \sum_t \beta_{3,t} \text{Year}_t + u_{s,t}$$

If interpreted causally, then these point estimates would imply that in the absence of no-fault divorce reforms, the CDR would have been about 1.0 point *higher*. This is diametrically opposed to conventional wisdom. Considering that the 2.3-point rise in divorce between 1967 and 1976 has often been considered remarkable, these estimates—if interpreted causally—would suggest that in the absence of no-fault reforms, said rise would have been even more extraordinary. However, as will be suggested by my historical study and in the conclusion below, these estimates should not be interpreted causally.

Next, as per the critique of Wolfers by Lee & Solon (2011), I rerun specifications 4 and 6 using OLS. The results are reported in Table II.3 as specifications 5 and 7. These OLS estimates do not alter the substantive conclusions made above. But it must be admitted that the discrepancies, especially between specifications 4 and 5, are large.

It turns out that these discrepancies are driven mostly by the Nevada outlier. In 1946 for example, Nevada had a remarkable 136 divorces per thousand persons. Table II.5 replicates Table II.3 but with all Nevada observations dropped (and with the placebo tests corresponding to specifications 8 and 9 also dropped). The discrepancies, especially between specifications 4 and 5, are now smaller. This gives some assurance that the model is not badly misspecified.

TABLE II.5—REPLICA OF TABLE II.3, BUT WITH ALL NEVADA OBSERVATIONS DROPPED

(For all specifications except (6) and (7), the dependent variable is the CDR. For (6) and (7), it is log CDR.)

	Wolfers	(1) Wolfers Replicated	(2) Same as (1), but data ex- tended to 1922-90	(3) Same as (2), but re- form years corrected	(4) Same as (3), but California data cor- rected	(5) Same as (4), but OLS	(6) Same as (4), but CDR in log form	(7) Same as (6), but OLS
First 2 years (of no-fault)	0.302 (0.059) [0.182]	0.308 (0.054) [0.186]	0.358 (0.068) [0.185]	0.076 (0.056) [0.152]	-0.046 (0.055) [0.091]	0.009 (0.072) [0.115]	-0.222 (0.025) [0.106]	-0.097 (0.028) [0.053]
Years 3–4	0.265 (0.059) [0.147]	0.290 (0.055) [0.153]	0.335 (0.069) [0.161]	0.101 (0.059) [0.133]	0.076 (0.058) [0.121]	0.065 (0.075) [0.139]	-0.235 <sup>75</sup> (0.026) [0.129]	-0.103 (0.029) [0.064]
Years 5–6	0.228 (0.059) [0.154]	0.207 (0.055) [0.154]	0.255 (0.068) [0.158]	0.078 (0.059) [0.124]	0.053 (0.059) [0.115]	-0.004 (0.075) [0.166]	-0.281 (0.026) [0.141]	-0.129 (0.029) [0.074]
Years 7–8	0.219 (0.059) [0.159]	0.212 (0.055) [0.148]	0.261 (0.069) [0.155]	0.076 (0.061) [0.128]	0.051 (0.061) [0.119]	-0.050 (0.078) [0.202]	-0.312 (0.027) [0.152]	-0.158 (0.030) [0.084]
Years 9–10	-0.059 (0.058) [0.147]	-0.051 (0.055) [0.153]	-0.005 (0.068) [0.161]	0.007 (0.064) [0.137]	-0.011 (0.063) [0.135]	-0.103 (0.082) [0.240]	-0.364 (0.028) [0.166]	-0.196 (0.032) [0.096]
Years 11–12	-0.255 (0.058) [0.169]	-0.278 (0.055) [0.168]	-0.225 (0.068) [0.173]	-0.126 (0.065) [0.165]	-0.142 (0.064) [0.167]	-0.140 (0.083) [0.231]	-0.437 (0.029) [0.177]	-0.218 (0.032) [0.099]
Years 13–14	-0.388 (0.058) [0.189]	-0.045 (0.055) [0.185]	-0.389 (0.067) [0.192]	-0.231 (0.067) [0.197]	-0.229 (0.066) [0.194]	-0.063 (0.084) [0.221]	-0.513 (0.030) [0.187]	-0.229 (0.032) [0.105]
Year 15 onwards	-0.446 (0.056) [0.234]	-0.433 (0.052) [0.227]	-0.332 (0.052) [0.242]	-0.355 (0.057) [0.241]	-0.363 (0.056) [0.242]	0.155 (0.070) [0.237]	-0.620 (0.025) [0.202]	-0.228 (0.027) [0.131]
Observations	1,598	1,503	2,923	2,923	2,923	2,923	2,923	2,923
Mean DV	3.865	3.823	3.306	3.306	3.301	3.126	1.004	0.954
R <sup>2</sup>	0.9614	0.9680	0.9372	0.9355	0.9368	0.9107	0.9117	0.8989
No-fault law in operation	0.003 (0.036) [0.135]	0.005 (0.034) [0.136]	0.004 (0.035) [0.145]	-0.004 (0.035) [0.129]	-0.046 (0.034) [0.120]	-0.002 (0.043) [0.154]	-0.332 (0.016) [0.159]	-0.154 (0.017) [0.079]
R <sup>2</sup>	0.9563	0.9625	0.9338	0.9338	0.9354	0.9102	0.9040	0.8980

Notes: Notes for Table II.3 apply here.

In sum, no-fault reforms were not correlated with an increase in the CDR (in the short term or the long). Instead, they were associated with a large and statistically significant fall in the growth rates of the CDR. As an additional robustness check, Table II.6 replicates Table II.3 with census-

region-by-year fixed effects included (and with the placebo tests corresponding to specifications 8 and 9). It is seen that the same broad conclusions apply.

TABLE II.6—REPLICA OF TABLE II.3, BUT WITH REGION-BY-YEAR FIXED EFFECTS

(For all specifications except (6) and (7), the dependent variable is the CDR. For (6) and (7), it is log CDR.)

	Wolfers	(1) Wolfers Replicated	(2) Same as (1), but data ex- tended to 1922-90	(3) Same as (2), but re- form years corrected	(4) Same as (3), but California data cor- rected	(5) Same as (4), but OLS	(6) Same as (4), but CDR in log form	(7) Same as (6), but OLS
First 2 years (of no-fault)	0.127 (0.090) [0.122]	0.116 (0.090) [0.117]	0.103 (0.167) [0.128]	-0.013 (0.134) [0.119]	-0.080 (0.134) [0.112]	-0.414 (0.499) [0.470]	-0.161 (0.023) [0.060]	-0.091 (0.030) [0.047]
Years 3–4	0.133 (0.091) [0.144]	0.143 (0.090) [0.151]	0.109 (0.169) [0.163]	-0.022 (0.139) [0.134]	-0.036 (0.139) [0.132]	-0.507 (0.517) [0.591]	-0.163 (0.023) [0.070]	-0.100 (0.031) [0.058]
Years 5–6	0.093 (0.091) [0.162]	0.031 (0.090) [0.152]	-0.011 (0.166) [0.167]	-0.083 (0.141) [0.136]	-0.098 (0.140) [0.134]	-0.844 (0.519) [0.843]	-0.195 (0.024) [0.076]	-0.147 (0.031) [0.068]
Years 7–8	0.090 (0.090) [0.162]	0.053 (0.091) [0.135]	0.008 (0.168) [0.160]	-0.116 (0.146) [0.150]	-0.134 (0.146) [0.149]	-1.188 (0.539) [1.172]	-0.221 (0.025) [0.084]	-0.185 (0.032) [0.086]
Years 9–10	-0.106 (0.090) [0.148]	-0.119 (0.091) [0.143]	-0.173 (0.167) [0.175]	-0.139 (0.151) [0.161]	-0.154 (0.151) [0.160]	-1.483 (0.565) [1.445]	-0.240 (0.025) [0.091]	-0.214 (0.034) [0.105]
Years 11–12	-0.235 (0.089) [0.133]	-0.288 (0.091) [0.129]	-0.333 (0.167) [0.169]	-0.256 (0.155) [0.172]	-0.272 (0.155) [0.171]	-1.701 (0.572) [1.630]	-0.276 (0.026) [0.095]	-0.233 (0.034) [0.108]
Years 13–14	-0.294 (0.091) [0.161]	-0.375 (0.092) [0.150]	-0.408 (0.165) [0.193]	-0.311 (0.161) [0.200]	-0.315 (0.160) [0.199]	-1.816 (0.580) [1.743]	-0.310 (0.027) [0.103]	-0.241 (0.035) [0.114]
Year 15 onwards	-0.199 (0.093) [0.172]	-0.225 (0.093) [0.168]	-0.247 (0.134) [0.221]	-0.527 (0.142) [0.286]	-0.537 (0.141) [0.286]	-1.832 (0.484) [1.914]	-0.382 (0.024) [0.114]	-0.255 (0.029) [0.156]
Observations	1,631	1,536	2,988	2,988	2,988	2,988	2,988	2,988
Mean DV	3.909	3.869	3.357	3.357	3.352	3.790	1.009	1.005
R <sup>2</sup>	0.9412	0.9451	0.8084	0.8087	0.8085	0.6597	0.9429	0.9188
No-fault law in operation	-0.028 (0.054) [0.131]	-0.055 (0.054) [0.123]	-0.116 (0.086) [0.155]	-0.133 (0.084) [0.139]	-0.159 (0.084) [0.137]	-1.044 (0.301) [1.031]	-0.219 (0.014) [0.080]	-0.163 (0.018) [0.077]
R <sup>2</sup>	0.9401	0.9438	0.8078	0.8078	0.8076	0.6586	0.9412	0.9179

Notes: Notes for Table II.3 apply here.

## 9 Judicial and Legislative Erosion of the Fault Concept

The above empirical finding that statutory no-fault reforms were not correlated with increased divorce is perhaps surprising. It is however congruent with the historical facts: The fault concept had already been heavily eroded in the decades leading to 1970, so that statutory no-fault reforms merely made *de jure* what had already been *de facto*.

Previous writers have described the decades-long erosion of the fault concept, but only in broad strokes.<sup>34</sup> To my knowledge, none has documented in systematic detail the erosive process for any single state, as I do here. In this section, I document the cases of California and Vermont, as examples of judicial and legislative erosion of the fault concept.

Before proceeding, it should be noted that each state's experience was distinct. The judicial and legislative erosion of the fault concept in each state were not always as smooth, steady, and pronounced as in California and Vermont. Unfortunately it is not feasible here to describe the decades-long erosive process in every state. I simply assert here that, based on my study of the history of divorce, California and Vermont were not wildly exceptional. In general, across the US, the fault concept had been steadily eroded in the many decades before the statutory introduction of no-fault.

### 9.1 *California: Judicial Erosion of the Fault Concept*

*Note:* This section is accompanied by a list of notes in section 12.

Long before 1970, many had already observed that there was a great divergence between the law in action and the law of the books. Below is listed a series of cases that trace the evolution of California's divorce law in action from fault to no-fault. Of these, *De Burgh v. De Burgh* (1952) was probably the most important.<sup>35</sup> (Unless otherwise noted, all cases mentioned in this subsection are from California.) But as the following will show, even *De Burgh* was merely the largest in a series of steps taken towards no-fault.

California judges eroded the fault doctrine chiefly by stretching the definition of cruelty. California lawyers would eventually circulate the apocryphal tale that even "crackers in bed" constituted cruelty (Rheinstein, 1972). It is thus helpful to begin with the leading, traditional, and conservative interpretations of cruelty given by the English jurist Lord Stowell (Sir William Scott). It can then be seen how these traditional interpretations were steadily eroded by California judges.

Judges often refused to give a positive definition of cruelty. But one was given by Lord Stowell in the English case of *Waring v. Waring* (1813):<sup>36</sup> "The definition of legal cruelty, is that which

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<sup>34</sup> E.g. Marshall & May (1932, pp. 12, 17); Pound (1943); Sirjamaki (1953, pp. 179-185) O'Gorman (1963, pp. 20-30); Clark (1968, pp. 341, 344); Rosenblatt (1969); Rheinstein (1952; 1972, pp. 51-105); Frank, Berman, & Mazur-Hart (1978, pp. 40-45); Marvell (1989, p. 544); Fineman (1989, pp. 945-946); Blumberg (1991, pp. 117-118, 124); Friedman (2000, pp. 1511-1527).

<sup>35</sup> *De Burgh v. De Burgh* (39 Cal.2d 858, 1952).

<sup>36</sup> *Waring v. Waring* (2 Phil. Eccl. 132, 1813).

may endanger the life or health of the party.” His negative definition in *Evans v. Evans* (1790) would however prove to be the more influential.<sup>37</sup> As said by Griswold (1986), “The importance of the Evans decision to American interpretations of matrimonial cruelty cannot be overestimated.” In both *Waring* and *Evans*, Lord Stowell made clear that bodily harm was necessary for a finding of cruelty.

*Carpenter v. Carpenter* (1883) took place not in California, but in Kansas.<sup>38</sup> Nonetheless, it was seminal. *Carpenter* explicitly repudiated Lord Stowell and would be oft-cited by California courts. *Carpenter* defined legal cruelty to include any “unjustifiable conduct ... such as utterly destroys the legitimate ends and objects of matrimony.” *Carpenter* also declared that “the tendency of modern thought is to elevate the marriage relation and place it upon a higher plane, and to consider it *a mental and spiritual relation* as well as a physical relation” (emphasis added).

The views expressed in *Carpenter* were not immediately endorsed by California: In *Waldron v. Waldron* (1890),<sup>39</sup> *Evans* continued to be cited approvingly. But just two years later, *Waldron* was reversed and *Carpenter* was cited with approval in *Barnes v. Barnes* (1892).<sup>40</sup> *Barnes* thus marked an early and significant departure from the fault doctrine in California.

*MacDonald v. MacDonald* (1909) reaffirmed *Carpenter* and *Barnes*.<sup>41</sup> Mrs. MacDonald had filed with her husband’s fraternal order—Hesperian Parlor of the Native Sons of the Golden West—a single affidavit listing charges against his character. A lower court found these charges to be “false, unfounded, and malicious” and granted Mr. MacDonald a divorce for cruelty. Mrs. MacDonald then appealed, arguing that this single act of cruelty did not suffice for the granting of a divorce. Her appeal was defeated, with the court citing *Carpenter* and *Barnes*.

*Brewthauer v. Brewthauer* (1920) cited *Barnes*.<sup>42</sup> But more importantly, it made the assertion that “the ends and object of matrimony between them [Mr. and Mrs. Brewthauer] having been

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<sup>37</sup> In *Evans v. Evans* (1 Hag. Eccl. 35, 1790), Lord Stowell wrote, “Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty: they are high moral offences in the marriage-state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties (for it may exist on the one side as well as on the other) the suffering party must bear in some degree the consequences of an injudicious connection; must subdue by decent resistance or by prudent conciliation, and if they cannot, they must suffer in silence.”

<sup>38</sup> *Carpenter v. Carpenter* (30 Kans. 712, 1883).

<sup>39</sup> *Waldron v. Waldron* (85 Cal. 251, 1890).

<sup>40</sup> *Barnes v. Barnes* (95 Cal. 175, 1892).

<sup>41</sup> *MacDonald v. MacDonald* (155 Cal. 665, 1909).

<sup>42</sup> *Brewthauer v. Brewthauer* (188 P. 296, Cal.App. 1920).

utterly destroyed, *it were better for them and for society* that the union be legally dissolved” (emphasis added). This was a clear departure from the law of the books, which permitted divorce only if certain fault-based grounds were established.

‘Incompatibility of temperament’, which many writers consider to be a no-fault divorce ground, has never been a divorce ground in California. Yet it was explicitly considered in *Blanchard v. Blanchard* (1909).<sup>43</sup> *Blanchard* would later be cited in *McGann v. McGann* (1947) to defeat the wife’s protest that her acts did not constitute cruelty—the husband had testified that, amongst other things, she “was cold toward him, nagged him, wrote him whining letters.”<sup>44</sup>

One important element of the fault theory is malice. *Barngrover v. Barngrover* (1922) suggested that this element was not essential.<sup>45</sup> Mrs. Barngrover’s “nagging for over ten years” was held sufficient for the finding of cruelty, even if such nagging had sprung from good motives. This ruling that the element of malice was not essential would be cited approvingly in *Keener v. Kenner* (1941) and *Hill v. Hill* (1947).<sup>46</sup>

A distinct *Hill v. Hill* (1943) case asserted that “public policy does not discourage divorce where the relations between husband and wife are such that the legitimate objects of matrimony have been utterly destroyed.”<sup>47</sup> This assertion is significant in that it invokes ‘public policy’. In law and perhaps especially family law, ‘public policy’ is sometimes used to override other considerations. *Hill* thus set a precedent for invoking ‘public policy’ as a rationale for departing from the divorce law of the books. *Hill* would be frequently cited,<sup>48</sup> including in *De Burgh* itself.

Three cases on the eve of *De Burgh* lent further affirmation to the breakdown theory. Weil v. Weil (1951) reiterated the assertion made in *Hill* (1943): “No prospects of reconciliation remain . . . We cannot ignore the important ‘social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.’”

In *Slavich v. Slavich* (1951),<sup>49</sup> the trial judge had apparently granted a divorce on the basis of remarks far removed from the statutory divorce law: e.g. “both these parties are acting very, very

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<sup>43</sup> *Blanchard v. Blanchard* (10 Cal.App. 203, 1909).

<sup>44</sup> *McGann v. McGann* (82 Cal. App. 2d 382, 1947).

<sup>45</sup> *Barngrover v. Barngrover* (56 Cal.App. 687, 1922).

<sup>46</sup> *Keener v. Keener* (18 Cal.2d 445, 1941), *Hill v. Hill* (82 Cal.App.2d 682, 1947).

<sup>47</sup> *Hill v. Hill* (23 Cal.2d 82, 1943).

<sup>48</sup> E.g. *Barham v. Barham* (33 Cal. 2d 416, 1949), *Spellens v. Spellens* (49 Cal. 2d 210, 1957), *Braden v. Braden* (178 Cal. App. 2d 481, 1960).

<sup>49</sup> *Slavich v. Slavich* (108 Cal.App.2d 451, 1951).



silly indeed, very silly” and “I couldn’t keep these people together.” Citing these remarks, Mrs. Slavich appealed on the basis that she had been denied “a fair trial by certain acts and conduct of the trial judge.” Her appeal failed and the trial judge’s decision was upheld.

The law of the books made no mention of the concept of love. Yet *Ganann v. Ganann* (1952) suggested that this concept deserved consideration in divorce cases.<sup>50</sup>

In the seminal case of *De Burgh* (1952), a lower court had denied the De Burghs a divorce upon a showing of recrimination—both husband and wife had been guilty of cruelty towards each other. Mrs. De Burgh then appealed to the Supreme Court.

*De Burgh* made three distinct but not unrelated advances towards no-fault. First, Chief Justice Roger Traynor repealed recrimination. California’s recrimination clause, enacted in 1872, had never been amended. Yet Traynor was able to re-interpret it in an entirely new light and thereby repeal it altogether.

Second, the breakdown theory was enshrined. Henceforth, divorce cases would be governed by several major considerations, the first being: “The prospect of reconciliation. The court should determine whether the legitimate objects of matrimony have been destroyed or whether there is a reasonable likelihood that the marriage can be saved.” This, once again, completely departed from the law of the books, which made no reference, however obliquely, to “the prospect of reconciliation” or whether “the marriage can be saved.” Similar language would appear in later no-fault laws.

Third, it was declared that divorce to both parties would henceforth be possible. Such a possibility had hitherto never been entertained in a Californian court. This was yet another rebuke to the fault theory, in which divorce was to be awarded to the victorious, innocent party and against the defeated, guilty party.

The *De Burgh* ruling prevailed on a 4-3 majority. In his dissent, Justice Edmonds criticized “the fallacy of such circuitous reasoning,” noted that the “Civil Code contemplates that a divorce can be awarded to only one party,” and concluded, “If public policy no longer approves the doctrine of recrimination, then it is for the Legislature, and not for the court, to repeal the statute.”

*Phillips v. Phillips* (1953) and *Mueller v. Mueller* (1955) cemented *De Burgh*.<sup>51</sup> In each case, a lower court had, as in *De Burgh*, denied a divorce upon a showing of recrimination. In each, the

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<sup>50</sup> *Ganann v. Ganann* (109 Cal.App.2d 346, 1952).

<sup>51</sup> *Phillips v. Phillips* (41 Cal.2d 869, 1953), *Mueller v. Mueller* (44 Cal.2d 527, 1955).

Supreme Court overturned the lower court's decision and affirmed the *De Burgh* ruling. In each, the majority were the same four justices and the dissenters the same three. In the following years, lower courts would expound upon, expand upon, and reaffirm the ideas expressed in *De Burgh*.<sup>52</sup>

A further advance towards no-fault was made in *Nunes v. Nunes* (1964).<sup>53</sup> Mrs. Nunes argued that her cruel conduct was "basically attributable to her emotional difficulties and that she was unable to discipline herself." Citing *De Burgh*, the Supreme Court stated, "it does not follow that [Mr. Nunes] must be denied a divorce." Sanner's (1965) commentary on *Nunes* is worth quoting at length:

Although the courts had tended to become less preoccupied with the fault doctrine and the degree of fault required in a particular case had been held to be minimal, no court had held that a complete lack of fault would not constitute a bar to divorce, except where the strict requirements of Section 108 of the California Civil Code were met. *Nunes*, however, seems to stand for that very proposition and coupled with the court's decision in *DeBurgh v. De-Burgh*, which held that the "innocence" of a complaining spouse is not a condition precedent to the award of a divorce, marks California as a jurisdiction in which the issue of fault may be of very minor relevance in future divorce actions.

... If *Nunes* stands for the proposition that intention and the ability to control one's acts are no longer relevant factors in cruelty cases, the ground of extreme cruelty could seemingly be used as a basis for terminating any marriage that a court might find had ceased to serve the legitimate ends of matrimony.

... In conclusion, it is suggested that a new look at California statutory divorce provisions is needed. There seems little doubt that the present scheme, based on fault and misconduct, is obsolete and misleading. If marriage failure has become the first principle of divorce law, the statutes should express and qualify that fact.

In 1969, the Family Law Act (FLA) was passed. But in so doing, the legislature merely adopted the recommendation of Sanner and many others to codify the law in action (see California Legislature, 1969, p. 8054). Not surprisingly, many contemporaries would comment that the FLA did not make divorce any easier; instead, it merely made *de jure* what had already been *de facto*.

One final and crucial observation must be made: *Even on paper*, the FLA was not a liberal revolution. Divorce would henceforth be granted if and only if<sup>54</sup> there were "Irreconcilable differences, which have caused the irremediable breakdown of the marriage." As Wheeler (1974, p. 21) notes, "If taken at face value, these phrases present a standard so strict that no marriage could ever

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<sup>52</sup> *Kirsch v. Kirsch* (119 Cal.App.2d 271, 1953), *Hendricks v. Hendricks* (125 Cal.App.2d 239, 1954), *Ohligschlager v. Ohligschlager* (125 Cal.App.2d 458, 1954), *Friedenberg v. Friedenberg* (178 Cal.App.2d 106, 1960), *Baker v. Baker* (233 Cal.App.2d 569, 1965).

<sup>53</sup> *Nunes v. Nunes* (62 Cal.2d 33, 1964).

<sup>54</sup> Again ignoring divorce on the ground of incurable insanity, which the FLA retained.

be dissolved.” Similar remarks can be found in Sharff (1969), Rheinstein (1972, p. 373), Lee (1972, p. 419), and DiFonzo (1994, p. 546).

In sum, California’s divorce law evolved from fault to no-fault, over the course of many decades. The FLA, when it was finally passed, served largely to codify into the law of the books what had already been the law in action. It did not represent a revolutionary leap from fault to no-fault.

The foregoing discussion prompts a related empirical question: Did any of these judicial cases affect divorce rates? As I have tried to show above, the erosion of the fault doctrine was incremental and relentless. No single one of these cases marked a momentous shift in the law. In California between 1941 and 1965, there were, in the foregoing discussion alone, twenty cases<sup>55</sup> that undermined the fault doctrine to some small degree. Collectively, the tide of judicial cases over the many decades mattered. But it is unlikely that any single one of them engendered changes in the divorce rates that can be detected in an empirical analysis. Moreover, it is unclear how each of these cases should be coded in an empirical test. It would seem necessary to employ an empirical strategy more sophisticated than the mere assignment of indicator variables. This I leave to future research.

## 9.2 Vermont: Legislative Erosion of the Fault Concept

Vermont was a state where, unlike California, the legislature played an important role in eroding the fault concept. Researchers disagree over which year, if any, Vermont introduced no-fault.<sup>56</sup> The key reason is that its statutory divorce law progressed from fault to no-fault in a series of small steps. I now list these to illustrate how one state’s legislature aided the erosive process.

In 1931, the General Assembly of Vermont added incurable insanity as a divorce ground.<sup>57</sup> As discussed above, the fault theory contains three key elements: innocence, guilt, and malice. All three can reasonably be said to be absent from divorce for insanity. This 1931 enactment of insanity as a divorce ground may thus be considered Vermont’s first breach of the fault doctrine.

Ten years later, the General Assembly added this divorce ground: “VII. *Desertion*. When a married person has lived apart from his or her spouse for three consecutive years without fault on

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<sup>55</sup> Keener (1941), Hill (1943), McGann (1947), Hill (1947), Barham (1949), Weil (1951), Slavich (1951), Ganann (1952), De Burgh (1952), Phillips (1953), Kirsch (1953), Hendricks (1954), Ohligschlagler (1954), Mueller (1955), Spellens (1957), Friedenberg (1960), Braden (1960), Nunes (1964), Baker (1965).

<sup>56</sup> Ellman & Lohr (1998) and Gold (2010) say 1941; Drewianka (2008) says between 1967 and 1969; Nakonezny, Shull, & Rodgers (1995, 1997, 1999) and Vlosky & Monroe (2002) say 1972; and Wright & Stetson (1978), Zelder (1993), Brinig & Crafton (1994), Brinig & Buckley (1998), Allen, Pendakur, & Suen (2006), and Mechoulam (2006) say never.

<sup>57</sup> 31<sup>st</sup> Biennial Session, No. 44. Approved on and effective from 1931-03-25.

the part of the libellant and the court finds that the resumption of marital relations is not reasonably probable.”<sup>58</sup> The sentence quoted explicitly preserved the fault theory’s first element with its insistence that the “libellant” be “without fault.” However, it made no mention of the other two elements, namely guilt and malice on the part of the libellee. This ground thus marked a further breach of the fault doctrine.

Note though that this new ground was explicitly headed with the word *Desertion*.<sup>59</sup> This word could have been taken by judges to connote the necessity of guilt and malice. However, this word would be omitted from the *1947 Vermont Statutes* and subsequent editions thereof. I have found no primary legislative commentary or secondary legal commentary regarding this omission.

An act of 1970 amended this 1941 ground by deleting the words *without fault on the part of the libellant*,<sup>60</sup> thereby jettisoning a third element of the fault theory, *viz.* the innocence of the libellant. The same act also repealed recrimination, thereby further eroding the fault theory.

The act of March 1971 repealed condonation, thereby further eroding the fault doctrine. This same act also reworded the 1970 repeal of recrimination, which had read “The defense of bar in recrimination in matrimonial actions is hereby abolished.” This sentence was now rewritten as: “Recrimination shall not constitute a defense or a bar to a libel for divorce.”<sup>61</sup> I have found no primary legislative commentary or secondary legal commentary regarding this rewording. But this 1971 rewording suggests that legislature was firm in its intent to repeal recrimination.

A month later, the act of April 1971 reduced the separation requirement of the above ground from three years to two.<sup>62</sup> The act of 1972 then further reduced this to six months.<sup>63</sup> Also, the wording of Section 3 of the same 1972 act closely resembled other newly-minted no-fault grounds.

The foregoing shows that in no single year did Vermont’s statutory divorce law leap dramatically from fault to no-fault. Instead, it progressed from fault to no-fault in a series of small steps.

## 10 Conclusion

I reexamined the data. I found that the statutory introduction of no-fault was not correlated with an increase in divorce (in the short term or the long). Instead, it was associated with lower growth

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<sup>58</sup> 36<sup>th</sup> Biennial Session, No. 43. Approved on 1941-03-20.

<sup>59</sup> Even though there was already another divorce ground that read “IV. For wilful desertion for three consecutive years.”

<sup>60</sup> 50<sup>th</sup> Biennial Session, Adjourned Session, No. 264. Approved on 1970-04-08

<sup>61</sup> 51<sup>st</sup> Biennial Session, No. 4.

<sup>62</sup> 51<sup>st</sup> Biennial Session, No. 39. Effective from 1971-05-01.

<sup>63</sup> 51<sup>st</sup> Biennial Session, Adjourned Session, No. 238. Approved on and effective from 1972-04-06.

rates of divorce. It must be emphasized that my findings do not and cannot *prove* that no-fault reforms did not increase divorce. Nonetheless, my findings appear to be consistent with the historical facts reviewed. Statutory no-fault reforms merely coded into the law of the books what had already been the law in action. This would provide one possible explanation for why they would have been correlated with an increase in divorce. This would also lend support to the hypothesis that what matters most for divorce rates is the law in action, rather than the law of the books. If there is a sudden change to the latter without a sudden change to the former, then one should not expect to see changes in the divorce rate.

So, what did cause the divorce boom of the 1960s-1970s? This broader question is beyond the scope of this chapter. This chapter sought merely to answer a simple question (“Was statutory no-fault correlated with an increase in divorce?”) and did so in the negative.

There remains a puzzle: How could it be that reforms were correlated with lower growth rates of divorce? As this chapter has tried to show, reforms had little substance in practice. It is thus unlikely that reforms *caused* a decrease in the growth rates of divorce. This correlation must be dismissed as spurious.

Nonetheless, this correlation is not entirely inexplicable. Here is one possibility that future researchers may explore. Rising divorce prompted legislative reforms.<sup>64</sup> No-fault, when it finally came into effect, tended to mark the tail end of the 1960s-1970s divorce boom. And as is now known, this boom was followed by a decades-long decline in divorce that continues even today. It is thus not surprising that no-fault and the growth rates of divorce were negatively correlated.

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<sup>64</sup> **Example 1.** In California, the Governor’s Commission on the Family (1966) had been established to begin a “concerted assault on the high incidence of divorce in our society and its often tragic consequences.” Three years later, the Family Law Act was approved. **Example 2.** In Arizona, a 1963 Committee on Marriage and Family Problems “examined the rising incidence of divorce.” The Governor of Arizona (1963) said, “It is the studied opinion of this committee that major revisions are needed in our marriage and divorce laws.” In 1973, Arizona would adopt the “irretrievably broken” standard. **Example 3.** In Texas, “Faced with the increasing probability of a breakdown in traditional marriage and family life, the Texas Interim Study Committee on Divorce was created to study the problem ... The work of the Texas Study Committee culminated in Title 1 of the Texas Family Code” (Bonesio, 1970, p. 105).

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## 11 Appendix: Calculating the Effects of the 1984 California Timing Reform

Absent the 1984 reform, how many of the 1984 final decrees would instead have been entered only in 1985? Assume that absent the 1984 reform, the 1984 couples would have exhibited precisely the same pattern of tardiness as in 1973, for which we have some information: Mielke & Smith (1977, p. 24) report that of final decrees in 1973, 16.6% were entered within a month of the eligible date; 21.5%, one month later; 11.5%, two months; 7.9%, three months; 6.0%, four months; 4.7%, five months; 9.4%, six to eight months; 5.8%, nine to eleven months; 9.9% twelve to 23 months; and 6.7%, 24 or more months. So, let us assume that, (at least) 83.4% of December 1984 final decrees would instead have been entered in 1985. Likewise for (at least) 61.9% of November decrees, 50.4% of October decrees, 42.5% of September decrees, 36.5% of August decrees, 31.8% of July decrees, 22.4% of April to June decrees, and 16.6% of January to March decrees.

There were 142,972 divorces, annulments, and legal separations 1984. Err on the side of understating the effect of the 1984 reform and say that 10,000 final decrees were entered in each month of 1984. Hence, absent the reform, 8,340 of the 10,000 December decrees would instead have been entered in 1985; 6,190 of the 10,000 November decrees would instead have been granted in 1985; etc. Altogether, (at least) 42,350 of the 1984 decrees would instead have been entered in 1985.

If I assume instead that the pattern of tardiness in 1984 would, absent the 1984 reform, have been the same as that in 1969 (for which Mielke & Smith also provide data), then the corresponding number would be 34,460. Either of these numbers vastly exceeds the 1984 spike of 15,440. These calculations are extremely crude. Nonetheless, it is probably safe to conclude that divorces would have fallen in 1984, were it not for this reform.

The future researcher wishing to undertake a more refined analysis may wish to take note of three things. First, when comparing the patterns of tardiness in 1969 and 1973, Mielke & Smith (1977, p. 23) state, “it appears that the heavier case load confronting the courts in 1973 was the probable cause of the slow-down in processing of decrees.”

Second, unlike 1983 and before, the figures for 1984-6 include legal separations (hence biasing upwards the divorce totals for these years). I have not been able to uncover the exact number of legal separations in 1984, but based on the following clues, it is likely to have been relatively small. First, there were 496, 553, and 570 separations in 1979, 1980, and 1981 (California Department of Public Health, *Vital Statistics of California*, 1979-1980 and 1981). Second, it is stated in the source for the 1989 divorce total that there were about 1,000 legal separations that year.

Third, I have completely ignored the *nunc pro tunc* ('now for then') decrees. Although these could conceivably skew my calculations, it does not seem, based on my study of the history of California divorce, that these ever had an appreciable effect on the divorce statistics.

## 12 Appendix: Notes to Accompany Section 9.1

Commentators on the dual law of divorce before 1970:

To all who make such proposals [for change to the law of divorce], the Institute of Law issues the same challenge: "First find out what the law of divorce really is." ¶ That challenge came as a shock to the group of Maryland lawyers to whom the manuscript of this book was submitted. They thought they knew the law; and they were a little annoyed to have put in their hands a book of 350 pages to tell them what is found in three pages of the Annotated Code and a dozen leading cases. But they were forced to admit that the law of the law-books and the law as it is, the living body of the law, are not always identical. It is the latter, the living body of the law of divorce, the law of divorce as it really functions, the law of divorce as a working tool of society, that is delineated in this book (Joseph N. Ulman, foreword to Marshall & May, 1932, p. 12).

Butler's satire of the two distinct commercial systems in the metropolis of Erewhon bears a too-apt analogy to the subject of divorce in the American states. Like Erewhon our states have a system ancient in heritage, minutely defined, and officially accepted. Like Erewhon, too, they have a practice that varies widely from the official theory, a practice which is not heralded in law books but which is thoroughly a part of common thought and common discussion (Marshall & May, 1932, p. 17).

Perhaps in no other area has the discrepancy between law in dogmatic theory and law in action, evading dogma by fiction and subterfuge, become so marked as in divorce law. The withered dogma that divorce can be granted only for marital fault, variously and eccentrically defined from state to state, is rendered still more irrational by the widespread rule that recrimination is an absolute defense. The result has been a triumph, not for dogma, but for hypocrisy. Rules insensitive to reality have been cynically circumvented by litigants and attorneys with the tacit sanction of the courts (Traynor, 1956).

We have our fine strict divorce law on the book; our official morals sound wonderful, and the people who want their liquor or the people who want to gamble or the people who want to get an easy divorce can have it for the asking (Rheinstein, 1952, p. 45).

It is apparent that courts are frequently dealing in fictions when they determine "innocence" or "guilt" of married couples (A.D.C., 1949, p. 709).

the exclusion of fault has the virtue of being in closer rapport with actual practice in divorce litigation. ... it is submitted that present popular concepts of the marital institution approach an actual practice between individuals which has diverged so far from the "legal norm" that statutes predicated on traditional thinking have become archaic (Students of Northwestern University, *Illinois Law Review*, 1950).

There has been a gradual relaxation in the grounds of divorce and a judicial winking at collusion so as to allow the dissolution of marriages for purely personal reasons quite apart from the "fault" of either party (Leathers, 1937).

If you talk to the man on the street, he generally takes it for granted that whenever he wants a divorce he can have it. He knows that there is some legal rigmarole connected with it, even though he does not quite see why and what. He knows he has to have a lawyer to whom he has to pay a fee, which he, of course, always regards as exorbitant. But he is perfectly convinced that if he wants a divorce he can have it. ¶ Very few people who harbor that belief have ever looked up the divorce statute of their state, and, if they did, they might experience a severe shock. According to the official law of the majority of states, it is not so easy to obtain a divorce (Rheinstein, 1952, p. 45).

*Evans v. Evans* (1790):

*What is cruelty?* ... it is the duty of courts ... to keep the rule extremely strict. The causes must be grave and weighty, and such as shew an absolute impossibility that the duties of the married life can be discharged. ... What merely wounds the mental feelings is in few cases to be admitted, where they are not accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty: they are high moral offences in the marriage-state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve. Under such misconduct of either of the parties (for it may exist on the one side as well as on the other) the suffering party must bear in some degree the consequences of an injudicious connection; must subdue by decent resistance or by prudent conciliation, and if they cannot, they must suffer in silence. And if it be complained that by this inactivity of the courts much injustice may be suffered and much misery produced, the answer is, that courts of justice do not pretend to furnish cures for all the miseries of human life. They redress or punish gross violations of duty; but they go no farther; they cannot make men virtuous; and, as the happiness of the world depends upon its virtue, there may be much unhappiness in it which human laws cannot undertake to remove.

Still less is it cruelty, where it wounds not the natural feelings, but the acquired feelings arising from particular rank and situation; for the court has no scale of sensibilities by which it can gauge the quantum of injury done and felt; and therefore, though the court will not absolutely exclude considerations of that sort, where they are stated merely as matter of aggravation; yet they cannot constitute cruelty where it would not otherwise have existed: of course, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number amongst its necessities, is not cruelty. ...

These are negative descriptions of cruelty; they shew only what is *not* cruelty ...; but if it were at all necessary to lay down an affirmative rule ... the danger of life, limb, or health, is usually inserted as the ground upon which the court has proceeded to a separation. ... I have heard no one case cited in which the court has granted a divorce without proof given of a *reasonable apprehension* of bodily hurt.

*Carpenter v. Carpenter* (1883):

It was formerly thought that to constitute extreme cruelty, such as would authorize the granting of a divorce, physical violence is necessary; but the modern and better-considered cases have repudiated this doctrine as taking too low and sensual a view of the marriage relation, and it is now very generally held that any unjustifiable conduct on the part of either the husband or the wife, which so grievously wounds the mental feelings of the other,

or so utterly destroys the peace of mind of the other as to seriously impair the bodily health or endanger the life of the other, or such as in any other manner endangers the life of the other, or such as utterly destroys the legitimate ends and objects of matrimony, constitutes “extreme cruelty” under the statutes, although no physical or personal violence may be inflicted, or even threatened. [Citations.]

None of the foregoing cases are precisely like the present case, but many of them sustain the principle above enunciated; and taken together, they clearly show the tendency of modern thought upon this subject. The tendency of modern thought is to elevate the marriage relation and place it upon a higher plane, and to consider it a mental and spiritual relation as well as a physical relation.

*Waldron v. Waldron* (1890):

the final test of its sufficiency, as a cause of divorce, must be its actual or reasonably apprehended injurious effect upon the body or health of the complaining party. . . . the practical view of the law is, that a degree of cruelty which cannot be perceived to injure the body or the health of the body, “can be practically endured,” and must be endured, if there is no other remedy than by divorce

*Barnes v. Barnes* (1892):

[*Waldron*] was decided by a bare majority of the court as it was then constituted, and while the conclusion there reached finds support in many earlier cases cited in the opinion, we do not think it can be sustained without a wide departure from the letter and spirit of section 94 of the Civil Code of this state, which declares: “Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.” . . .

The tendency of modern decisions, reflecting the advanced civilization of the present age, is to view marriage from a different standpoint than as a mere physical relation. It is now more wisely regarded as a union affecting the mental and spiritual life of the parties to it,—a relation designed to bring to them the comfort and felicities of home life,—and between whom, in order to fulfill such design, there should exist mutual sentiments of love and respect.

*Blanchard v. Blanchard* (1909):

Incompatibility of temperament is disclosed by the record also, and that mutual confidence and affection essential to conjugal happiness and the proper maintenance of the marriage state seems to have been entirely wanting.

*McGann v. McGann* (1947):

[Wife] was cold toward [husband], nagged him, wrote him whining letters while overseas, turned her back on him while in bed, attempted to regulate his life and refused to permit him to go bowling with his father, invited him to leave home, made it difficult for him to practice dentistry, and attempted to have him arrested.

*Barngrover v. Barngrover* (1922):

The nagging grew out of the ultrapurist character of [wife]. [Wife] says that “she is an earnest Christian woman.” It may be added that the whole record sustains that claim. It may be added that apparently [husband] is an earnest Christian man. Nevertheless it is a sound legal proposition that nagging by a spouse of such character may have, and probably would have, the same effect on the other spouse as any other kind of nagging. [Wife] also argues that “her motives have always been good.” Conceding such to be the fact, it still remains that nagging from good motives may be just as hurtful as nagging from any other kind of motives.

*Weil v. Weil* (1951):

It is apparent from the proposal made by the trial judge, and from his other comments, that he believed a divorce was the only satisfactory solution to the problems presented in the marital tragedy that confronted him. His statement that “it was clear to him from all the evidence that he had heard and read in the case, that the legitimate objects of matrimony had been destroyed” is conclusively supported by the record. The evidence shows that the marriage of the parties began with mutual affection and happiness, but that arguments and misunderstandings, largely over financial matters, became increasingly frequent and acrimonious. The physical health of both parties has become seriously impaired. Family, social, and even business relationships have been disrupted. No prospects of reconciliation remain—the final separation followed earnest efforts to overcome differences and live peacefully together. Since the filing of the complaint the activities of the parties have degenerated into a legal battle, characterized by extravagant and embittering charges, and in which the only remaining consideration of importance is money. We cannot ignore the important “social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.”

*Slavich v. Slavich* (1951), quoting the trial judge’s remarks:

never in my experience have I tried a case of this character, a divorce case or plea for separate maintenance, where there were so many intangibles that have been enlarged into apparently important features ... I received the impression at the hearing yesterday that this case is made up almost exclusively of trivial incidents. ... the facts developed in the course of this trial are very fragmentary ... It seems an immense amount of discussion here over very little. ... I think both these parties are acting very, very silly indeed, very silly. ... [F]rom an economic standpoint, these people are way superior to the average American family. The only thing they lack, they don’t lack any income, but they lacked happiness and the ability to get along with one another—but I think it has got beyond that point. They both exhibit, I think, extreme dislike for one another, both of them.

... I had to. I couldn’t keep these people together. Mrs. Slavich wouldn’t take a divorce, so I gave the divorce to him.

*Ganann v. Ganann* (1952):

The court was fully justified in drawing the inference that if the appellant loved the respondent at the time of the marriage she lost that love shortly afterwards and that that fact became evident to respondent.

*De Burgh v. De Burgh* (1952):

The family is the basic unit of our society, the center of the personal affections that ennoble and enrich human life. It channels biological drives that might otherwise become socially destructive; it ensures the care and education of children in a stable environment; it establishes continuity from one generation to another; it nurtures and develops the individual initiative that distinguishes a free people. Since the family is the core of our society, the law seeks to foster and preserve marriage. But when a marriage has failed and the family has ceased to be a unit, the purposes of family life are no longer served and divorce will be permitted.

... Important developments of the past several decades have made it increasingly clear that the courts can no longer decline to exercise the discretion inherent in the clean hands doctrine.

The rising divorce rate in the United States has compelled a growing recognition of marriage failure as a social problem and correspondingly less preoccupation with technical marital fault. This trend is strikingly exemplified by the recent amendment of section 92 of the Civil Code designating incurable insanity as a ground for divorce. Formerly, no matter how vicious the conduct of an insane spouse, he could not be divorced, for the law refused to find in him the guilt essential to a marital offense. [Citations.] The Legislature has come to realize, however, that when a union is dominated by insanity, fulfilment of the normal purposes of marriage is hopeless. What was once a bar to divorce is now recognized as a justification for divorce. Still more striking in recognition of this trend has been the enactment of legislation in many states authorizing divorce when the spouses have lived apart for a required number of years. Marriage failure, rather than the fault of the parties, is the basis upon which such divorces are granted. [Citations.]

It would be froward indeed for the court, when it is called upon to evaluate an alleged recriminatory defense, to ignore the growing awareness that a marriage in name only is not a marriage in any real sense. In other fields, equity does not deny relief on the ground of plaintiff's unclean hands when to do so would be harmful to the public interest.

... In keeping with the traditional view of the law toward both marriage and divorce, the Lord Chancellor states that the consideration of "primary importance" is the interest of the community at large. This interest is "to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down."

... the doctrine of recrimination, like the doctrine of unclean hands of which it is a part, is neither puristic nor mechanical, but an equitable principle to be applied according to the circumstances of each case and with a proper respect for the paramount interests of the community at large.

... Reconciliation appears impossible. The trial judge himself observed that "the marriage here was a failure from the start" and that "there is nothing really to keep them together." ... it is apparent that there has been a total and irremedial breakdown of the marriage. Technical marital fault can play but little part in the face of the unhappy spectacle indicated by this evidence, with its inevitable effect upon the family, friends, neighbors, and business interests of the parties.

Also from *De Burgh*, Chief Justice Traynor re-interprets and thereby repeals the recrimination clause:



the language of section 122 of the Civil Code indicates that the trial court may have abused its discretion in disregarding the requirement therein that the cause of divorce of which one party is found guilty must be “in bar” of that party’s ground of divorce against the other party. To resolve this conflict, we have studied the history of the doctrine of recrimination, its objectives, and the wording and legislative background of the applicable statutes.

It has sometimes been assumed that any cause of divorce constitutes a recriminatory defense. The legislative language, however, is ill-adapted to such a broad purpose. Read together, sections 111 and 122 of the Civil Code provide: “Divorces must be denied upon ... a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff’s cause of divorce.” Had the Legislature meant to make every cause of divorce an absolute defense, it could easily have provided that: “Divorces must be denied upon ... a showing by the defendant of any cause of divorce against the plaintiff.” We are bound to consider the additional requirement that such a cause of divorce must be “in bar” of the plaintiff’s cause of divorce.

... It is clear that the Legislature, in relying upon judicial principles of general application, intended that in divorce litigation the fault of the plaintiff should have no more significance than elsewhere in the law. Apparently with this purpose in mind it worded the statute to require that a cause of divorce shown by defendant must be “in bar” of the plaintiff’s cause of divorce. It would have defeated its own purpose had it closed the avenues to divorce when the legitimate objects of matrimony have been destroyed. The perpetuation of an unwholesome relationship would be a mockery of marriage.

... We have concluded that section 122 of the Civil Code imposes upon the trial judge the duty to determine whether or not the fault of the plaintiff in a divorce action is to be regarded as “in bar” of the plaintiff’s cause of divorce based upon the fault of the defendant. Tested by the considerations discussed above, the evidence in the present case would have been ample to support a finding that the parties’ misconduct should not bar a divorce. Reconciliation appears impossible. The trial judge himself observed that “the marriage here was a failure from the start” and that “there is nothing really to keep them together.”

Also from *De Burgh*, California divorce cases would henceforth be governed by this consideration:

The prospect of reconciliation. The court should determine whether the legitimate objects of matrimony have been destroyed or whether there is a reasonable likelihood that the marriage can be saved. It should consider the ages and temperaments of the parties, the length of their marriage, the seriousness and frequency of their marital misconduct proved at the trial and the likelihood of its recurrence, the duration and apparent finality of the separation, and the sincerity of their efforts to overcome differences and live together harmoniously.

Also from *De Burgh*, Justice Edmonds’s dissent:

Ignoring the mandatory “must” of section 111, the majority hold that the trial court may exercise its “discretion” in determining whether to grant a divorce where each party has shown a cause of divorce against the other.

... The fallacy of such circuitous reasoning lies in the misinterpretation of the plain language of the statute.

... That the doctrine of recrimination has been repealed is made crystal clear by the suggestion “that a divorce will be granted to both parties.” The code makes no provision for such a decree and the result is contrary to the requirement that a divorce “must be denied” when recrimination is proved. ... The Civil Code contemplates that a divorce can be awarded to only one party. Section 131 provides in part: “If it determines that the divorce ought to be granted, an interlocutory judgment must be entered, declaring that *the party* in whose favor the court decides is entitled to a divorce; ...”

... this court should not usurp the legislative prerogative by the device of interpreting a statute which needs no interpretation, and which has been accepted without question for 80 years. If public policy no longer approves the doctrine of recrimination, then it is for the Legislature, and not for the court, to repeal the statute.

*Kirsch v. Kirsch* (1953):

From the narrative of the unfortunate relationship that developed between the parties it is apparent that the family effected by the union of these parties is at an end. ... When a marriage fails, the family thereupon ceases to exist; it is no longer a unit, “the purposes of family life are no longer served” and a dissolution should be decreed if statutory requirements therefor are met. [*De Burgh* citation.] Marriage should not be degraded and its purposes frustrated by such decrees as will merely punish the parties and rob their progeny of love and contentment yet at the same time bring no benefit to the state.

*Hendricks v. Hendricks* (1954):

It is fundamental that a marriage contract differs from other contractual relations in that there exists a definite and vital public interest in reference to the marriage relation. The “paramount interests of the community at large,” quoting from the Phillips case, *supra*, is a matter of primary concern. The instant case presents a picture of long continued strife not merely between husband and wife but as well involving the two children in the marital quarrels. The parties have been married almost 23 years, and as appellant says, it appears that “their constant litigation has produced nothing so far but additional trouble for the entire family (Clk. Tr., pp. 40, 41).” Public policy cannot well be served by denying a divorce to both parties. Since both parties are, under the evidence, entitled to a divorce on the ground of cruelty, they should be granted that relief without further litigation.

*Ohligschlager v. Ohligschlager* (1954):

The law provides a method of escape from marital relationships that have become intolerable to one or both of the parties. This was such a marriage. There were mutual desires to solve the marital problems and avoid a divorce, but the sincere efforts of [wife] had failed and it appeared clearly from the evidence that further efforts would have been futile. It is not the policy of the law that a man and his wife should be required to live together, or be held in a marital relationship, when they have come to regard each other as mere strangers, even though one of them objects to its termination. And when it appears that honest and repeated efforts have been made by the complaining party to overcome the causes of the failure of the marriage, and that they cannot be overcome, it would be an act of injustice to withhold the relief which the law provides.

*Friedenberg v. Friedenber*g (1960):

Two conclusions were drawn from the facts found. The first one was that the deed was void because given for a promise that was promotive of a divorce and so contrary to public policy. No doubt for many years the premise of this conclusion was sound; such promises were held to be contrary to public policy. (See cases cited, 9 Cal.Jur. 636.) A change has taken place in the law.

*Baker v. Baker* (1965):

The court further found the marriage had failed; that there was no likelihood of reconciliation or that the marriage could be saved, and that its continuance would involve serious hazard to the health of both parties and be a deleterious influence upon their minor child. ... The evidence in the record fully supports the findings and clearly demonstrates that the trial court did not abuse its discretion in granting each party a divorce.

California Legislature (1969, pp. 8054-8055):

California's outmoded divorce laws, dating for the most part from 1872, lately have generated considerable dissatisfaction. In recent years there have been exhortations for reform by professional groups, the electorate and those who have experienced divorce. In response, Governor Edmund G. Brown in May, 1966, established the Governor's Commission on the Family to examine what he termed "the high incidence of divorce in our society and its often tragic consequences."

... Dissolution was to be based upon the sole finding by the court that 'the legitimate objects of matrimony have been destroyed and that there is no reasonable likelihood that the marriage can be saved.' That language was based upon the opinion of Chief Justice Roger Traynor in *De Burgh*

Commentary on the 1969 Family Law Act:

They [those in the legal profession] don't, generally, think it's an "easier" bill. "How could divorce be easier than it already is in California?" one attorney asks (McGuinness, *Los Angeles Times*, 1969-09-04, p. G1).

dramatic and sweeping as the new law is in its language, much of it simply represents a legislative recognition of evolving public attitudes and judicial practices. For most California judges, the changes involve not much more than the use of new terms and different code sections; in few courtrooms will considerable restructuring of the judicial process be necessary (Avakian [Alameda County Superior Court judge], 1970).

According to Herma Kay, that divorce is now available on demand is not very different from the old practice. "It's just under a new rubric. The mental cruelty divorces were divorce on demand as far as I can tell. I don't remember many contested cases being denied, once the courts determined ways to grant a wife support." (Wheeler, 1974, p. 24).

As one judge has said, the new law "represents a legislative recognition of evolving public attitudes and judicial practices." Another judge has said that "what was *de facto* before the Act is now *de jure*; the new law has cut out hypocrisy." In this respect, the new law has not created "divorce for the asking," as has been suggested. Judges interviewed agreed that divorce is easy to get, but the ease of divorce has not been aided by the new law. A simple divorce has been possible for some time (Goddard, 1972, p. 419).

Would not suggest that divorce be made easier to obtain in California, since I don't think that is possible. There is no person in this state who can't get a divorce simply by supplying the given attorneys with the right amount of money. It is simply a matter of patience and waiting until the routine goes through and getting her sister or brother or Aunt Nellie to tell a couple of white lies for you. It couldn't be made any easier (California Assembly Interim Committee on Judiciary, 1964, pp. S-42).

the defendant's opposition did not markedly reduce the plaintiff's chances of success. The only result of an attempt to prevent divorce was to make reconciliation less possible (Berg, 1974, p. 455).

It was impossible to make divorce easier in California than it already was (Herma Hill Kay, as quoted in Jacob, 1988, p. 46).

Remarks regarding how the 1969 California Family Law Act could, if judges had so chosen, have been interpreted conservatively:

Lawyers are in doubt as to whether ... the Legislature intended to make it more difficult to obtain a divorce in California, or to make it easier. For example, suppose a husband struck his wife, knocking her down, but only did this once during a 10-year marriage. Under the current law this one incident would be extreme cruelty and would entitle the wife to a divorce. However, could a judge find that one such incident was an irreconcilable difference causing the irremediable breakdown of the marriage? ... It is to be kept in mind that the new divorce law is the product of a commission appointed by Governor Brown for the purpose of saving the family as a unit (Sharff, 1969).

True enough, this term is susceptible of a great variety of interpretations, especially when, as the statute says, the breakdown must be caused by irreconcilable differences. A conservative judge may use this formula to deny the dissolution of a marriage in situations in which under the former law a divorce might have been had for the asking, upon true or faked evidence. But are California trial judges likely to be conservative? Few have been so in the past. They have handled the old statute so that a divorce was hardly ever denied and thus the California divorce rate has been one of the highest in the nation (Rheinstein, 1972, p. 373).

one can imagine a judge, whose commitment to the institution of marriage is deeper than that of the immediate parties, denying a divorce for a single act of adultery, cruelty or desertion, even though he would have been bound under the old law to grant a divorce upon a showing that such a marital offense had been committed. Instances may well arise where the judge denies a divorce when both parties want it, simply because he feels a breakdown has not occurred. (Lee, 1972, p. 419)

The conservative aura of the reforms created the impression that the Family Law Act of 1969 would truly escalate the hurdles facing dissolution-minded couples. Both law review commentary and appellate court interpretation reinforced the notion that California No-Fault had closed the gates on divorce on demand. (DiFonzo, 1994, p. 546)

## CHAPTER III

### Omnibus Clauses and Contemporaneous Changes in Divorce Rates, 1867-1906

#### 1 Introduction

To what degree are legislation and divorce rates linked? This question is of interest to policy-makers, for example those seeking to shape the American family. It has been intensively studied by economists of the family, but mostly in the context of the twentieth century. This chapter instead studies data from 1867-1906—these were last analyzed a century ago and are here subject to the first modern empirical analysis.

This chapter also focuses on the unusually liberal divorce laws known as *omnibus clauses*. These catch-all clauses gave judges wide discretion to grant divorces. For example, Washington's permitted divorce "for any other cause deemed by the court sufficient." As remarked by Crayton (1904, p. 28), "What case could not be covered by this statute!" The omnibus clauses were arguably the most liberal divorce statutes ever known to the United States. A study thereof might therefore be expected to shed light on the degree to which legislation and divorce rates are linked.

This chapter's first contribution is to give a primer on these omnibus clauses. This is of value because most discussions of omnibus clauses were isolated, made in passing, and contained errors. I give a single, complete, and correct list of these omnibus clauses. This list includes the reasons behind their enactment and abolition. I also give an exhaustive examination of the reported rulings from five states' Supreme Courts. I find that these Supreme Courts interpreted the omnibus clauses conservatively.

This chapter's second contribution is to conduct an empirical analysis of these omnibus clauses. The analysis involves a multiple regression. The dependent variable is the crude divorce rate (CDR), defined here as *absolute* divorces per *million* population. An *absolute* divorce is the complete, final, and legal dissolution of a valid marriage; it must be distinguished from such other legal devices as limited divorce, annulment, decree of nullity, and decree *nisi*. The dependent variable is constructed by compiling annual county-level divorce counts for 1867-1906.

The independent variables include legal coding for 44 aspects of divorce statutes. These 44 aspects of divorce statutes are constructed by examining the statutes and session laws of 50 divorce jurisdictions, over 1867-1906. Two of these 44 legal aspects pertain to the omnibus clauses. The remaining 42 are not the focus of this chapter. Nonetheless, I do consider the estimates of their correlation with the CDR.

The empirical analysis here suggests that the omnibus clauses were correlated with higher CDR. The magnitude of this correlation amounted to over a fifth and over a third of the mean and the standard deviation of the dependent variable—most would judge this non-trivial, if not substantial.

Data from this bygone era is worth studying for at least three reasons. First, this era contains surprisingly complete and extensive divorce data. Concerned about the problem of divorce, the National Divorce Reform League and other reformers petitioned Congress to undertake massive investigations of marriage and divorce statistics. The results were the *Wright Report* (1889) (1891), covering 1867-1886 and numbering 1,074 pages; and the *North Report* (1909) (1908), covering 1887-1906 and numbering, in two parts, 535 and 840 pages. As said by Willcox (1891, p. 9) of the first report,

the bulky volume is a mine of information on the subject of divorce in this and foreign countries. Like other mines, however, it does not carry its ore on the surface; it needs to be worked.

The last analyses of these troves of data were made about a century ago. These analyses are reviewed in greater detail in section 3.2. They were less sophisticated than the empirical analysis in this chapter. They examined the trends in divorce rates and laws of each state and then proceeded to adjudge, on a case-by-case basis, whether legislation had had any influence over the divorce rate in that state. One broad conclusion common to these dated studies was that the influence of legislation on divorce was not large. This conclusion is consistent with the findings of this chapter.

A second reason for examining this era is that the omnibus clauses were in effect during this time. The no-fault reforms circa 1970 have attracted much attention. It is less well-known that the nineteenth century had divorce statutes that were more liberal than even today's no-fault divorce laws. This chapter gives these unusually liberal divorce laws some of the attention they deserve.

A third reason for examining this era is that it had considerable variation in legislation across space and time, and thus provides a helpful setting for identifying the effects of legislation. In this early era, there were few precedents to serve as constraints: The mother country (England and

Wales) had not known absolute divorce, except as Acts of Parliament; moreover, ecclesiastical courts had handled matrimonial affairs, but these were never replicated in America. Also, this early era bore witness to what Howard (1904, p. 4) called the “immense volume of laws, the constant stream of legislative enactments, the ceaseless tinkering of the statute-maker, the wearisome repetitions.” Altogether, it would have been during this early era that Vernier’s (1932) remark rang especially true:<sup>65</sup>

Divorce statutes are not a product of logic alone. They are a resultant of many mixed elements. Religion, sentiment, logic, historical accident, commercialism, and other matters—all have combined to form an inharmonious and incongruous whole. Anyone making a comparative reading of our American divorce statutes for the first time is astounded by the unnecessary variation and vagueness of this legislative output.

This chapter proceeds as follows. Section 2 provides a primer on the omnibus clauses. Section 3 describes this chapter’s empirical analysis and is divided into a further four subsections. The first considers how legislation may influence divorce; the second reviews older studies on the influence of legislation on divorce; the third discusses the divorce data; and the fourth discusses the legal coding. Section 4 reports and discusses the results of the empirical analysis. Section 5 concludes.

## 2 A Primer on Omnibus Clauses

The phrase *omnibus clause* was coined by contemporary observers and cannot be found in any statute. There is thus the question of what an omnibus clause is. Definitions varied across sources. To motivate this chapter’s definition of an omnibus clause, consider first these two descriptions of Connecticut’s omnibus clause:

Previous to this time the law ... had contented itself with alleging certain distinct and definite crimes, capable in each case of definite legal proof ... Now, however, in language so general and vague, and wholly unknown to any jurisprudence, whether civil or criminal, as to be utterly incapable of any definite legal construction, marriage was declared dissoluble by “any such misconduct as permanently destroys the happiness of the petitioner, or defeats the purposes of the marriage relation.” No rules of evidence are provided for determining whether these conditions are fulfilled, nor are the purposes of the marriage relation more particularly defined. It is evident that the widest door possible was opened, both in the character of the evidence which might be admitted, and in the latitude of discretion allowed the judge in his ultimate decision (Loomis, 1866, pp. 441-442).

If the law containing this provision had been entitled “An Act for the Promotion of Divorce in the State of Connecticut,” the description would have been exact (Gladden, 1882, p. 412).

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<sup>65</sup> See also Clark (1968, p. 379).

TABLE III.1—STATES THAT HAD OMNIBUS CLAUSES, YEARS OF ENACTMENT AND REPEAL

State	Enactment	Repeal	State	Enactment	Repeal
Iowa	1846	1855	Louisiana	1870	1877
Minnesota	1855	1866	Connecticut	1849	1878
North Carolina	1827	1872	Utah	1852	1878
Indiana	1824	1873	Maine	1847	1883
Illinois	1832	1874	Washington	1854	1921

Notes: See Appendix D for sources of these dates. See Section 6 for the wording of each omnibus clause.

As a second example, consider North Carolina’s omnibus clause. It was referred to, in *Scroggins v. Scroggins* (<sup>66</sup>1832), as “the unlimited powers which we are commanded to exercise.” Commenting on *Scroggins*, Kent (1854, p. 77) wrote, “This vast power and discretion were found by the Supreme Court to be exceedingly embarrassing and painful in the exercise.”

As a third example, Governor Baker (1871, p. 66) described Indiana’s omnibus clause thus:

This clause, which pretends to lay down a rule for the government of human affairs in the most important relation of life, is at war with the fundamental idea and elementary definition of law. ... Under this clause the question, what is or is not a sufficient cause for a divorce, instead of being determined by a general rule is measured by no rule at all, and the standard of judgment, instead of being prescribed so that it may be known and read of all men, remains locked up in the mind of the judge until he pronounces judgment between the parties in the case before him.

Therefore, this chapter defines an omnibus clause to be a clause in the statutory divorce law that gives the court wide discretionary power to grant an absolute divorce. It may be that the court is allowed to grant a divorce if this be deemed ‘just’ or ‘reasonable’. It may also be that the court is allowed to take into consideration the questions of whether the parties can live together in peace, happiness, or union; and whether the happiness of the petitioner has been destroyed. However, an omnibus clause may *not* require acts of cruelty or neglect.

Table III.1 lists the ten states that ever enacted omnibus clauses.<sup>67</sup> (Section 2.4 lists another three states which enacted what I call *weak* omnibus clauses.) Here are some summary observations. These ten states spanned all four Census regions (see Figure III.1).

<sup>66</sup> *Scroggins v. Scroggins* (14 N.C. 535, 1832).

<sup>67</sup> Several writers claim that Missouri, Kentucky, Florida, and Wisconsin also had omnibus clauses. They are either mistaken or have a different definition of an omnibus clause. Kent (1854, p. 77) is mistaken about what is printed on p. 225 of the *Revised*



Nine of the ten omnibus clauses were enacted before 1867. Louisiana’s was enacted in 1870. Two of the ten were abolished before 1867 (Iowa in 1855, Minnesota in 1866). One was abolished after 1906 (Washington in 1921). The remaining seven were all abolished between 1872 and 1883. The shortest-lived omnibus clause was Louisiana’s, at seven years (1870-1877). The longest-lived was Washington’s, at 67 years (1854-1921).

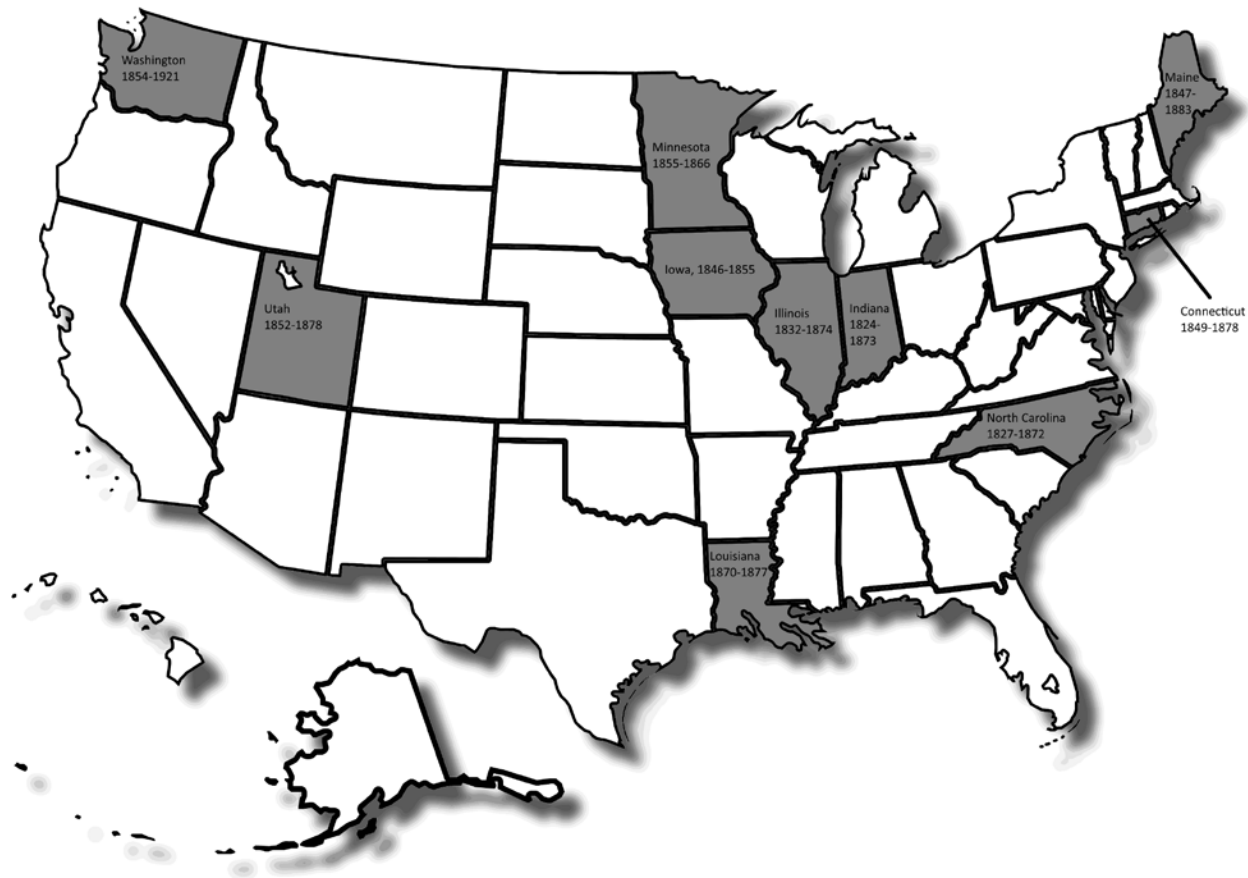


FIGURE III.1. STATES THAT HAD OMNIBUS CLAUSES (SHADED IN GRAY), YEARS OF ENACTMENT AND REPEAL

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*Statutes of Missouri, 1835.* Snyder (1889, p. 159) says that Kentucky “permitted divorce ‘for any cause in the discretion of the court’.” Wording aside, he is correct, but this was only for **limited divorce**. He also says that “the law now allows a dissolution of the marriage ‘where the husband habitually behaves toward his wife, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, or to destroy permanently her peace or happiness.’” But most would consider this clause to be a cruelty clause, especially given the phrase “cruel and inhuman.” Stimson (1886, p. 688) claims that Florida and Wisconsin had omnibus clauses. But most would simply consider **Florida’s** a cruelty clause, while a careful reading of Wisconsin’s [§2357](#) and [§2358](#)—which Stimson fails to quote correctly—suggests that these are simply neglect and cruelty clauses. Crayton (1904, p. 28) writes, “At present this ‘Omnibus Clause’ has generally disappeared from our statute law, but not wholly, for a near equivalent still disfigures the statutes of a few States. In Florida, ‘the habitual indulgence of a violent and ungovernable temper’ is ample ground for divorce. Kentucky, Missouri, Oregon, Wyoming, and Washington, will grant divorce for ‘indignities sufficient to render life burdensome’.” The present chapter classifies these two laws cited by Crayton as cruelty clauses.

Both Utah and Washington were territories when they enacted their omnibus clauses. Both did so at their very first legislative session. Both gained statehood in 1896. Utah abolished its omnibus clause in 1878, before statehood, while Washington did so only in 1921, after statehood.

With one exception, every omnibus clause was accompanied by at least one other divorce ground. The exception was Maine between 1850 and 1863, when its omnibus clause was its *only* divorce ground.<sup>68</sup>

Figure III.2 depicts the CDR of the ten states that ever had omnibus clauses, that of the other states, and that of the USA as a whole. It is seen that the ten states that ever had omnibus clauses had consistently higher CDR.

Figure III.3 depicts the CDR of the eight states whose omnibus clauses were in effect during at least some portion of 1867-1906. Note that Utah, whose CDR exploded during 1875-1877, is depicted on the secondary axis (right axis). The figure suggests that only in the cases of Utah and Maine was the enactment or repeal of an omnibus clause followed by any abrupt changes in CDR.

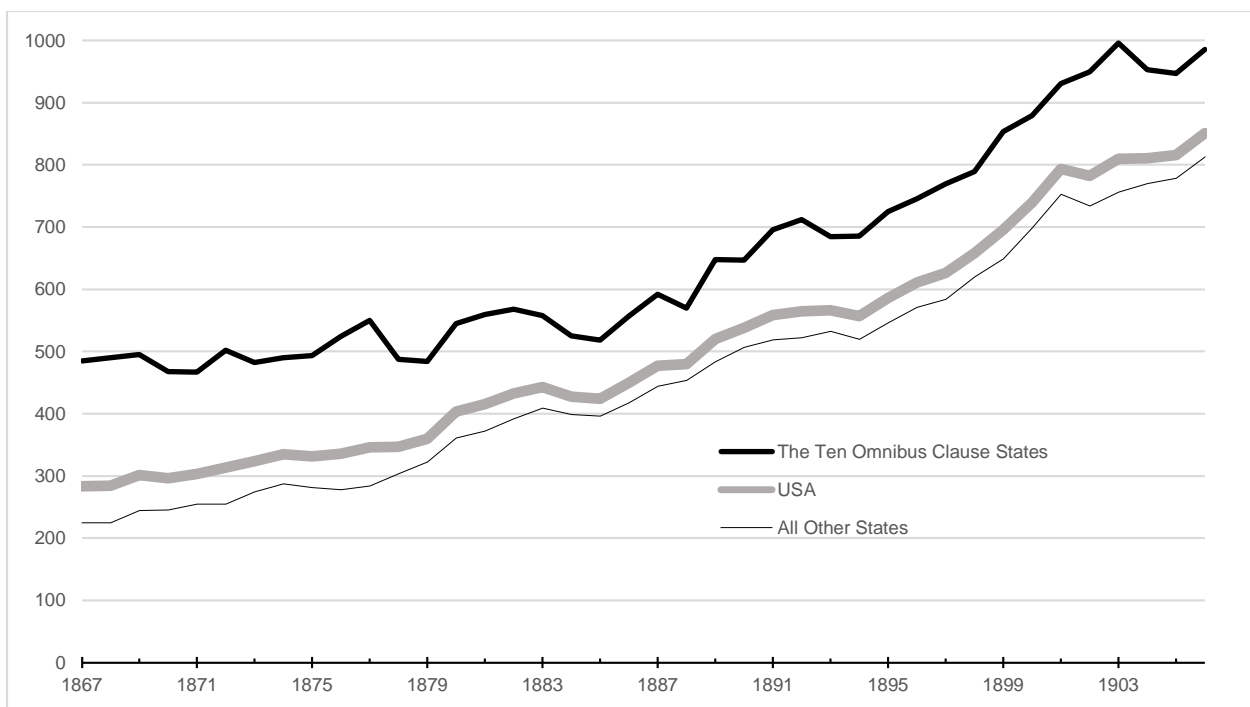


FIGURE III.2. 1867-1906 CDR OF THE TEN OMNIBUS CLAUSE STATES, USA, AND ALL OTHER STATES

Notes: Author's calculations. The ten omnibus clause states are Iowa, Minnesota, North Carolina, Indiana, Illinois, Louisiana, Connecticut, Utah, Maine, and Washington.

<sup>68</sup> The section containing all other grounds for divorce was repealed in 1850 (*Acts and Resolves*, 1850, Ch. 171, Sect. 4, p. 151, approved 1850-08-16). Subsequently, it would only be in 1863 that desertion was reinstated (*Acts and Resolves*, 1863, Ch. 211, pp. 157-158, approved March 25, 1863).

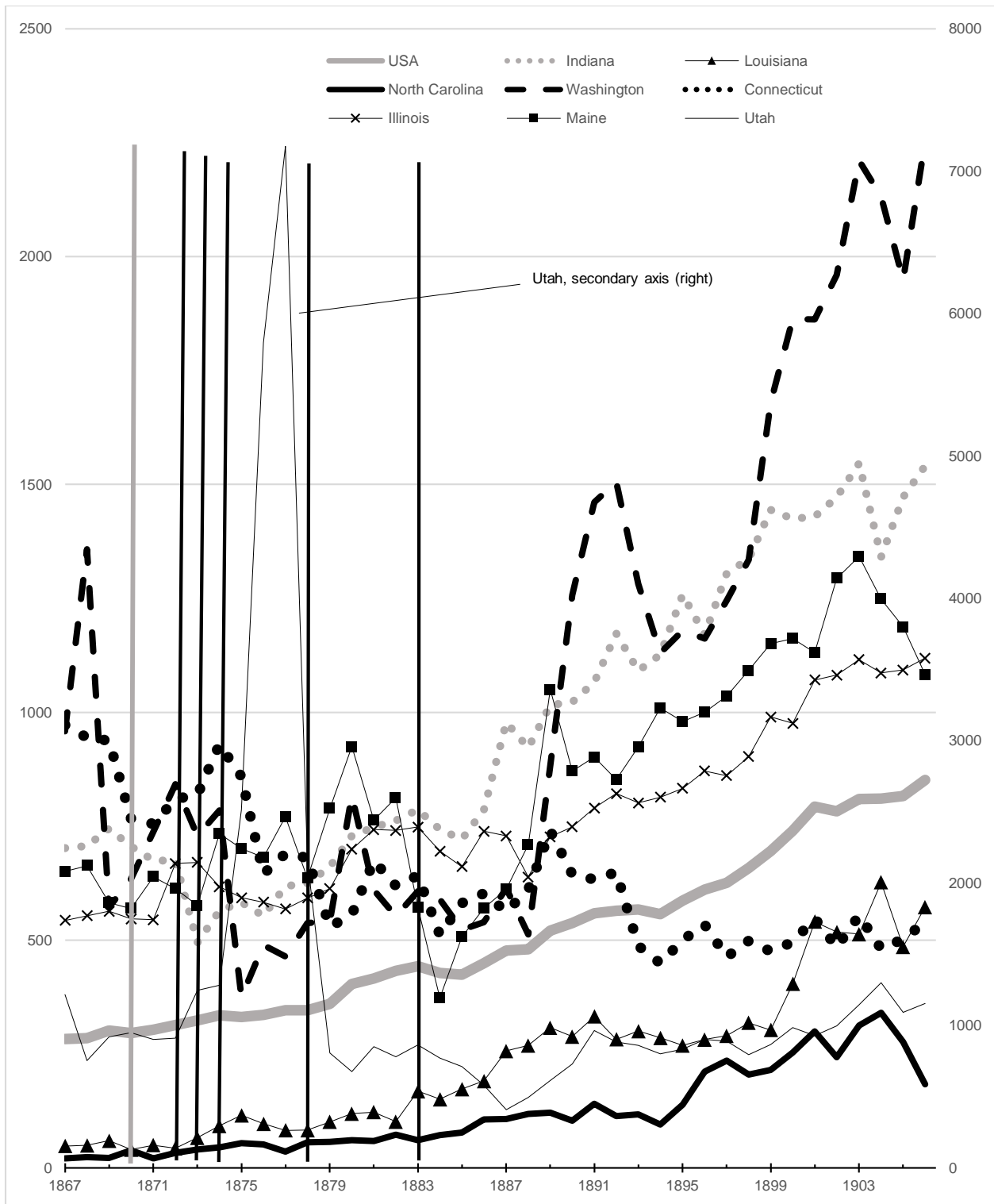


FIGURE III.3. 1867-1906 CDR OF USA, CONN., INDIANA, ILL., LOUISIANA, MAINE, N. CAROLINA, UTAH, & WASH.

*Notes:* Author's calculations. This figure depicts the eight states whose omnibus clauses were in effect during some portion of 1867-1906. The secondary (right) vertical axis is for Utah only. During 1867-1906, only Louisiana enacted an omnibus clause (1870)—this is marked by a gray vertical line; seven repealed their omnibus clauses—these are marked by black vertical lines (1872: North Carolina; 1873: Indiana; 1874: Illinois; 1878: Connecticut, Louisiana, & Utah, and 1883: Maine); and, of the eight states depicted, two gained statehood (Washington, 1889 and Utah, 1896).

## 2.1 *Reasons for Enactment*

Bishop<sup>69</sup> suggests that there were two main reasons for enacting omnibus clauses. First, to provide relief for those “cases falling completely within the equity of the divorce laws, yet not sufficiently within the letter to enable the tribunals to interfere.” Second, to “prevent the legislature from being burdened with applications for special divorces.” This second reason requires some explanation:

Many states had had the practice of legislative divorce (LD). That is, their legislatures had had the power to grant divorces. As the demand for divorce rose, this power proved to be less a privilege than a burden. Most states would eventually ban such practice through their constitution. What Bishop suggests is that in some states, omnibus clauses were enacted to curb such practice.

North Carolina’s act of 1827 introduced the omnibus clause. The preamble candidly revealed that this was to disencumber legislature.<sup>70</sup> The same act also provided that “no defendant or party offending” divorced through an act of legislature “shall ever be permitted to marry again.” Both the omnibus clause and this latter provision would have had the effect of making LD less attractive. Nonetheless, the practice of LD would not cease<sup>71</sup> until it was altogether banned by the *1835 Constitution* (Art. 1, Sec. 4, §3).

Connecticut’s omnibus clause was enacted in 1849. Loomis (1866, p. 441) claims that it likewise sprang “mainly from the strong desire on the part of Legislature to rid itself of troublesome applications.” I have no direct evidence for this claim. But it seems plausible. Even though Connecticut had permitted judicial divorce since at least 1702,<sup>72</sup> its legislature remained burdened by divorce applications.<sup>73</sup> In 1843, cruelty and intemperance were added as grounds for judicial divorce. But even so, legislature continued to receive divorce applications.<sup>74</sup> The 1849 law enacted the omnibus clause and also stipulated that the superior court was to have sole jurisdiction over divorce cases. Thereafter, LD became very rare.<sup>75</sup>

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<sup>69</sup> Bishop (1859, pp. 519-520), (1873, pp. 694-695), (1864, pp. 685-686), (1881, pp. 640-641).

<sup>70</sup> *Laws of North Carolina*, 1827-28, pp. 19-20, Ch. XIX: “the numerous applications for divorce and alimony ... consume a considerable portion of time ... and consequently retard the investigation of more serious subjects.” It should also be noted that the Act of 1814 had imposed the requirement that all absolute divorces be ratified by the General Assembly (*Laws*, 1814, pp. 4-6, Ch. V, Sec. IV). But this onerous requirement was repealed in 1818 (*Laws*, 1818, p. 21, Ch. X).

<sup>71</sup> There were 1 in 1832, 2 in 1833, 6 in 1834, and a record 15 in 1835 (Ferrell, 1963, p. 619).

<sup>72</sup> *Acts and Laws, Of His Majesties Colony of Connecticut in New-England*, 1702, p. 28.

<sup>73</sup> Between 1837 and 1843 are found, in each year, 16, 9, 19, 9, 7, 10, and 13 LDs granted.

<sup>74</sup> Between 1844 and 1849 are found, in each year, 2, 5, 6, 7, 15, and 18 LDs granted.

<sup>75</sup> Though not extinct, as some writers have erroneously claimed. One can be found in each of 1850, 1856, 1859, and 1871. One can also be found as late as 1915, granted to one Merrill C. Jenkins, for incurable insanity on the part of his wife (*Special Acts*, January Session, 1915, No. 347, p. 387, approved May 20, 1915).

Utah's omnibus clause was enacted in 1852. It was dubbed by Ertman (2010, pp. 341-342) "the most permissive divorce statute in the entire country." An account of early Utah divorce law is given by Aaron (1982). In "the absence of direct legislative history," Aaron marshals a variety of other evidence and arrives at the tentative conclusion "that the new divorce statute may have been formulated as a convenient method to allow the faithful to rescind old marriage bonds in order to remarry within the sect" (p. 22).

In 1824, Indiana was the first American jurisdiction to enact an omnibus clause. It might be thought that Robert Dale Owen was involved in the 1824 enactment, given the oft-quoted exchange between him and Horace Greeley. The latter charged that Owen's "lax principles" had brought about "a state of law which enables men or women to get unmarried nearly at pleasure" in this "paradise of free-lovers."<sup>76</sup> But despite these charges, it is unlikely that Owen had been involved in the 1824 enactment, given that he first arrived in the New World in 1825 (Owen, 1874, p. 232). It might also be thought that Owen's father Robert Owen was involved, because the elder Owen had in 1825 founded the Utopian community of New Harmony, Indiana. But this is also unlikely, given that the elder Owen sailed to America only in December 1824 (Podmore, 1907, p. 288), while Indiana's 1824 act had been approved in January. Altogether I am inclined to rule out the involvement of either Owen in the original 1824 enactment. But otherwise I have found little material to explain this 1824 enactment.

Minnesota's omnibus clause, it was alleged in *True v. True* (1861),<sup>77</sup> had in 1855 been "improvidently added" "to meet a particular case." I have found no other commentary on Minnesota's omnibus clause. But the Minnesota Supreme Court's allegation does seem plausible, given the covert circumstances under which the omnibus clause seems to have been enacted.<sup>78</sup>

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<sup>76</sup> *New York Daily Tribune* editorial, March 1, 1860. The full debate is reproduced in Greeley & Owen (1860, p. 10).

<sup>77</sup> *True v. True* (6 Minn. 458, 1861).

<sup>78</sup> There are several reasons for deeming this 1855 enactment 'covert'. First, the 200-odd pages of the *Session Laws of 1855* do not seem to contain a single instance of the word 'divorce'. Second, the act under which the omnibus clause was passed was entitled "[An Act allowing for a change of Venue in certain cases.](#)" This gave no hint that the act was in any way connected to divorce. Third, the omnibus clause was buried as the penultimate section in said act. Moreover, it did not make explicit that the divorce law was being amended. It said simply: "Section seven (7) of chapter sixty-six, (66) page two hundred and seventy-four of the Revised Statutes, is hereby amended by adding at the end of said section seven ..."

It is reported in the [1855 House Journal](#) (p. 416) that Minnesota's omnibus clause was offered as an amendment to a bill, by one Mr. Sibley, by the unanimous consent of the House. But no other details are furnished.

Louisiana enacted its omnibus clause in 1870. I have found no direct evidence to explain this. But some inferences may be made. One, the 1845 Constitution had already banned LD,<sup>79</sup> so it cannot be that the 1870 law was passed in order to relieve legislature of burdensome divorce applications. Two, after Louisiana repealed its omnibus clause in 1877, there was much confusion over what precisely the Louisiana divorce law said.<sup>80</sup> Such confusion suggests that the 1870 enactment and 1877 repeal of Louisiana's omnibus clause were not the products of careful deliberation. This lends weight to Carver's (1909) assertion that the 1877 repeal was a "mere retracting of a step taken too hastily and too far."

Washington enacted its omnibus clause in 1854. The only possible clue I have found to explain this is an allegation that Governor Fayette McMullin (1857-1859) had come to the Territory of Washington to obtain a legislative divorce (Meany, 1909, p. 326). This allegation, if true, would suggest a possible link between McMullin and the 1854 enactment. But I have found no evidence of any such link.

If pertinent material regarding why omnibus clauses were enacted in Illinois, Maine, or Iowa exists, such material has unfortunately eluded me. I must therefore remain silent on them.

## 2.2 *Reasons for Repeal*

"A migratory divorce is a divorce granted to a person who has left his home in one state and resorted temporarily to another state for the express purpose of obtaining a divorce from its courts" (Cavers, 1937). Jurisdictions that granted too many migratory divorces risked being branded 'divorce mills'.

Indiana was "the first divorce mill in our history" (Nolan, 1951, p. 515). Its omnibus clause was enacted in 1824 and repealed in 1873. The following account of the 1873 reform is from Wires (1967). Reform efforts failed in the late 1850s, but resumed after the war. In 1867, a proposed reform failed because it was too harsh. In 1869, reform efforts were sidelined by the controversy surrounding the 15<sup>th</sup> Amendment. "By 1871 the reputation of Indiana as a jurisdiction of easy

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<sup>79</sup> Title VI, Art. 117. In fact the Act of 1827-03-19 had already decreed that the district courts "shall have exclusive original jurisdiction in cases of divorce" (*Acts Passed at the First Session of the Eighth Legislature of the State of Louisiana*, p. 130).

<sup>80</sup> Following the 1877 repeal, there was much uncertainty over Louisiana's divorce law. As remarked in *Daspit v. Ehringer* (32 La. Ann. 1174, 1880), "at first glance it may seem that article 138, R. C. C. [*Revised Civil Code*] was apparently repealed by Act 76 of 1870." However, the Court would go on to clarify, "such is not the fact, for the double reason ..." Despite the clarification made in *Daspit*, lower courts continued to fall into the error of believing that article 138 of the *Revised Civil Code* was defunct. In the following years, the Court would have to repeat the clarification made in *Daspit*: *Bates v. Behen* (35 La. Ann. 872, 1883) and *Blanchard v. Baillieux* (37 La. Ann. 127, 1885).

divorce had become so objectionable ... Popular demand for divorce reform was also growing.” By November 1872, “divorce reform was regarded as virtually inevitable.” Such reform was finally achieved in 1873. The 1873 law amended the “most criticized provisions of the Indiana divorce law,” namely “those pertaining to residence requirements and service of summons.”<sup>81</sup> Packaged alongside was the abolition of the omnibus clause.

One might fear that the issue of migratory divorce severely injures the empirical analysis below. Perhaps it was that whenever a state enacted or repealed its omnibus clause, its divorce rate did not change because couples there had already been getting divorced through Washington’s omnibus clause. (Note that our sample period is a subset of the lifespan of Washington’s omnibus clause.) It is thus possible that omnibus clauses—in particular Washington’s—had a tremendous positive effect on divorce rates, but our data and methodology fail to detect it. While this possibility cannot be ruled out, it is unlikely, given that migratory divorces never constituted more than a small fraction of divorces nationwide.<sup>82</sup> There were certainly instances where a state’s divorce rate was boosted by migratory divorce (e.g. Utah between 1875 and 1877, as shall be seen next). But as suggested by Hankins (1931, pp. 182-183), twentieth-century Nevada was the only state where migratory divorce was a chronic and severe phenomenon.

Utah’s divorce law had been enacted in 1852 and was not amended before 1878. Yet in 1875-1877, its CDR surged (Figure III.3). This remarkable surge was epitomized by Beaver county. It had recorded just 2,007 persons in the 1870 Census. Yet in 1875-1877, it had 639 divorces. Apparently some, if not most, were to individuals who had never set foot in Utah.<sup>83</sup> Elsewhere in the town of Corinne, a vending machine allegedly dispensed divorce decrees for \$2.50 apiece.<sup>84</sup>

What explains Utah’s 1875-1877 surge? According to Wright (1891, pp. 203-206) and Aaron (1982, p. 23), this was when “eastern lawyers discovered the Utah divorce statute.” Aaron gives some credit for this ‘discovery’ to “the meeting of the transcontinental railroad at Promontory Point in Utah in 1869.” It is also possible that this ‘discovery’ was spurred by Indiana’s 1873

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<sup>81</sup> E.g. Wharton (1879) mentions these two provisions in his critique of Indiana’s divorce law, but not the omnibus clause.

<sup>82</sup> See e.g. *Wright Report* itself (pp. 193-194), Willcox (1893, pp. 90-92), the *North Report* (pp. 33-35), Lichtenberger (1931, pp. 180, 206-207), Hankins (1931, pp. 182-183), Cahen (1932, p. 78), Marshall and May (1932, pp. 54-56, 89; 1933, pp. 60-65, 126-127), Groves (1935), Cavers (1937), Jacobson (1959, p. 109). Several of these scholars estimated that migratory divorces constituted at most three percent of all divorces. Despite these efforts, there was the recurrent popular belief that migratory divorces were a serious problem (see e.g. Lichtenberger, 1931, p. 188). Indeed, this popular belief was instrumental in producing the *Wright Report*, the *North Report*, and the decades-long movement for a uniform nationwide divorce law. For more on this latter movement, a good starting point in *The Congressional Digest*, Vol. VI, Number 6-7, June-July 1927.

<sup>83</sup> See e.g. *Hood v. State* (56 Ind. 263, 1877).

<sup>84</sup> I can find only secondary sources for this claim—e.g. Anderson (1941, p. 151).

divorce reforms—with the closure of the Indiana divorce mill, eastern lawyers were encouraged to look elsewhere. Aaron (p. 44) concludes:

The Utah divorce statute of 1851 demonstrated that a divorce process tantamount to consent divorce was no threat to the group whose values about marriage were set by religious beliefs that were peculiar and strong. While isolated and administered by non-lawyers, the territorial probate courts showed no remarkable divorce consequences. Only when the territory was accessible, and lawyers within and without Utah conspired to manipulate the statute, did a sham divorce haven develop.

In 1878, Utah legislators “struck at the root of the former abuses” by introducing an explicit one year residency requirement and making it mandatory that courts grant decrees only upon proper legal testimony and file its finding of facts and law (Wright, 1891, p. 206). The omnibus clause was also abolished.

The remaining eight states never achieved the same level of disrepute. Perhaps for precisely this reason, I can find little material regarding each of their repeals. What follows are a few findings.

Connecticut repealed its omnibus clause repeal in 1878, but agitation for divorce reform had begun at least a decade before.<sup>85</sup> In 1870, a bill to abolish the omnibus clause was proposed, but failed.<sup>86</sup> It was alleged in the *Hartford Post* that such failure occurred because the “judiciary committee [was] composed of lawyers who [had] a lucrative practice in procuring divorces.”<sup>87</sup> In 1878, the omnibus clause was repealed. But strangely enough, this was done through a bill that had initially proposed instead to make the omnibus clause the sole divorce ground!<sup>88</sup> Following 1878, there were at least four separate attempts to restore the omnibus clause.<sup>89</sup> All failed. It was alleged that these attempts were made by a legal profession that was “resolutely interested in the facilitation of divorce.”<sup>90</sup>

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<sup>85</sup> For example, during the 1867 session, 25 out of the 200-odd petitions to the House of Representatives were for divorce law reform. (*Journal of the House of Representatives, of the State of Connecticut, May Session, 1867*). Also, in each year’s annual address, the Governor would urge for divorce reform (*House Journal, 1869, p. 37; 1870, p. 37; 1871, p. 63*).

<sup>86</sup> *House Journal, 1870, pp. 65, 314, 338.*

<sup>87</sup> *Hartford Post*, date unknown, quoted in *Albany Law Journal, 1870, Vol. 1, p. 421*. See also *Chicago Tribune, 1870-07-19, ‘Rights of Married Women’* and *Albany Law Journal, Vol. 2, p. 47.*

<sup>88</sup> *House Journal, 1878, pp. 203, 408, 517.*

<sup>89</sup> 1879 *House Journal, H.B. 5, pp. 66, 449, 556; 1880 House Journal, H.B. 246, pp. 212, 345, 366; 1882 House Journal, H.B. 215, pp. 225, 348, 660, 683; 1883 House Journal, H.B. 159, pp. 217, 584.*

<sup>90</sup> *Minutes of the General Association of Connecticut, 1881, p. 13 and 1882, p. 15.*



Connecticut's *organized* divorce reform efforts should be mentioned. Although Connecticut had had several prominent anti-divorce crusaders,<sup>91</sup> it appears that the first serious organized efforts were made only circa 1880. In 1879, the General Association of Connecticut resolved to establish a committee to produce divorce reform. This led to the formation of the Divorce Reform Association of Connecticut in 1880 and a similar sister association in Massachusetts. In 1881 the New England Divorce Reform League was founded. This would be renamed the *National* Divorce Reform League in 1885—this organization would prove influential in securing the *Wright Report*.<sup>92</sup> It would seem plausible that Connecticut's 1878 reform was linked to these organized efforts. But I can find no evidence of any such link.

The above historical review suggests that Connecticut's omnibus clause would have been repealed, sooner or later. It also suggests that the precise timing of the repeal was fortuitous—it could just as easily have been a decade earlier or a decade later.

It is natural to link Maine's 1883 divorce reforms to the New England Divorce Reform League, the latter having been founded in 1881. But I can find no evidence of any such link. Here is what I was able to find. In 1875, divorce reform was urged in [the Governor's address](#). In 1882, the Episcopal Church established a committee on divorce.<sup>93</sup> This committee submitted a petition to the House of Representatives in 1883. This, "in conjunction with strong and influential petitions from other sources," resulted in "a very important modification of the divorce law of the state, clearing it of those features most grossly objectionable from a social point of view, and adding provisions which will probably go far to check a great and growing evil" (*Journal of Episcopal Church of Maine*, 1883, p. 26).<sup>94</sup> And so according to the Episcopal Church, it was influential in securing the repeal of Maine's omnibus clause.

Maine's 1883 omnibus clause repeal was packaged alongside many other reforms. Adultery, cruelty, intemperance, neglect, and impotency were added as divorce grounds. The interlocutory decree with a six-month interlocutory period was also introduced. This latter reform would have delayed by six months all final divorce decrees and so probably explains most of Maine's 1883-1884 CDR drop (see Figure III.2).

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<sup>91</sup> E.g. Trumbull (1785), Dwight (1819), Loomis (1866).

<sup>92</sup> In 1897, it was further renamed the National League for the Protection of the Family.

<sup>93</sup> *J. of the Sixty-Third Annual Convention of the Protestant Episcopal Church in the Diocese of Maine*, 1882, pp. 10, 14, 27.

<sup>94</sup> The petition is recorded on p. 99 of the 1883 *Journal of the House of Representatives of the State of Maine*. Similar appeals by other parties are recorded on pp. 67, 78, 79, 84, 97.

I have found no material to explain the repeal of the omnibus clause in Iowa, North Carolina, Illinois, Louisiana, or Washington. And so nothing will be said of them, except for one observation: North Carolina repealed its omnibus clause in the same year (1872) that South Carolina's divorce law began its short life (1872-1878). I do not know if these two events were linked.

### 2.3 *How the Omnibus Clauses Were Interpreted by the Supreme Courts*

A literal reading of the law of the books lends some weight to the claims by various observers, that the omnibus clauses opened “the widest door possible,” were “for the Promotion of Divorce,” and bestowed courts with “unlimited powers.” However, in practice, how were such “unlimited powers” actually exercised? To try to answer this question, the relevant, reported Supreme Court cases in five states are examined. It is found that these Courts interpreted the omnibus clauses very conservatively. The presence of an omnibus clause made these Courts little, if any, more inclined to grant divorces.

Note though that these are merely reported cases from each state's Supreme Court. It is possible that the average *trial* court judge interpreted his state's omnibus clause more liberally than did his state's highest court. If so, then notwithstanding the conservatism of the Supreme Courts, the omnibus clauses may still have had the effect of boosting divorces. Unfortunately, I have found no records of trial court rulings. Nonetheless, if it were indeed the case that trial courts were more liberal, some indirect evidence of this might be furnished by the empirical analysis below.

Here follows a summary of pertinent Supreme Court cases from five arbitrarily-chosen states, *viz.* North Carolina, Iowa, Maine, Minnesota, and Louisiana. Section 7 contains fuller excerpts of some of the cases discussed here and also some others.

**North Carolina.** *Scroggins v. Scroggins* (1832) was the first reported case in the US to concern an omnibus clause.<sup>95</sup> The ruling itself said the case had a “peculiar character,” “produced by the odious circumstance of color.” Mr. Scroggins had wed Mrs. Scroggins while she was several months pregnant. After birth, the child was found to be mulatto, whereupon Mr. Scroggins sought a divorce.

The state's Supreme Court made a lengthy explanation of its “private convictions”: Divorce “ought in no ease to be allowed, but in [impotency], and near consanguinity.” It then inferred that

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<sup>95</sup> *Scroggins v. Scroggins* (14 N.C. 535, 1832).

the legislative intent behind the 1827 omnibus clause enactment was to make divorce harder to obtain.<sup>96</sup> The Court reasoned that Mr. Scroggins must have known his wife had been impregnated by another man. He was therefore “criminally accessory to his own dishonor, in marrying a woman whom he knew to be lewd” and so undeserving of relief.

North Carolina’s omnibus clause permitted divorce whenever the court “may be satisfied, upon due evidence presented, of the justice of such application; *any law, usage or custom to the contrary notwithstanding*” (emphasis added). The sub-clause just emphasized suggested that courts need not place great weight on “any law, usage or custom to the contrary.” But this sub-clause was given no mention in *Scroggins*. Instead, tradition was paid obeisance:

After the law upon this subject has been settled for ages, and when the Legislature has been unable to devise any alteration, founded on a general principle worthy of their adoption, it would be too much to expect a court to pretend to more wisdom than the Legislature and our forefathers united, and strike out new theories.

A very similar case took place the same month (December 1832), but produced a different result. In *Barden v. Barden* (1832), the Bardens had wed *after* the birth of the child.<sup>97</sup> Only later was it discovered that the child was mulatto. The Court granted Mr. Barden a divorce, on the reasoning that he had, unlike Mr. Scroggins, been deceived into believing that the child was his. One reason was “the artful representations” of Mrs. Barden. Another was that “in so young an infant, whose mother was white, it might not be in the power of an ordinary man, from inspection of the face and other uncovered parts of the body, to discover the tinge, although it were so deep as to lead to the belief now, that it is the issue of a father of full African blood.”

*Johnson v. Kincade* (1843) affirmed the conservative interpretation in *Scroggins*:<sup>98</sup>

as we have before said, those large terms of the act of 1827 do not confer the arbitrary power of divorce, but must be restricted to the causes enumerated in the act of 1814, or others of a like nature, or to such enumerated causes as were grounds for holding a marriage void at common law and still in reason should annul it.

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<sup>96</sup> “the great purpose of the Legislature was to free itself from applications which ought not to be granted, but which, from the hardship to the parties, and feeling in the members, were sometimes obtained, and to turn them over to tribunals which would do more impartial or exact justice. . . . We cannot intend that the meaning was that the courts should grant divorces where, under like circumstances, the Legislature had or might be expected to grant them by statute; for the contrary is implied by commanding the action of courts, usually regulated by fixed rules.”

<sup>97</sup> *Barden v. Barden* (14 N.C. 548, 1832).

<sup>98</sup> *Johnson v. Kincade* (37 N.C. 470, 1843).

In *Joyner v. Joyner* (1862), Mrs. Joyner sought a divorce after her husband had, amongst various misdeeds, struck her with a horse-whip and a switch.<sup>99</sup> The Court was unsympathetic. It invoked the biblical injunction “Thy desire shall be to thy husband, and he shall rule over thee” (Genesis 3:16). It also noted that

there may be circumstances which will mitigate, excuse, and so far justify the husband in striking the wife “with a horse-whip on one occasion and with a switch on another, leaving several bruises on the person,” so as not to give her a right to abandon him and claim to be divorced.

It elaborated by giving several concrete examples of circumstances that would “justify the conduct of the husband” and permit the Court to “dismiss her petition with the admonition, ‘*if you will amend your manners, you may expect better treatment*’” (emphasis added).

In *Hansley v. Hansley* (1849),<sup>100</sup> the Court stated that the law entitled Mrs. Hansley to a *limited* divorce but not to an absolute divorce. The allegations are worth quoting at length, because they illustrate how difficult it was to get an absolute divorce, even with an omnibus clause. Mr. Hansley had

became, at some time, intemperate, and then was harsh, insulting and cruel to the wife—at times beating her: that occasionally, for a while, and, afterwards, for weeks, he absented himself from his wife’s bed at night, and, as she suspected for some time, and afterwards ascertained, he spent those nights in bed with a negro woman he had on the same plantation: that he did himself, and allowed that woman to treat his wife with contempt, depriving her of all authority as mistress of the house, and conferring it on the negro: that, afterwards, instead of going to the house of the black woman, he brought her to his own house, and frequently made her and the wife sleep in the same bed with him, and in that situation he had carnal knowledge of the negro: that at other times the husband would not allow the wife to sleep in the house, but turned her out and locked the door against her and kept her out all night: that he at some times went away, carrying the keys and leaving her without food for several days together.

Unfortunately for Mrs. Hansley, the law “does not authorize such a divorce for cruelty, nor for every act of adultery, nor even for habitual adultery.” In *Whittington v. Whittington* (1836) and *Foy v. Foy* (1851), the Court was similarly reluctant to grant a divorce.<sup>101</sup>

**Iowa.** Iowa’s omnibus clause read “when it shall be made fully apparent to the satisfaction of the Court, that the parties cannot live in peace or happiness together, and that their welfare requires a separation between them.” *Pinkney v. Pinkney* (1854) specifically emphasized that no divorce

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<sup>99</sup> *Joyner v. Joyner* (59 N.C. 322, 1862).

<sup>100</sup> *Hansley v. Hansley* (32 N.C. 506, 1849).

<sup>101</sup> *Whittington v. Whittington* (19 N.C. 64 1836), *Foy v. Foy* (35 N.C. 90, 1851).

was to be granted unless it was *fully apparent* that the parties *cannot* live in peace or happiness together.<sup>102</sup> The Court also stated, “A law so unusual, so relaxing in its influence upon the sacred obligations of marital contracts, should not be loosely administered.”

In *Lyster v. Lyster* (1855),<sup>103</sup> Mr. and Mrs. Lyster had apparently come to the conclusion that they could not live in peace and happiness together and that they should be separated. The Court rebuked them thus: “The law requires that the *court* shall be satisfied ... and not that the *parties* shall be satisfied.” The Court also cited several English cases with approval: “Parties cannot lawfully rid themselves of the duties of the marriage contract at the pleasure of either or both of them”; “it is the policy of the law not to proceed upon the ground of the *consent* of parties to a dissolution of the marriage contract.”

In *Inskeep v. Inskeep* (1857),<sup>104</sup> the Court observed that even if “the parties could not live in peace and happiness together,” “it might not be apparent that their *welfare* required their separation.” It also repeated points made in *Lyster*: “these things *must be made fully apparent to the court*”; “the chancellor is not to dissolve the relation, upon the mere clamor of the parties.” It further stated that “if it shall appear that the parties could live together in peace and happiness, but for the unwarrantable conduct of the complainant—if it is shown that but for his, or her, improper conduct, there might be peace, quiet and happiness, the relief prayed for should be denied.”

The omnibus clause was not at issue in either *Hunt v. Hunt* (1854) or *Smith v. Smith* (1854).<sup>105</sup> But in *Hunt*, the Court revealed, in an off-hand remark, its disapproval of the “apparent facility with which divorces are to be obtained under the Code.” In *Smith*, after elaborating at some length about the sanctity of the family relation, the Court announced that it was “not ambitious to establish for Iowa, by judicial construction, the humbling *distinction* of being ‘the state in which a divorce can be most easily obtained.’”

**Maine.** Maine’s omnibus clause was enacted in 1847, modified in 1849, and reenacted in 1850. In 1868, the Supreme Court of Maine would remark that the “Legislature has seen fit to give to

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<sup>102</sup> *Pinkney v. Pinkney* (4 G. Greene 324, 1854).

<sup>103</sup> *Lyster v. Lyster* (1 Iowa 130, 1855).

<sup>104</sup> *Inskeep v. Inskeep* (5 Iowa 204, 1857).

<sup>105</sup> *Hunt v. Hunt* (4 G. Greene 216, 1854), *Smith v. Smith* (4 G. Greene 226, 1854).

this Court an almost unlimited power to grant divorces.”<sup>106</sup> How was this “almost unlimited power to grant divorces” actually exercised? Four cases involved the omnibus clause.<sup>107</sup>

*Ricker v. Ricker* (1849) suggested that at least initially, the Supreme Court did not regard the 1847 enactment as being a radical change to the divorce law. The ruling spanned two paragraphs, one of which read:

The enactment of 1847 was not intended to repeal any part of ch. 89, of the R. S. It only introduced some classes of causes which should justify a divorce, which were not embraced in the former law. That law was not altered as to causes of divorce, which had already been prescribed.

The 1847 enactment had contained the clause “in all cases not now provided for by law.” In 1849, this clause was dropped.<sup>108</sup> Even though I have no evidence, it is plausible to suppose that this enactment was in response to the Court’s pronouncements in *Ricker*.

In 1850, the Court would similarly assert in three cases (*Motley*, *Small*, and *Elwell*) that the 1849 enactment did not repeal any part of the former divorce law. *Motley* interpreted the 1849 enactment as merely giving discretion to grant divorces where there had been “a combination of such wrongs as might, each, become, by a sufficient length of continuance, a ground of divorce.” And in *Small*, the Court stated:

If, on every occasion of a departure for a short time, by one of the parties from the other, a divorce could be had, the marriage contract could be rescinded with great facility; it would in effect, be but an arrangement to continue during the pleasure of both parties. Such a rule could not be consistent with public morals.

In 1850, legislature repealed several sections of the former divorce law (see n. 68 above). In particular, *only* one ground for divorce was retained, namely the omnibus clause. Again, though I have no evidence, it is plausible to suppose that this was in response to the assertions in *Ricker*, *Motley*, *Small*, and *Elwell*.

I can find no reported Supreme Court case after 1850 that directly concerned the omnibus clause. I thus have no direct evidence as to whether the 1850 reform marked any change to the law in

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<sup>106</sup> This and another similar remark were made in passing in two cases that did not directly involve the omnibus clause, viz. *Jay v. East Livermore* (56 Me. 107, 1868) and *Stilphen v. Stilphen* (58 Me. 508, 1870).

<sup>107</sup> *Ricker v. Ricker* (29 Me. 281, 1849), *Motley v. Motley* (31 Me. 490, 1850), *Small v. Small* (31 Me. 493, 1850), and *Elwell v. Elwell* (32 Me. 337, 1850).

<sup>108</sup> Another possibly important change was that henceforth, divorce could be granted by *any* justice of the supreme judicial court rather than by a *majority* of justices thereof. Compare the precise wording of the 1847 and 1849 enactments.

action. But *Holyoke v. Holyoke* (1886) suggests that the Court did not become much more liberal in the next few decades.<sup>109</sup> *Holyoke* was one of the earliest reported divorce cases that took place after Maine's 1883 repeal of its omnibus clause. In *Holyoke*, the Court stated:

Divorce should not be a panacea for the infelicities of married life; if disappointment, suffering, and sorrow even be incident to that relation, they must be endured. The marriage yoke, by mutual forbearance, must be worn, even though it rides unevenly, and has become burdensome withal. Public policy requires that it should be so. Remove the allurements of divorce at pleasure, and husbands and wives, will the more zealously strive to even the burdens and vexations of life, and soften by mutual accommodation so as to enjoy their marriage relation.

**Minnesota.** In *True v. True* (1861),<sup>110</sup> the Supreme Court of Minnesota wrote, "In 1855, to meet a particular case, the legislature (as we think subsequent events have fairly proven) improvidently added [the omnibus clause] ... The contract of marriage differs from all other contracts, in being indissoluble by the action of the parties to it ... It is the most important of the social relations. ... It is not pretended, that by the mere consent of the parties the marriage contract may be dissolved." I can find no other reported Minnesota case concerning Minnesota's omnibus clause.

**Louisiana.** Louisiana enacted its omnibus clause in 1870. In *Scott v. Scott* (1875),<sup>111</sup> Mr. Scott invoked Louisiana's omnibus clause. But in its ruling, the Court gave no indication that it was even aware that the law had been changed in 1870. Moreover, it wrote:

No grave and insuperable cause, in our judgment, exists justifying a decree of divorce. It was not the intention of the lawmaker that courts should be governed in their decisions of cases of this sort by the declarations and wishes of the parties themselves, acting under excitement and dissatisfaction. Their allegations of grievances insupportable must be made good by proof, to authorize the action of the judge. Trials and troubles from the infirmities of our nature constantly assail us, and it is our duty, as best we may, to bear up under them and overcome them if in our power. Something must be expected from the parties themselves, to overcome their domestic difficulties. It is not every family feud declared by husband or wife to be insupportable that will authorize a divorce. It is in the great interests of society that the conjugal relation should not be dissolved except upon weighty and well established reasons.

In contrast, in *Castell v. Castell* (1876),<sup>112</sup> the Court referred specifically to the 1870 enactment. Allegedly, Mr. Castell had "uniformly treated [Mrs. Castell] with neglect and contumely, failing to supply her with means necessary for her support or the support of their child;" had "on one or

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<sup>109</sup> *Holyoke v. Holyoke* (78 Me. 404, 1886).

<sup>110</sup> *True v. True* (6 Minn. 458, 1861).

<sup>111</sup> *Scott v. Scott* (27 La. Ann. 594, 1875).

<sup>112</sup> *Castell v. Castell* (28 La. Ann. 91, 1876).

two occasions, in the presence of strangers, abused, vilified, and struck her,” and had “for three years or more, been addicted to the use of intoxicating liquors, making his home a pandemonium and those dependent on him miserable and unhappy.” The Court ruled that “the case presented by the record comes clearly within the provision of the law, and plaintiff is entitled to the relief she asks.”

*Scott* and *Castell* were the only two relevant Louisiana Supreme Court cases during 1870-1877. Several cases occurred either after 1877 or outside Louisiana. These are discussed in n. 80 (above) and section 7 (below).

#### 2.4 *Weak Omnibus Clauses*

Besides the ten states that enacted omnibus clause, there were also three that enacted what I call *weak* omnibus clauses. These are clauses that do not quite qualify as omnibus clauses.

Rhode Island’s ancient and [still-extant](#) clause requires that the spouse “do, or hath, wilfully and wickedly broken and violated the Marriage Covenant.”<sup>113</sup> Such language is much harsher than that found in other omnibus clauses. It is thus classified as a weak omnibus clause.

I have found no material explaining the enactment of Arizona’s omnibus clause. But it follows, almost verbatim, Bishop’s (1859, pp. 520-521) suggestion. (Bishop was an authority on the law of marriage and divorce in nineteenth century America and suggested his own version of an omnibus clause.) It is thus reasonable to suppose that the Arizona legislature intended to follow the Bishop’s accompanying recommendations, including his dictum that such clause “never be held to permit a judge to grant a divorce merely because his own private opinion was favorable to letting parties loose when they wish to be unloosed.” Arizona’s omnibus clause should thus be deemed weak.<sup>114</sup>

Montana’s 1907 law defined cruelty. Embedded in this definition was the suggestion that any “treatment of one party to the marriage, by the other ..., which justly and reasonably is of such a nature and character as so ... entirely to defeat the proper and legitimate objects of marriage”

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<sup>113</sup> *At the GENERAL ASSEMBLY of the GOVERNOR and COMPANY of the English Colony of Rhode-Island, and Providence-Plantations, in New-England, in America; begun and held at South-Kingston in said Colony, the last Wednesday of October, in the Year of our LORD, One Thousand Seven Hundred and Forty Nine. Ad in the Twenty-third Year of the Reign of His Most Sacred Majesty GEORGE the Second, by the Grace of GOD, of Great-Britain, France, and Ireland, King, Defender of the Faith, &c., pp. 53-54.*

<sup>114</sup> *Contra* Snyder (1889, p. 159), who deems Arizona’s “the most marvellous of all the ‘omnibus clauses,’ and the queerest piece of legislation contrived by mortal man.”



constitutes “Extreme Cruelty.”<sup>115</sup> The language is reminiscent of Connecticut’s omnibus clause. But because it is embedded in a definition of cruelty, I classify it merely as a weak omnibus clause.

### 3 The Empirical Analysis

Divorce laws may be thought of as an obstacle that divorce-seekers must overcome. This obstacle may be easier or harder to overcome. This raises the question: To what degree do easier divorce statutes affect the rate of absolute divorce? It is this question that the empirical analysis below seeks to address.

The empirical analysis involves a simple regression. The dependent variable is the crude divorce rate (CDR), defined here as divorces per million population. To construct this variable, population numbers are obtained from decennial Census counts and through simple linear interpolation for intercensal years, while annual county-level divorce counts are taken from the *Wright* and *North Reports*. The independent variables include coding for 44 aspects of the law. The focus is on the two that pertain to the omnibus clauses.

This section proceeds as follows. Subsection 3.1 considers why easier divorce laws may affect divorce rates. Subsection 3.2 reviews the older literature on the influence of legislation on divorce. Subsection 3.3 discusses how the annual county-level divorce counts were compiled from the *Wright* and *North Reports*. Subsection 3.4 discusses how the legal coding for the 44 aspects of the law was obtained.

But before proceeding, three restrictions to the scope of the present empirical analysis must be noted. The first is that the empirical analysis is restricted to the *statutory* law. Case law is ignored.

The second is that all aspects of the divorce law related to procedure (e.g. service, publication requirements) and incidental relief (e.g. property division, alimony, child custody) are ignored. While these probably do have some influence on the divorce rate, they have relatively little bearing on the ease with which a divorce may be procured. Moreover, these aspects of the divorce law are subject to great variation and are difficult to consistently code. These are thus ignored.

The third restriction is that the dependent variable in the present analysis refers only to *absolute* divorce. This is the complete, final, and legal dissolution of a valid marriage.

One implication is that all extralegal forms of marital breakdown (e.g. informal separations, murder) are ignored. These are not unimportant. But pertinent data are difficult to obtain and scarce.

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<sup>115</sup> *Laws, Montana Tenth Regular Session, 1907, Ch. 118, pp. 297-298.*

For example, even the stupendous *Wright* and *North* investigations devoted few resources to gathering such data.

Another implication is that I also ignore three other legal devices, namely divorce from bed and board, annulment, and interlocutory decree. As Bishop (1891, pp. 71-72) suggests, even law-makers and practitioners were often confused between absolute divorce and these three devices. The reader must therefore be clear on the distinction between these various devices.<sup>116</sup>

### 3.1 *Theoretical Reasons Why Easier Divorce Laws Might Influence Divorce Rates*

Considered here, in purely qualitative terms, are the possible effects that an easier divorce law might have on divorce rates. The first and most obvious effect is that one who was already seeking a divorce will enjoy an increased probability of success. A second is that a couple whose marriage was already broken (perhaps they had been living apart for decades) may now seek a divorce. A third is that an easier divorce law may prompt couples close to the precipice to seek a divorce. For example, an unhappy couple that would have clung on to their dysfunctional marriage may now instead cut their ties. These first three effects are perhaps not clearly distinguishable, whether in practice or in theory.

The fourth effect is via the channel of social mores. When the divorce law is eased, divorce may become less repugnant or shameful. This may increase both the demand for *and* supply of divorce.<sup>117</sup> As an example, suppose a woman could easily have gotten a divorce for desertion, but

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<sup>116</sup> This footnote contains a brief discussion of each. In Western Christendom, from about the eleventh through the fifteenth centuries, marriage was indissoluble. Nonetheless, it was possible to get a limited divorce (also known as ‘divorce from bed and board’, ‘divorce *a mensa et thoro*’, ‘partial divorce’, ‘judicial separation’). This granted the couple the privilege of not having to live together, but left unscathed their marital bond—neither could remarry and both had to remain sexually faithful.

It was also possible to get an annulment or a decree of nullity. This declared the marriage void (it never existed in the first place) for such reasons as fraud or consanguinity. (This explanation is simplistic. See Mueller (1957) and Goda (1967) for more.)

The Reformation made possible absolute divorce (also known as ‘*divortium a vinculo matrimonii*’, ‘final divorce’, ‘legal (or total) dissolution of marriage’, ‘divorce from the bond of matrimony’). Confusingly enough, annulments had also been called *divortium a vinculo matrimonii*. (This was less confusing when marriages were indissoluble and the only way to erase the bond of matrimony was through an annulment or a decree of nullity.) This is perhaps why the three annulments of Henry VIII are sometimes mistakenly referred to as divorces. For the purposes of this chapter, it is important to clearly distinguish between absolute divorce and annulments.

The interlocutory decree or ‘decree *nisi*’ features less prominently in the history of Western divorce; only a few of the United States have ever imposed it. A couple is first granted an interlocutory decree. When the interlocutory period (typically between three months and one year) has expired, a final divorce decree may be entered. Until this is done, the couple remains legally married. This device was supposed to serve two purposes: Provide additional time for reconciliation and make divorce less attractive. See *Columbia Law Review* (1956) for more details.

<sup>117</sup> This idea was expressed more lyrically by Loomis (1866, p. 444): “It is noticed sometimes in musical instruments that an attachment directly connected with but a portion of the scale, and designed primarily to affect but the notes of a single octave, is found in practice to give a new tone and character to the whole instrument throughout its entire range. Something analogous to this would seem to have been the effect of this general misconduct attachment to our divorce law. Its influence has been felt not only in the suits brought specifically in its name, but in extending the loose, vague, and indefinite character of its own terms over the language and administration of the entire enactment.”

had not done so, for fear of being labeled a divorcée. Suppose a reform adds insanity as a ground for divorce, but makes no other changes. The woman may now perceive that there is less stigma associated with divorce; she may thus decide to get her divorce for desertion. And on the supply side, judges may interpret the new ground as signaling legislative intent to break away from the old, moralistic, fault-based view of divorce; they may thus be more easygoing when it comes to granting divorce for desertion.

The fifth is the publicity effect. In an era when divorce was rare, it may simply not have occurred to some that divorce was a possible solution to their marital woes. The publicity generated by reforms may have alerted them to this possibility.

Sixth, divorce law reform may alter the behavior of the married. The sign of this effect is ambiguous. On the one hand, with the price of divorce lowered, couples may put less effort into maintaining domestic harmony, thereby increasing the risk of breakdown. On the other hand, it is conceivable that couples actually become more vigilant and work harder at fortifying their marriage.<sup>118</sup> But either way, the magnitude of such effect was probably small in the nineteenth century. This is because divorce was so rare and unlikely that most couples not already seriously contemplating divorce would scarcely have noticed any changes in the price of divorce.

The seventh is the selection effect. The sign of this effect is again ambiguous. On the one hand, a widened escape hatch makes marriage more attractive. This increases marriages and thus also the per capita rate of divorce. On the other hand, to the extent that marriage is a commitment device whose value is increasing in the price of divorce, an easier divorce law makes marriage less attractive. This would decrease marriages and thus also the divorce rate. But again, the magnitude of such effect was probably small, because divorce was so rare and unlikely that individuals deciding whether to wed would scarcely have noticed any changes in the price of divorce.

Lastly, there are positive feedback effects. One, each additional divorce increases the pool of potential remarriage partners. Two, each additional divorce may reduce the stigma associated with

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<sup>118</sup> The *Westminster Review* (1867, p. 447) expressed similar ideas: "It is felt indeed, not without a show of reason, that much of the mutual toleration existing between husband and wife is due to the prevalent sense of the indissolubility of the union, and therefore that greater facility of divorce would only multiply its causes. This argument, however, cuts both ways, and it may be equally well said that husbands and wives would treat each other better and more considerately, if they felt that angry words and evil temper could not be safely indulged in on either side, without running a risk of losing altogether a really loved and long familiar companion."

divorce. This is similar to the channel of social mores discussed above.<sup>119</sup> Three, increased demand for divorce may lower supplier costs, perhaps through economies of scale or learning by doing.<sup>120</sup>

One possible negative feedback effect is that reformers may be roused into action. They may campaign for tighter divorce laws. But even without influencing the law, moralists can dampen divorce. For example, preachers can discourage divorce in their Sunday sermons.

### 3.2 Literature Review

The US no-fault reforms circa 1970 have been heavily studied and is the subject of Choo (2015a). Here I considered only the older literature on the influence of legislation on divorce.

As mentioned, there are several dated analyses of the data contained in the *Wright* and *North Reports*. Each takes a qualitative, case-study approach. Wright (p. 150) himself writes: “it seems quite apparent that the lines of statistics are curved in accordance with laws enacted just prior to the curves. Yet it is quite impossible to reconcile the general increase of divorces in certain states with the laws of such states.” Willcox (1897, pp. 47, 55, 61, 72) concludes: “law appears to be a relatively unimportant factor in the complete explanation of the diversities of divorce-rate in the states.” Lichtenberger (1909, p. 106) concurs, upon examining the 1887-1906 data; and does not waver, upon considering also later data: “far from being the cause of the increase of divorce, the law is not even an adequate preventive of that increase”; “the main trend of divorce appears to be entirely independent of, and undisturbed by, restrictive legal enactments aimed at its control” (Lichtenberger, 1931, pp. 154-186). Holbrook (1910, p. 395) finds that changes to the desertion period, residency requirement, and remarriage restrictions had little effect. Cahen (1932, p. 92) writes, “A detailed analysis and summary of divorce legislation from the Civil War to the present time shows that the number of changes has been many, but their importance slight.”

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<sup>119</sup> Loomis (1868, p. 228) expressed similar ideas (emphases in original text): “*Each Divorce sows the seed for others*. It is the town talk. The newspapers give the often disgusting particulars, with an unholy relish. The men give the details of it in the tavern, over the counter, and at the noonday rest. The women gossip over it, month after month, at their calls, tea-drinkings, or sociables. The children hear it discussed freely by their elders at the daily meals, with comments and details often that they should not hear. They all, men, women, and children see that it is a Legal act, frequently occurring, recognized by the Statute Law, and accepted by the people. They see the actors in it, and their children, living in the same reputation as heretofore, and they hear them extenuating and justifying their course. They see the Supreme Court of the County, which they have been trained to regard as the very impersonation of Justice and Dignity, sanctioning this dissolution of the Marriage tie. They see Justices of the Peace, perhaps, sometimes, Ministers of the Gospel, uniting these Divorced persons again with others in Holy Matrimony. And what is the result? What *can* it be, other than the general corruption of the Public Conscience, and a contemptuous disregard for the appeals of the few remaining fastidious, reverent, and religious citizens?”

<sup>120</sup> For example, a lawyer may now specialize in divorce and so process divorce cases ever more efficiently. This may reduce the cost of divorce suits. Also, a lawyer may now find it worthwhile to publicize his services—see e.g. American Bar Association (1882, pp. 297, 306-308). This would further increase demand for divorce.

None of these analyses may be said to be modern. This chapter thus furnishes the very first modern econometric analysis of any data contained in the *Wright* and *North Reports*. Moreover, none of the above analyses looked specifically at the omnibus clauses, to which this chapter pays special attention.

Now considered are some other studies based on data not in the *Wright* or *North Reports*. Several were cursory examinations of limited data. Using sixteen years of Connecticut data, Loomis (1866, p. 443) judged its 1849 omnibus clause enactment ‘revolutionary’. Using a little more data, Allen (1880, p. 551) concluded that an easier divorce law at once increases divorce. Dike (1881, pp. 127-128) blamed reforms for the increases in divorce in Connecticut and Massachusetts, but conceded that they “cannot account for all of this increase” (p. 130). In a survey of the history of divorce from Moses, Gwynne (1898, p. 493) found it “abundantly evident that the looser the laws regulating divorce and marriage the greater the cruelty and misery produced both in degree and in volume.” Payne (1915, p. 212) and Conger (1915, p. 220) did not specify the statistics they appealed to. But the first asserted that “statistics show us conclusively that legislative changes, both as to legal grounds and methods of procedure, produce no visible change in the divorce rate.” In contrast, several pages later in the same report, the second asserted that “from all the evidence available, it seems almost certain that there is a margin, very important, although narrow, within which the statute maker may exert a morally beneficent and even restraining influence.”

Three early European sociologists—Bodio (1882, p. 56), Bertillon (1883, pp. 9, 23), and Bosco (1908, pp. 454, 458)—concluded that divorce rates were no higher with easier laws. In a study of Chicago, Mowrer (1927) found that “family disintegration varies widely by communities,” despite the uniformity in divorce law (Ch. V). In a study of the 1900 *Bürgerliches Gesetzbuch*, Wolf, Lüke, and Hax (1959, pp. 139, 299-300) concluded that it “had no detectable influence” on divorce rates. This conclusion would be reversed by the reanalysis of Glass, Tiao, & Maguire (1971).<sup>121</sup> Como and Varese (Italy) and Ticino (Switzerland) had different divorce laws but were otherwise similar. Rheinstein (1967) investigated them, but ultimately deemed his investigation “inconclusive” (pp. 387, 408). In a study of 1950 US Census data, Broel-Plateris (1961, p. 215) concluded that “marriage disruption is associated not so much with individual variables as with a system of interrelated

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<sup>121</sup> But see the rejoinder by Rheinstein (1972, pp. 303-304).

variables which may be considered as indices of a greater whole which can be called social stability of social cohesiveness.”

### 3.3 *Annual Divorces in Each County and How They Were Compiled*

Appendix E contains the details of how county-level divorce data were collected from the *Wright* and *North Reports*. Here I merely mention some salient points.

The data were often defective. For example, it might be stated that for county X, divorce records were destroyed by a fire in 1896. In that case I code the divorce data for county X for years 1896 and earlier as being defective. Such defective data are dropped in the primary empirical analysis below.

Now, one concern might be that these defects lead to systemic biases. For example, it may be that conflagrations happened most often precisely where divorces were most frequent. The possibility of such biases cannot be ruled out. But absent evidence of such biases, it is perhaps reasonable to ignore them.

There is one more caveat. Above was stressed the distinction between three other legal devices and absolute divorce, to which the regression’s dependent variable refers. It is thus of some concern as to what precisely the divorce counts presented in the *Wright* and *North Reports* referred to. It turns out that investigators were explicitly instructed to exclude annulments<sup>122</sup> and interlocutory decrees.<sup>123</sup> So these two legal devices are of no worry. Unfortunately, no distinction was made between absolute and limited divorces. That is to say, both types of divorce were counted indiscriminately and simply as divorces in the reports. But limited divorces constituted less than one percent of the total number of divorces.<sup>124</sup> And so, just like was done in the *Wright* and *North Reports*, no effort is made to correct for this problem. It is unlikely that this problem seriously injures the empirical analysis below.

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<sup>122</sup> See *Wright Report* (p. 134) and *North Report* (p. 31).

<sup>123</sup> See *Wright Report* (pp. 132, 134). I can find no mention in the *North Report* of how decrees *nisi* were treated in the second investigation. But given the close parallels, it is reasonable to believe the same treatment was applied in both investigations.

<sup>124</sup> See *Wright Report* (p. 132) and *North Report* (p. 19).

### 3.4 *The 44 Aspects of the Law*

The empirical analysis below involves 44 regressors of interest. Most are indicators for whether the particular aspect of the law was in effect for each county-year observation. Appendix F contains details of how the coding for these 44 independent variables were obtained.

The two that are of greatest interest are indicators for omnibus clauses and weak omnibus clauses. These we have already discussed in considerable detail. We now discuss the other regressors, which are of tangential interest.

The largest and most important subset of these 44 aspects of the law are the divorce grounds. To get a divorce, one must establish a divorce ground. This was true in the nineteenth century and remains true today. Adultery, desertion, and cruelty were the three classic Protestant divorce grounds. Two other grounds common in the US were neglect and intemperance. During 1867-1906, the vast majority of divorces across the US involved one of these five grounds.<sup>125</sup>

The nineteenth-century American legislator added many more grounds. Here are six: mental cruelty, conviction of a felony or imprisonment, insanity (contracted *after* marriage), acts of sexual immorality other than adultery (e.g. buggery, sodomy, bestiality), the ‘living separate and apart’ clauses, and religion (e.g. Shakerism). Another two were the omnibus clauses and the weak omnibus clauses already discussed.

Often also added were grounds that would historically have been for an annulment or a decree of nullity. Seven of these are bigamy, consanguinity, nonage, fraud, impotency, pregnant (wife pregnant by man other than the husband at the time of marriage), and other incapacity (such as insanity at the time of marriage). Call these seven grounds *improper* and the other thirteen discussed above *proper*.

Twenty of the 44 independent variables in the present empirical analysis are indicators for these twenty divorce grounds. Table III.2 lists summary statistics for these divorce grounds.

It is worth noting that, as said in the *North Report* (p. 25), “Among the several states the legal causes of divorce differ widely in number and phraseology.” At one extreme was South Carolina, which, before 1949, had zero divorce grounds (1872-1878 excepted).<sup>126</sup> New York had one, namely adultery, until 1966. Every other state had at least two, often more.

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<sup>125</sup> See *Wright Report* (pp. 169-170) and *North Report* (pp. 25-30).

<sup>126</sup> As McCrady (1896, p. 11) writes, “There never has been a divorce in South Carolina—province, colony, or State—except during the Reconstruction period after the war between the States, under the government of strangers, adventurers, and negroes,

TABLE III.2—SUMMARY STATISTICS FOR JURISDICTIONS THAT GRANTED AT LEAST ONE DIVORCE

	1870	1880	1890	1900
Observations	46	47	47	49
<i>Number of jurisdictions with the following divorce grounds</i>				
omnibus	8	2	1	1
weakomnibus	1	2	1	1
adultery	43	46	47	49
crime	34	37	38	40
cruelty	36	39	40	42
desert	40	45	45	47
insanity	2	2	3	4
intemperance	33	35	38	40
immoral	3	2	2	2
mental	2	5	6	7
neglect	15	18	23	26
religion	3	3	3	3
volssep	3	2	2	3
bigamy	15	14	14	14
consanguinity	6	6	6	6
fraud	11	9	7	9
impotency	36	35	34	35
nonage	4	3	1	1
otherincapacity	6	5	5	5
pregnant	12	14	15	17
<i>Average</i>				
Population	837,917	1,045,962	1,309,317	1,531,558
Divorces Granted	238	418	711	1,138

The phraseology could also vary widely. Consider for example these three divorce grounds:

Where either party ... shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other as shall render his or her condition intolerable (*A Digest of Statutes of Arkansas*, 1893, p. 680).

upheld by Federal bayonets.” Some writers claim that at least prior to 1949, South Carolina had never had a single divorce. This is false. The 1868 Constitution first raised the possibility of divorce (“Divorces from the bonds of matrimony shall not be allowed but by the judgment of a Court, as shall be prescribed by law”). But whether divorce was actually legal remained uncertain until an 1872 law explicitly provided grounds for divorce (No. 21, approved 1872-01-31). Nonetheless, according to the *Wright Report* (p. 388), between 1868 and 1871, there were five divorces in Spartanburgh county and one in Fairfield county. Howard (1904, p. 38) writes that “these were probably granted by the legislature.” The 1872 law was repealed at the end of 1878 (No. 591, approved 1878-12-20). For good measure, the 1895 Constitution (Art. 17, Sec. 3) declared that “Divorces from the bonds of matrimony shall not be allowed in this State.” For more on South Carolina, Millar (1954) is perhaps a good starting point.



Where either the husband or wife is guilty of excesses, cruel treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable (*Sayles' Annotated Statutes of the State of Texas*, Vol. I, 1898, p. 1095).

For intolerable severity in either party (*Vermont Statutes*, 1894, p. 507).

One could make a fine distinction between them. But most writers, including the present one, choose to code these (and other similar clauses) equally as cruelty clauses.

The analysis includes two indicators for whether divorce for cruelty or intemperance was granted only to wives. Also included are another three continuous variables that measure, in years, the duration of desertion, neglect, and voluntary separation required for a divorce to be granted.

A second subset of divorce laws are the residency requirements. These require that the divorce petitioner be a *bona fide* resident of the jurisdiction in which the suit was filed. The main reason for enacting such requirements was to prevent out-of-state divorce seekers from abusing the local divorce law. These requirements could vary along multiple dimensions, of which only two are included as independent variables in the present empirical analysis. The first is an indicator for whether there was any residency requirement. The second is a continuous variable measuring, in years, the requisite duration of residency.

A third subset of divorce laws are the special defenses, the four most important being recrimination, collusion, connivance, and condonation. In a pith, recrimination says that no divorce shall be granted if both spouses are at fault; collusion says that no divorce shall be granted if both spouses agree to commit (or appear to commit) a fault in order to get a divorce; connivance says that no divorce shall be granted if one spouse sets up or consents to a situation leading to the fault complained of; finally, condonation says that no divorce shall be granted on the basis of a fault that has been forgiven.

Of the 44 independent variables in the analysis, three indicate whether the statutes provided recrimination, collusion/connivance, or condonation as special defenses. Collusion and connivance are combined into a single variable because they often cannot be clearly distinguished. Another three independent variables indicate whether the bar of recrimination was discretionary, or restricted to cases where the complainant had committed adultery or the same fault. Two more indicate whether the defense of collusion/connivance or condonation was restricted to where the fault complained of was adultery.

A fourth subset of divorce laws pertain to constitutional bans of legislative divorce (LD). (These were briefly discussed above.) Many state constitutions had *unambiguous* bans on LD. For example, Michigan’s constitutional ban read, “Divorces shall not be granted by the legislature.”<sup>127</sup>

A few state constitutions had what may be called *ambiguous* bans on LD. For example, those of Virginia and West Virginia read, “The general assembly shall confer on the courts the power to grant divorces . . . , but shall not, by special legislation, grant relief in such cases, or in any other case of which the courts or other tribunals may have jurisdiction.” This is considered an *ambiguous* ban because it seemed to permit LD in those cases where courts had no power to grant divorces.

Of the 44 independent variables in the present empirical analysis, one indicates whether the state constitution had no such ban on LD whatsoever. Another indicates whether the state constitution had an ambiguous ban on LD. (The omitted category thus contains those with unambiguous bans on LD.)

Two independent variables indicate whether there was the interlocutory decree or the limited divorce. Another is a continuous variable measuring in years the length of the interlocutory period. Some states allowed limited divorces to be converted to absolute divorces, usually after some requisite waiting period. Hence, also included are an indicator for whether this was possible and a continuous variable measuring in years the length of this waiting period.

The penultimate independent variable indicates whether statehood had *not* been attained. The last indicates whether a public defender was required to represent the interests of the State in divorce cases. The main purpose of such a requirement was to prevent collusive divorces.

#### **4 The Results of the Empirical Analysis**

I use multiple regression to test whether the omnibus clauses were correlated with higher divorce rates. I use a panel of state divorce data. The dependent variable is the CDR. The 44 regressors of interest were just discussed. I also include state and year fixed-effects. Weighted least squares (WLS) are used, with population as weights. The results of this regression are reported in Table III.3, specification 1.

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<sup>127</sup> See the Michigan Constitutions of 1835 (Art. XII, Sec. 5), 1850 (Art. IV, Sec. 26), and 1908 (Art. V, Sec. 32). I cannot however find any such clause in Michigan’s 1963 Constitution.

One concern might be whether the panel is balanced. For all but four of the divorce jurisdictions considered, there are observations for each of the 40 years (1867-1906) under consideration. These four exceptions are: Indian Territory, Oklahoma, North Dakota, and South Carolina.

As additional robustness checks, I also run a number of other specifications. As explained above, Utah's CDR surged dramatically during 1875-1877, for reasons quite unrelated to legal reforms. One possible worry is that this unusual episode in history may skew the results. I rerun specification 1, but with the two Utah state-year observations for 1876 and 1877 dropped. The results are reported under specification 2 of the same table.

Lee & Solon (2011) suggest the logarithm of the divorce rate as an "obvious alternative" functional form. Following this suggestion, I rerun specifications 1 and 2, but with the dependent variable in log form. The results are reported under specifications 3 and 4 of the same table.

One may worry that the features of the laws are collinear. Hence, I also run specifications 1 through 4, but drop the 42 regressors besides the two that pertain to omnibus clauses. These are reported under specifications I through IV, at the bottom of the same table.

Dröes & van Lamoen (2010) and Lee & Solon (2011) point out that if the model is correctly specified, then both WLS and ordinary least squares (OLS) should yield unbiased estimates. Following this critique, Table III.4 (printed in section 8) replicates the eight specifications run in Table III.3, but uses OLS instead. The estimates across Table III.3 and Table III.4 are fairly similar, suggesting that the model is not badly misspecified.

One may also wonder whether dropping the defective county-year observations (as described in section 3.3) materially affects the estimates. Hence, Table III.5 (printed in section 8) replicates the eight specifications run in Table III.3, but without dropping any defective county-year observations. It is seen that the estimates across Table III.3 and Table III.5 are fairly similar.

It is possible that the enactment and the repeal of an omnibus clause affect the divorce rates differently. To test for this possibility, I rerun the above regressions, but with an additional regressor that indicates whether the state used to have an omnibus clause. It turns out that the estimates of the correlation between this additional regressor and the CDR is not significant at any conventional significance level, across all of the 24 specifications described above. I thus fail to find any evidence that the enactment and the repeal of an omnibus clause affect the divorce rates differently.

I now discuss the results. The regressors of greatest interest are the omnibus clauses. The results suggest that the omnibus clauses were indeed correlated with higher divorce rates. Specification 1

in Table III.3 suggests that the presence of an omnibus clause was correlated with a 118-point increase in the CDR. Two yardsticks to which this estimate may be compared are the mean and the standard deviation of the CDR. Going by these, the 118-point estimate is clearly large, it being over a fifth of the mean and nearly a third of the standard deviation. Moreover, the estimates under specifications 3 and 4 are statistically significant at the five percent level. The results in Table III.5 are quite similar. Those in Table III.4 are even stronger. This point estimate implies that Indiana for example would have had about 200 additional divorces per annum after it repealed its omnibus clause in 1873, rather than the roughly 1000 per annum it enjoyed. Altogether, it is clear that omnibus clauses do matter, as typified by my above case study of Utah. An indirect inference that may be made from this empirical finding is that not all trial courts interpreted the omnibus clauses quite as harshly as in some of the above state Supreme Court cases. Note though that because only seven states repealed their omnibus clauses during the 40-year period under study, even if these states had never repealed their omnibus clauses, the *national* divorce statistics would scarcely have been affected.

Yet another yardstick by which the omnibus clause estimates may be compared are the coefficient estimates for some of the other laws. They are very similar to the estimates for ‘Crime’, which is the indicator for whether conviction of felony or incarceration was a ground for divorce. They are somewhat smaller than the estimates for ‘Intemperance’ and ‘Immoral’, which are indicators for whether intemperance and sexual acts of immorality (other than adultery) were grounds for divorce. They are also a little smaller (in absolute terms) than the estimates for ‘Recrimination’, which is the indicator for whether recrimination was explicitly listed as a defense. They are much smaller (in absolute terms) than the estimates for ‘Nonage’, which is the indicator for whether lack of majority at time of marriage was a ground for divorce.

It appears that the weak omnibus clauses may have been associated with higher divorce rates, though none of the estimates in specifications 1 through 4 of Table III.3 are statistically significant at any conventional level. Moreover, the estimates in specifications I through IV are negative and highly statistically significant. It will further be recalled that in the forty-year period under study, there were only states (namely Rhode Island and Arizona) that had weak omnibus clauses. Altogether then, it is doubtful if any conclusions may be drawn from these estimates.

It will be observed that without the other 42 laws as controls, the estimates for the correlation between omnibus clauses and log CDR (specifications III and IV) are much smaller, than when all

44 laws are included (specifications 3 and 4). (A similar observation may be made for Table III.5.) Why might this be so? One possibility is that the omnibus clauses were negatively correlated with some of these other laws, which in turn were positively correlated with the CDR. This is plausible. There was a tendency for states with omnibus clauses to have fewer of the other divorce grounds. This was most vivid in the case of Maine between 1850 and 1863, when its omnibus clause was its *only* divorce ground—during these years, it did not even have adultery as a divorce ground.

To test for the possibility that a single divorce law is largely responsible for this discrepancy, I reran specification 3 another 42 times—each time, I dropped one of the 42 regressors (that is, other than the two pertaining to the omnibus clauses). In all but one of these 42 reruns, the coefficient estimate for ‘Omnibus clause’ differed from that in specification 3 by less than 0.05. The only instance where the difference was larger than 0.05 was where ‘Desertion’ was dropped. But even in this case, the resulting coefficient estimate for ‘Omnibus clause’ was 0.361 (0.125), which would explain only a small part of the discrepancy. Altogether it would appear that there is no one single divorce law that can be said to be largely responsible for the discrepancy. It is all 42 divorce law controls that must be held responsible.

I turn next to discuss the other eleven ‘proper’ divorce grounds. It appears that *crime*, *intemperance*, and *immoral* were associated with higher divorce rates. There is no clear evidence that any of the other proper divorce grounds were associated with higher divorce rates. Contemporaries lamented the steady accretion of divorce grounds and linked this to the rising divorce rates. The results here provide evidence of such a link, in the case of at least three divorce grounds.

The presence of a residency requirement was significantly correlated with lower CDR. Most popular commentators deemed migratory divorce a serious problem and frequently urged more stringent residency requirements. The findings here support their claims.

TABLE III.3—CORRELATION BETWEEN DIVORCE LAWS AND DIVORCE RATES

<i>Variables marked with # are continuous and measured in years. All others are indicators.</i>	(1) Basic Specification	(2) Drop Utah for 1876-77	(3) Same as (1), but log	(4) Same as (2), but log
Omnibus clause	118 (105)	69 (72)	0.483** (0.182)	0.468** (0.176)
Weak omnibus clause	519 (532)	551 (472)	1.942 (3.033)	1.951 (3.008)
Adultery	-56 (379)	-235 (316)	2.021** (0.792)	1.967** (0.801)
Crime	73 (111)	106 (114)	0.456*** (0.098)	0.465*** (0.098)
Cruelty	75 (381)	246 (309)	-1.203** (0.572)	-1.152* (0.59)
Desertion	-131 (151)	-169 (146)	0.847** (0.328)	0.836** (0.328)
Insanity	-143 (104)	-139 (102)	-0.085 (0.076)	-0.084 (0.075)
Intemperance	335* (185)	192** (89)	0.535* (0.29)	0.493 (0.308)
Immoral	227** (90)	183*** (51)	0.173 (0.194)	0.160 (0.192)
Mental cruelty	-258 (307)	-67 (185)	0.056 (0.481)	0.113 (0.479)
Neglect	60 (237)	154 (183)	-0.418 (0.507)	-0.39 (0.513)
Religion (e.g. Shakers)	429 (389)	421 (350)	-1.242 (0.834)	-1.244 (0.844)
Voluntary separation	411 (555)	387 (527)	-2.725*** (0.881)	-2.733*** (0.886)
Cruelty only for wives	162 (178)	120 (172)	0.293 (0.204)	0.281 (0.203)
Duration of desertion #	22 (25)	31 (22)	-0.093 (0.058)	-0.091 (0.058)
Intemperance only for wives	-33 (69)	-34 (68)	-0.065 (0.084)	-0.066 (0.083)
Duration of neglect #	89 (97)	40 (74)	0.544** (0.25)	0.529** (0.251)
Duration of Vol. Sep. #	-56 (57)	-49 (54)	0.221** (0.089)	0.224** (0.089)
Bigamy	-128* (71)	-142** (67)	0.382 (0.337)	0.377 (0.335)
Consanguinity	369*** (55)	377*** (49)	-0.213 (0.341)	-0.211 (0.339)
Fraud	75 (52)	71 (51)	-1.055*** (0.116)	-1.056*** (0.116)
Impotency	-57 (62)	-64 (53)	-0.091 (0.181)	-0.093 (0.182)
Nonage	-1084*** (361)	-1066*** (329)	-0.612 (1.632)	-0.606 (1.618)
Other Incapacity	400 (321)	429 (320)	0.328 (0.524)	0.337 (0.523)
Pregnant	-184** (78)	-210*** (76)	0.214 (0.136)	0.207 (0.136)
Residency requirement	-198** (74)	-162** (66)	-0.126 (0.137)	-0.115 (0.141)
Duration of res. req. #	12 (38)	15 (36)	0.142 (0.107)	0.143 (0.107)
Recrimination	-171 (298)	-367** (176)	-1.006** (0.478)	-1.065** (0.477)
Collusion/connivance	451* (262)	353 (239)	1.083 (0.666)	1.053 (0.667)
Condonation	-768 (469)	-600 (393)	-1.903 (1.645)	-1.853 (1.635)
Recrimination only for adultery	82 (301)	277 (179)	0.584 (0.442)	0.643 (0.441)
Recrimination only for same fault	370 (361)	630*** (217)	0.759 (0.689)	0.836 (0.693)
Recrimination is discretionary	232 (612)	493 (427)	0.856 (1.796)	0.934 (1.787)
Collusion/connivance only for adultery	82 (269)	111 (232)	0.849 (1.52)	0.858 (1.508)

Condonation only for adultery	342 (376)	244 (290)	-0.527 (0.753)	-0.557 (0.752)
Limited divorce	54 (84)	55 (83)	0.024 (0.098)	0.024 (0.098)
Limited divorce is convertible to divorce	518 (604)	148 (481)	2.997** (1.397)	2.886** (1.393)
Waiting period before limited divorce can be converted #	-174 (201)	-46 (157)	-0.864* (0.463)	-0.826* (0.461)
Interlocutory period	-214 (146)	-337*** (73)	-0.358 (0.240)	-0.395 (0.240)
Duration of interlocutory period #	-237 (158)	-128 (115)	-0.597* (0.301)	-0.565* (0.300)
Not a state	-499** (194)	-548*** (176)	-0.128 (0.136)	-0.143 (0.131)
No ban on legislative divorce	254*** (48)	254*** (48)	-0.059 (0.041)	-0.059 (0.041)
Ambiguous as to whether there is a ban on legislative divorce	162** (65)	157** (64)	0.191 (0.121)	0.19 (0.121)
Public defender requirement	-62 (55)	-74 (54)	0.029 (0.126)	0.025 (0.127)
$R^2$	0.8799	0.9001	0.9410	0.9414
Observations	1920	1918	1920	1918
<i>Dependent Variable</i>				
Mean	557	556	6.060	6.060
Standard Deviation	376	371	0.803	0.802
<i>Specifications (I)-(IV) are the same as (1)-(4) except that the 42 regressors other than omnibus clauses are dropped.</i>				

	(I)	(II)	(III)	(IV)
Omnibus clause	102 (92)	71 (80)	0.209 (0.207)	0.197 (0.207)
Weak omnibus clause	-431*** (40)	-430*** (40)	-0.557*** (0.050)	-0.556*** (0.050)
$R^2$	0.8477	0.8688	0.9025	0.9033

*Notes:* In this table, the method of Weighted Least Squares is used. See text for a more detailed description of each specification. Every specification includes state and year fixed-effects. Standard errors are robust (clustered at state-level) and reported in parentheses. Estimates that are statistically significant at the 10%, 5%, and 1% significance levels are, as usual, marked with one, two, and three asterisks.

I turn next to discuss the special defenses. It appears that recrimination and condonation were associated with lower divorce rates. This is perhaps surprising, given that these special defenses were often applied even where absent and were sometimes ignored even where present. This furnishes yet another instance where the law matters.

The possibility of converting a limited divorce to an absolute divorce appears to be associated with higher CDR. The device of the interlocutory decree appears to be associated with lower CDR. It is once again not surprising to find that the law matters very much.

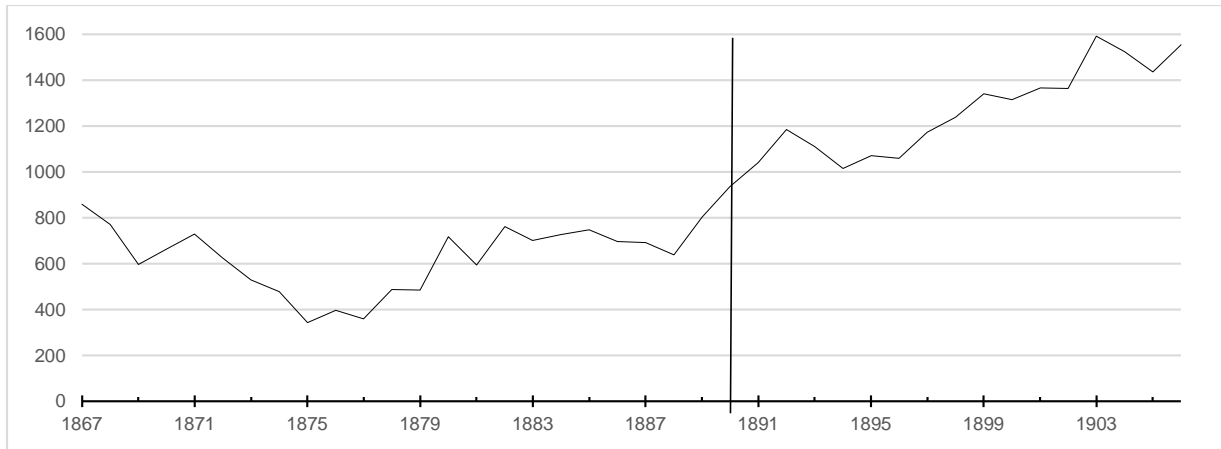


FIGURE III.4. POPULATION-WEIGHTED CDR OF THE SIX STATES THAT GAINED STATEHOOD IN 1889 OR 1890

Notes: Author's calculations. The six states were the Dakotas (1889-11-02), Montana (1889-11-08), Washington (1889-11-11), Idaho (1890-07-03), and Wyoming (1890-07-10). The year 1890 is marked by a vertical line.

To be considered next is whether the CDR was different in states and territories. It is not obvious what to expect. One consideration is that Congress had power to moderate the family law of territories, but not of states. But to my knowledge, only two Congressional constraints were ever placed: In 1886, Congress banned the practice of legislative divorce (LD) in territories;<sup>128</sup> and in 1896, Congress enacted a one year residency requirement in territories.<sup>129</sup> But these factors are already controlled for in the regression. It is thus not to be expected that states and territories had significantly different CDR.

Somewhat surprisingly, statehood is highly significantly correlated with an increase in the CDR. Figure III.4 provides further illustration of this finding—it shows the CDR of a group of six states that happened to gain statehood within the same eight month timespan (November 1889 – July 1890). I am unable to explain why states might have had higher CDR. One possibility is that territorial divorces had a murky legal status and were thus less attractive. It may have been thought that divorces obtained in territories were less readily recognized than those obtained in states.

Specifications 1 and 2 of Table III.3 suggest that the presence of an unambiguous constitutional ban on legislative divorce (LD) was associated with a lower CDR. This is not surprising. Such bans would have had the obvious effect of removing from the market one supplier of divorce, namely legislature. The principles of economics imply that this would have tended to reduce the total number of divorces issued. It would also dissuade any divorce seekers.

<sup>128</sup> *Forty-Ninth Congress of the United States*, Ch. 818.

<sup>129</sup> *Fifty-Fourth Congress of the United States*, Ch. 241.



Writing in the 1960s, Clark (1968, p. 395) remarks that the requirements that a public defender represent the interests of the state were mere “pious affirmations.” The evidence here is not clear as to whether during 1867-1906 such statutory requirements were significantly correlated with the CDR. This suggests that Clark’s views may also have applied to the nineteenth century.

## 5 Conclusion

This chapter examined the correlation between omnibus clauses and divorce rates, during 1867-1906. Casual contemporary commentators often blamed the lax divorce laws for the high divorce rates. Opprobrium was heaped upon the omnibus clauses, which would be somewhat unusual even today. This chapter is the first analyze data from that era using computers and modern econometric analysis. The analysis revealed that, as expected, the omnibus clauses were associated with higher CDR. This is consistent with what contemporary commentators might have supposed. Divorce laws did indeed matter a great deal in the nineteenth century.

Max Rheinstein asserted that there was a dual law of divorce during the mid-twentieth century. These assertions tended to be supported by the findings in Choo (2015a). During the nineteenth century, at least one writer made a similar assertion:

One peculiarity in the law of divorce, as it exists in this country, is the wide difference between its laxity, and the strictness of the moral sense and customs of the community (*United States Monthly Law Magazine*, 1850).

The above assertion tends to be supported by this chapter’s examination of judicial cases. State Supreme Courts tended to interpret the omnibus clauses conservatively. However, this chapter’s empirical analysis showed that the law of the books and in particular the omnibus clauses mattered a great deal. This tends to undermine the above assertion.

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## 6 Appendix: Wording of Omnibus Clauses

**Iowa** (1846-1855) *when it shall be made fully apparent to the satisfaction of the Court, that the parties cannot live in peace or happiness together, and that their welfare requires a separation between them*

**Minnesota** (1855-1866) *when it shall be made fully to appear that from any other reason or causes existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation.*

**North Carolina** (1827-1872) *whenever they may be satisfied, upon due evidence presented, of the justice of such application; any law, usage or custom to the contrary notwithstanding*

**Indiana** (1824-1873) *in all cases, where the court in its discretion, shall deem the granting a divorce just and reasonable*

**Illinois** (1832-1874) *In addition to the causes already provided by law for divorces from the bands of matrimony, courts of chancery in this state shall have full power and authority to hear and determine all causes for a divorce, not provided for by any law of this state.*

**Louisiana** (1870-1877) *any such misconduct repugnant to the marriage covenant as permanently destroys the happiness of the petitioner*

**Connecticut** (1849-1878) *any such misconduct as permanently destroys the happiness of the petitioner, or defeats the purposes of the marriage relation*

**Utah** (1852-1878) *when it shall be made to appear to the satisfaction and conviction of the Court, that the parties cannot live in peace and union together, and that their welfare requires a separation*

**Maine** (1847-1883) *when in the exercise of a sound discretion, he deems it reasonable and proper, conducive to domestic harmony, and consistent with the peace and morality of society*

**Washington** (1854-1921) *for any other cause deemed by the court sufficient, or where the court shall be satisfied that the parties can no longer live together*

## WEAK OMNIBUS CLAUSES

**Rhode Island** (1749-Never) *upon due Proof... that he or she do, or hath wilfully and wickedly broken and violated the Marriage Covenant, either by any Act done and committed*

**Arizona** (1871-1887) *And whereas, in the developments of future events, cases may be presented before the courts falling substantially within the limits of the law, as hereinbefore stated, yet not within its terms, it is enacted, that whenever the judge who hears a cause for divorce deems the case to be within the reason of the law, within the general mischief the law is intended to remedy, or within what it may be presumed would have been provided against, by the legislature establishing the foregoing causes of divorce had it foreseen the specific case and found language to meet it without including cases not within the same reason, he shall grant the divorce.*

**Montana** (1907-1976) *Extreme Cruelty is the infliction, or threat of grievous bodily injury, or of bodily injury dangerous to life, or the repeated infliction, or threat of bodily injury or personal violence, upon the other party, by one party to the marriage, or the repeated publication or utterance of false charges against the chastity of the wife by the husband, or the infliction of grievous mental suffering upon the other by one party to the marriage by a course of conduct towards, or treatment of one party to the marriage, by the other existing and persisted in for a period of one year immediately before the commencement of the action for divorce, which justly and reasonably is of such a nature and character as so to destroy the peace of mind and happiness of the injured party, or entirely to defeat the proper and legitimate objects of marriage or to render the continuance of the married relation between the parties perpetually unreasonable or intolerable to the injured party.*

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*Notes: See Appendix D for sources.*

### 7 Appendix: Notes to Accompany Section 2.3

**North Carolina.** *Scroggins v. Scroggins* (1832):

It is when we are told to do what is right, but not told what they deem right, that we are lost in the mazes of discretion. I cannot suppose, however, that the discretion conferred is a mere personal one, whether wild or sober, but must from the nature of things be confined to the cases for which provision was before made by law, or for those of a like kind.

... lawgivers, acting upon experience and disregarding theory, have generally been agreed in refusing them altogether, where the marriage was lawful, except in the case of impotency. If the Court could think that the duty to be performed was intended to be referred to the private opinions of the judges, it would be promptly, though reluctantly, executed; for there is no member of the Court who is not strongly impressed with the conviction that divorces ought in no ease to be allowed, but in that already mentioned, and near consanguinity.

At this point, the Supreme Court soliloquized about why the marriage contract should be held infrangible. The Court then noted that this view did not seem to be held by all legislators:

Such considerations have produced the private convictions felt by those who are now the judges of the Court. *But they seem not to have made the same impressions on all*, and it is our duty, notwithstanding the unlimited powers which we are commanded to exercise, to

endeavor to ascertain, as well as we may, in what cases the Legislature would, upon ascertained facts, authorize the parties to abandon their former choice, and make a new selection. [Emphasis added.]

Remarkably, the 1827 Act was interpreted as legislative desire to make divorce more restrictive:

To the extent of the Act of 1814, we consider the Court constrained to go. And from the second section of the Act of 1827, we suppose that we are not at liberty to stop there, since that implies that there are other cases besides those specified in that act in which divorces seem to have been expected to be properly applied for, and consequently granted. Yet, from the preamble of the last statute, one might infer the contrary, and that the great purpose of the Legislature was to free itself from applications which ought not to be granted, but which, from the hardship to the parties, and feeling in the members, were sometimes obtained, and to turn them over to tribunals which would do more impartial or exact justice. Indeed, it is difficult for persons to put a just interpretation upon terms, conferring in themselves such boundless power. We cannot intend that the meaning was that the courts should grant divorces where, under like circumstances, the Legislature had or might be expected to grant them by statute; for the contrary is implied by commanding the action of courts, usually regulated by fixed rules. The Court is then obliged to adopt the middle course, and prescribe to itself such principles as we think sound law-givers, who allow of divorces at all, would send as rescripts to a judiciary.

The Court would also write,

And we cannot but say that nothing could be more dangerous than to allow those who have agreed to take each other, in terms for better, for worse, to be permitted to say that one of the parties is worse than was expected, and therefore the contract ought to be no longer binding.

The Court ended by inviting Legislature to make itself clear, if its discussion of the matter were thought to be erroneous:

The full discussion thus entered into has been deemed due to the Legislature and the Court itself, that the principles which will guide the Court may be plainly known. It is proper that they should be placed before the Legislature, that if thought wrong by them, the Court may be spared from running further into error by having an authoritative guide to future action in a rule prescribed definitely by the Legislature itself.

The omnibus clause would indeed be reworded in 1837. But I do not know if this 1837 rewording was in any way connected to the remarks made in *Scroggins*.

*Joyner v. Joyner* (1862):

The petitioner [sic] states that ... her husband manifested great coarseness and brutality, "and even inflicted the most severe corporal punishment. This he did on two different occasions, once with a horse-whip, and once with a switch, leaving several bruises on her person." "He used towards her, abusive and insulting language, accused her of carrying away articles of property from his premises, to her daughter by a former husband; refused

to let said child live with her; has frequently, at night, after she had retired, driven her from bed, saying that it was not hers, and that she should not sleep upon it.—He has also forbade her sitting down to his table in company with his family,” and that “by such like acts of violence and indignity has forced her to leave his house, and that she is now residing with her friends and relatives, having no means of support for herself, and an infant son, born within the four past weeks.” ...

The wife must be subject to the husband. Every man must govern his household, and if by reason of an unruly temper, or an unbridled tongue, the wife persistently treats her husband with disrespect, and he submits to it, he not only loses all sense of self-respect, but loses the respect of the other members of his family, without which, he cannot expect to govern them, and forfeits the respect of his neighbors. Such have been the incidents of the marriage relation from the beginning of the human race. Unto the woman it is said, “Thy desire shall be to thy husband, and he shall rule over thee,” Genesis, chap. 3, v. 16. It follows that the law gives the husband power to use such a degree of force as is necessary to make the wife behave herself and know her place. Why is it, that by the principles of the common law if a wife slanders or assaults and beats a neighbor, the husband is made to pay for it? Or if the wife commits a criminal offense, less than felony, in the presence of her husband, she is not held responsible? Why is it that the wife cannot make a will disposing of her land? and cannot sell her land without a privy examination, “separate and apart from her husband,” in order to see that she did so voluntarily, and without compulsion on the part of her husband? It is for the reason that the law gives this power to the husband over the person of the wife, and has adopted proper safe-guards to prevent an abuse of it.

We will not pursue the discussion further. It is not an agreeable subject, and we are not inclined, unnecessarily, to draw upon ourselves the charge of a want of proper respect for the weaker sex. It is sufficient for our purpose to state that there may be circumstances which will mitigate, excuse, and so far justify the husband in striking the wife “with a horse-whip on one occasion and with a switch on another, leaving several bruises on the person,” so as not to give her a right to abandon him and claim to be divorced. For instance: suppose a husband comes home and his wife abuses him in the strongest terms—calls him a scoundrel, and repeatedly expresses a wish that he was dead and in torment! and being thus provoked in the *furor brevis*, he strikes her with the horse-whip, which he happens to have in his hands, but is afterwards willing to apologise, and expresses regret for having struck her: or suppose a man and his wife get into a discussion and have a difference of opinion as to a matter of fact, she becomes furious and gives way to her temper, so far as to tell him he *lies*, and upon being admonished not to repeat the word, nevertheless does so, and the husband taking up a switch, tells her if she repeat it again, he will strike her, and after this notice, she again repeats the insulting words, and he thereupon strikes her several blows; these are cases, in which, in our opinion, the circumstances attending the act, and giving rise to it, so far justify the conduct of the husband as to take from the wife any ground of divorce for that cause, and authorise the Court to dismiss her petition with the admonition, “if you will amend your manners, you may expect better treatment”; see Shelford on Divorce. So that there are circumstances, under which a husband may strike his wife with a horse-whip, or may strike her several times with a switch, so hard as to leave marks on her person, and these acts do not furnish sufficient ground for a divorce.



**Iowa.**<sup>130</sup> *Hunt v. Hunt* (1854):

The apparent facility with which divorces are to be obtained under the Code; the frequency of such applications; the rights and duties of parents in relation to their innocent, helpless and unfortunate offspring, and the community in which they live. The danger of a growing contempt for the sacredness and solemn responsibilities of the marriage contract, imperiously requires that the law should be so administered by our courts, that, in addition to statutory facility, a greater, by construction, may not be afforded for the reckless and immoral to abrogate this important principle of the social compact.

*Smith v. Smith* (1854):

The evidence of the case establishes the fact, by the statement of the plaintiff, that he had been advised by an attorney that he could procure a divorce more easily in Iowa than in any other state; and that he had been staying in Dubuque long enough for that purpose, and no other; that he was on his return to the state of New York, and would never live with his wife again.

In the case of *Hunt v. Hunt*, decided at this term, we have expressed our unwillingness to add to statutory facility that of loose judicial construction, to aid in the procurement of divorces from the marriage contract. Upon the most deliberate consideration of the subject, we reiterate what we expressed in that case. The family relation lies at the foundation of society. Upon it rests the well-being and hopes of the community. In its rights, duties and responsibilities are involved the dearest and highest interests of the state. The law, by enactment and due administration, should cherish and guard it with sacred fidelity. Otherwise, instead of being the legitimate means of individual and general happiness and prosperity, it will be perverted, and become the fruitful source of misery and ruin. It is the duty of our judicial tribunals to expound faithfully the enactments of the legislature, and give them due effect by legal execution. This we will do; but in the absence of legislative provisions requiring it of us, we are not ambitious to establish for Iowa, by judicial construction, the humbling *distinction* of being “the state in which a divorce can be most easily obtained.” The effect would be to make our young state the receptacle of those who are regardless of domestic and social virtue, and her laws the instrument of wrong, by depriving the innocent and unsuspecting of their rights.

*Pinkney v. Pinkney* (1854):

Our Code, §1482, provides for an eighth cause of divorce: “When it shall be made fully apparent that the parties cannot live in peace and happiness together, and that their welfare requires a separation.” There are no facts or circumstances stated in the petition that can render the above conclusion “fully apparent,” and applicable to the present parties. There is no averment of act, conduct, or disposition of the wife to justify the inference that the parties *cannot* live in peace and happiness together, or that their welfare requires a separation.

A party seeking a divorce, under this head, should state something more than the conclusion sought. He should allege his foundation, make out his case, state facts and reasons

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<sup>130</sup> For completeness, this footnote lists the other Iowa cases that made tangential reference to the omnibus clause. In *Russell v. Russell* (4 G. Greene 26, 1853, Iowa), the lower court had granted a divorce using the omnibus clause. Likewise in *Jolly v. Jolly* (1 Iowa 9, 1855), one of the alleged causes of the divorce suit was the omnibus clause. But in both *Russell* and *Jolly*, the Iowa Supreme Court said nothing whatsoever about the omnibus clause.

sufficient to make the conclusion “*fully apparent*” to the court, that the peace, happiness and welfare of the parties render it necessary to sever the bonds of matrimony.

The petition should not only distinctly state the facts constituting the cause of divorce, but it should also show, *prima facie*, that complainant is the injured party, in order to admit proof of these essential facts, before the court should decree a divorce by default.

A law so unusual, so relaxing in its influence upon the sacred obligations of marital contracts, should not be loosely administered, nor should the petition under it be bolstered up by latitudinarian intendment.

*Hinds v. Hinds* (1855) was not cited in the main text. *Hinds* concerned two issues. The first was whether Mrs. Hinds had been a *bona fide* resident of Iowa. The second concerned the omnibus clause. The Court ruled that Mrs. Hinds had not been a *bona fide* resident. And thus, “This view renders an examination of the other part of the case unnecessary.” Nonetheless, the Court did make a few remarks that might shed some light on its interpretation of the omnibus clause:

But further, in considering the context, let us look at the eighth cause for a divorce under the Code, and the one relied upon in this case. It must be “fully apparent to the court that the parties cannot live in peace and happiness,” &c. The court, as we apprehend, is not to be satisfied that in years and months past the parties could not live together in peace and happiness. The whole past may have been condoned and buried. It has reference to their ability to so live at the time of making the application, in determining which much aid might be gathered, it is true, from their previous conduct and happiness. But if the husband can leave the wife, or the wife the husband, and come to our state, board at hotels, and visit any and everywhere within and without the state, and no reliable means are afforded for showing the true character of the applicant, as you could in the case of the *bona fide* resident, how could it ever be said that the parties could not, at the time, live in peace and happiness together.

I do not understand the last sentence just quoted. But it seems to be suggesting that the parties *could* in fact live in peace and happiness together. And thus a divorce should not, in any case, be granted.

*Lyster v. Lyster* (1855):

The law requires that the *court* shall be satisfied; that it “shall be made fully apparent to the *court*, that the parties cannot live together in peace and happiness,” and not that the *parties* shall be satisfied.

*Inskeep v. Inskeep* (1857):

there may be cases where the court would be satisfied that the parties could not live in peace and happiness together, and at the same time, it might not be apparent that their *welfare* required their separation. But, as already stated, the chancellor must be satisfied of both these things before the divorce should be decreed.

Another thing is observable, from the language used in this section, and that is, that these things *must be made fully apparent to the court*. They are not left to be determined or judged of by the parties, but by the court. And the chancellor is not to dissolve the relation, upon the mere clamor of the parties, nor upon his mere supposition that they cannot live together in peace and happiness, but it must be made *fully apparent*—he must be fully satisfied that what is charged, in this respect, is true. Under the statute, the power given to the court is not the exercise of a discretion arbitrary in its character; but it must be exercised in a sound and legal manner.

... in all cases the court should be satisfied that the parties have, in good faith, endeavored to overcome such incompatibility of disposition—have, in sincerity and in truth, made the effort to banish discord and disquiet from their home, and that there is the absence of anything like collusion. The fault, whether mutual or on the part of one, must be real and substantial—one which no reasonable effort could eradicate—and not an inconsiderable one, or one which would yield to the genial influences of kindness and affection.

**Maine.** *Ricker v. Ricker* (1849) is reproduced in full here:

The enactment of 1847 was not intended to repeal any part of ch. 89, of the R. S. It only introduced some classes of causes which should justify a divorce, which were not embraced in the former law. That law was not altered as to causes of divorce, which had already been prescribed.

If all the facts alleged in the libel, are to be considered as proved, they, at most, only show a desertion; and that desertion was much less than the five years continuance, required by the R. S. *Libel dismissed.*

*Jay v. East Livermore* (1868).

The Legislature has seen fit to give to this Court an almost unlimited power to grant divorces. This authority is only limited by the requirement that, in the judgment of the Justice presiding, the granting of the divorce would be “reasonable and proper, conducive to domestic harmony,” &c.

*Stilphen v. Stilphen* (1870):

The very act which repealed the former enumeration, reaffirmed the power of the court to grant a divorce in any case and for any cause (except where both parties had been guilty of adultery, or were guilty of collusion), if the same should be deemed reasonable and proper, etc. Act of 1850, c. 171.

**Minnesota.** *True v. True* (1861):

The contract of marriage differs from all other contracts, in being indissoluble by the action of the parties to it, and of perpetually binding obligation until discharged by a competent court. It is the most important of the social relations. It is sanctioned by Divine authority, and recognized by all Christian nations as the palladium of virtue, morality, social order, and the permanent happiness of the human race. To its auspicious influence may be traced the great advances made in civilization, through the elevation of woman to social equality, the education of children, the refinement of manners, the improved sense of justice, the

enlightened cultivation of the arts, and the physical development of man; and, above all, is it valuable as awakening in the human heart those chaste and exalted conceptions of virtue, which, in spiritualizing the mind, and subduing the grosser passions of men, give moral character and grandeur to the state. It is the only lawful relation for the continuance of the species, and the perpetuity of the choicest benefits permitted by Providence to the enjoyment of man, and as such should engage the most profound solicitude of the legislator and the courts, to preserve it unsullied in its purity, and transmit it to posterity with its integrity unimpaired.

It is not pretended, that by the mere consent of the parties the marriage contract may be dissolved, and it is for us to determine whether the same end may be attained by the mere form of a statement of the facts charged in a complaint by one of the parties, and the confession of them by the other, without any further proof.

... In 1855, to meet a particular case, the legislature (as we think subsequent events have fairly proven) improvidently added the following clause to the law: "When it shall be made fully to appear, that from any other reason or causes existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation." Comp. Stat., 463, § 7. It is not for us to criticise, but to expound and apply. This section has been gravely quoted in other cases, as showing the intention of the legislature to be the encouragement of divorces, by affording unusual facilities for their attainment; but while we concede that it allows the courts a wide field for the exercise of discretion in determining such causes, we do not think it in any manner relaxes the rules by which such applications should be scrutinized, and such relief administered.

**Louisiana.** Strangely enough, it would be a reported New York Supreme Court case that made the most substantial ruling with regards Louisiana's omnibus clause. In *Hunt v. Hunt* (1877),<sup>131</sup> the appellant claimed that Louisiana's omnibus clause was unconstitutional. This claim was rejected. Even though the decision of one state's Supreme Court is not binding on the courts of another state, it is nonetheless plausible that the Louisiana Supreme Court would have come to the same conclusion as the New York Supreme Court.

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<sup>131</sup> *Hunt v. Hunt* (16 Hun. 622, 1877, New York).

## 8 Appendix: Replicas of Table III.3

TABLE III.4—REPLICA OF TABLE III.3, EXCEPT THAT ORDINARY LEAST SQUARES ARE USED INSTEAD

<i>Variables marked with # are continuous and measured in years. All others are indicators.</i>	(1)	(2)	(3)	(4)
	Basic Specification	Drop Utah for 1876-77	Same as (1), but log	Same as (2), but log
Omnibus clause	306** (135)	188* (97)	0.598** (0.289)	0.560* (0.292)
Weak omnibus clause	383 (544)	664 (457)	1.333 (2.204)	1.424 (2.181)
Adultery	111 (356)	-45 (295)	0.545 (1.075)	0.493 (1.07)
Crime	88 (122)	154 (113)	0.520** (0.197)	0.541*** (0.196)
Cruelty	-31 (330)	138 (264)	0.068 (1.126)	0.124 (1.122)
Desertion	-56 (120)	-110 (106)	0.908* (0.485)	0.890* (0.498)
Insanity	-7 (99)	0 (95)	-0.057 (0.071)	-0.055 (0.070)
Intemperance	319 (234)	161 (190)	0.579 (0.380)	0.527 (0.384)
Immoral	181 (125)	132* (76)	0.055 (0.295)	0.039 (0.300)
Mental cruelty	-369 (341)	-8 (230)	0.163 (0.521)	0.281 (0.533)
Neglect	-78 (332)	33 (292)	-0.043 (0.442)	-0.007 (0.444)
Religion (e.g. Shakers)	444 (505)	299 (405)	0.109 (1.137)	0.062 (1.136)
Voluntary separation	871* (444)	670* (365)	0.177 (1.803)	0.112 (1.787)
Cruelty only for wives	191 (173)	118 (153)	0.446* (0.253)	0.422* (0.248)
Duration of desertion #	-20 (32)	1 (26)	-0.236* (0.126)	-0.229* (0.123)
Intemperance only for wives	-86 (110)	-108 (109)	0.035 (0.211)	0.028 (0.211)
Duration of neglect #	127 (126)	99 (110)	0.451 (0.288)	0.442 (0.288)
Duration of Vol. Sep. #	-110** (45)	-85** (36)	-0.058 (0.18)	-0.050 (0.179)
Bigamy	-104 (82)	-130 (82)	0.037 (0.163)	0.028 (0.161)
Consanguinity	467*** (95)	463*** (87)	0.271 (0.178)	0.270 (0.175)
Fraud	159*** (58)	119*** (34)	-0.893*** (0.076)	-0.905*** (0.075)
Impotency	31 (128)	-22 (95)	-0.085 (0.179)	-0.102 (0.178)
Nonage	-705* (381)	-861** (334)	-0.483 (1.454)	-0.533 (1.442)
Other Incapacity	218 (432)	437 (375)	-1.235 (1.746)	-1.163 (1.727)
Pregnant	-225 (181)	-307* (171)	-0.184 (0.386)	-0.211 (0.386)
Residency requirement	-205 (137)	-122 (101)	-0.071 (0.237)	-0.044 (0.233)
Duration of res. req. #	-24 (55)	-10 (46)	-0.044 (0.134)	-0.039 (0.132)
Recrimination	406 (366)	-28 (230)	-0.346 (0.666)	-0.487 (0.675)
Collusion/connivance	266 (345)	30 (300)	1.240 (0.844)	1.163 (0.837)
Condonation	-815* (419)	-575 (350)	-1.118 (1.411)	-1.040 (1.411)
Recrimination only for adultery	-417 (355)	10 (222)	0.091 (0.614)	0.230 (0.622)
Recrimination only for same fault	-256 (521)	398 (348)	-0.224 (1.215)	-0.010 (1.207)

Recrimination is discretionary	-241 (686)	299 (498)	2.345 (1.516)	2.521 (1.524)
Collusion/connivance only for adultery	300 (296)	426 (256)	0.368 (1.111)	0.409 (1.101)
Condonation only for adultery	452 (474)	206 (376)	0.152 (0.896)	0.072 (0.904)
Limited divorce	-78 (61)	-56 (51)	-0.115 (0.153)	-0.108 (0.154)
Limited divorce is convertible to divorce	383 (704)	99 (595)	2.157 (1.931)	2.064 (1.938)
Waiting period before limited divorce can be converted #	-167 (230)	-63 (193)	-0.628 (0.645)	-0.594 (0.647)
Interlocutory period	-119 (155)	-288*** (97)	-0.348 (0.362)	-0.403 (0.372)
Duration of interlocutory period #	-321** (159)	-197 (131)	-1.043* (0.547)	-1.002* (0.545)
Not a state	-467*** (132)	-482*** (129)	0.025 (0.155)	0.020 (0.155)
No ban on legislative divorce	293*** (37)	292*** (35)	-0.063 (0.047)	-0.063 (0.047)
Ambiguous as to whether there is a ban on legislative divorce	234*** (58)	195*** (38)	0.304*** (0.082)	0.291*** (0.081)
Public defender requirement	-222** (94)	-197** (76)	-0.557 (0.399)	-0.548 (0.396)
<i>R</i> <sup>2</sup>	0.7347	0.8317	0.7804	0.8085
Observations	1920	1918	1920	1918
<i>Dependent Variable</i>				
Mean	639	633	6.134	6.131
Standard Deviation	462	421	1.004	1.001
<i>Specifications (I)-(IV) are the same as (1)-(4) except that the 42 regressors other than omnibus clauses are dropped.</i>				
	(I)	(II)	(III)	(IV)
Omnibus clause	438* (245)	256** (109)	0.614** (0.280)	0.550** (0.259)
Weak omnibus clause	-339*** (31)	-329*** (27)	-0.147** (0.056)	-0.144** (0.055)
<i>R</i> <sup>2</sup>	0.6786	0.7804	0.6421	0.7177

*Notes:* This table is an exact replica of Table III.3, except that the method of Ordinary Least Squares is used. Notes from that table apply here.

TABLE III.5—REPLICA OF TABLE III.3, EXCEPT THAT DEFECTIVE COUNTY-YEAR OBSERVATIONS ARE NOT DROPPED

<i>Variables marked with # are continuous and measured in years. All others are indicators.</i>	(1) Basic Specification	(2) Drop Utah for 1876-77	(3) Same as (1), but log	(4) Same as (2), but log
Omnibus clause	76 (109)	29 (77)	0.423** (0.193)	0.408** (0.187)
Weak omnibus clause	370 (506)	437 (436)	0.801 (3.469)	0.821 (3.440)
Adultery	-134 (382)	-297 (317)	1.797** (0.790)	1.747** (0.797)
Crime	79 (120)	111 (122)	0.469*** (0.100)	0.479*** (0.101)
Cruelty	132 (376)	286 (301)	-1.023* (0.554)	-0.975* (0.570)
Desertion	-173 (163)	-209 (159)	0.766** (0.335)	0.755** (0.335)
Insanity	-141 (104)	-136 (102)	-0.076 (0.077)	-0.074 (0.077)
Intemperance	314* (184)	180** (89)	0.503* (0.268)	0.462 (0.283)
Immoral	278*** (98)	230*** (55)	0.261 (0.202)	0.246 (0.198)
Mental cruelty	-250 (299)	-62 (175)	0.089 (0.475)	0.147 (0.471)
Neglect	55 (228)	148 (175)	-0.436 (0.500)	-0.408 (0.505)
Religion (e.g. Shakers)	481 (399)	459 (350)	-1.083 (0.819)	-1.090 (0.827)
Voluntary separation	487 (552)	445 (511)	-2.501*** (0.884)	-2.513*** (0.887)
Cruelty only for wives	153 (191)	113 (185)	0.284 (0.228)	0.272 (0.227)
Duration of desertion #	22 (26)	31 (24)	-0.089 (0.059)	-0.086 (0.059)
Intemperance only for wives	-33 (72)	-34 (71)	-0.049 (0.086)	-0.050 (0.085)
Duration of neglect #	82 (95)	35 (72)	0.530** (0.243)	0.515** (0.244)
Duration of Vol. Sep. #	-64 (57)	-55 (53)	0.198** (0.09)	0.200** (0.090)
Bigamy	-88 (68)	-102 (67)	0.400 (0.322)	0.396 (0.320)
Consanguinity	336*** (52)	343*** (50)	-0.212 (0.324)	-0.210 (0.322)
Fraud	82 (51)	78 (50)	-1.027*** (0.117)	-1.029*** (0.117)
Impotency	-64 (69)	-70 (61)	-0.098 (0.170)	-0.100 (0.171)
Nonage	-835** (340)	-837*** (306)	0.129 (1.829)	0.129 (1.813)
Other Incapacity	338 (327)	375 (319)	0.212 (0.541)	0.223 (0.538)
Pregnant	-171** (80)	-196** (76)	0.202 (0.135)	0.195 (0.135)
Residency requirement	-186** (73)	-150** (66)	-0.126 (0.150)	-0.115 (0.154)
Duration of res. req. #	-4 (37)	-1 (36)	0.125 (0.122)	0.126 (0.123)
Recrimination	-174 (292)	-367** (167)	-1.029** (0.472)	-1.088** (0.469)
Collusion/connivance	492* (264)	400 (241)	1.140 (0.681)	1.112 (0.682)
Condonation	-622 (422)	-483 (361)	-1.250 (1.835)	-1.207 (1.825)
Recrimination only for adultery	84 (294)	276 (170)	0.608 (0.437)	0.667 (0.434)
Recrimination only for same fault	324 (338)	576*** (194)	0.781 (0.695)	0.859 (0.697)
Recrimination is discretionary	193 (554)	429 (378)	1.570 (1.968)	1.643 (1.957)
Collusion/connivance only for adultery	101 (260)	147 (215)	0.392 (1.757)	0.406 (1.744)

Condonation only for adultery	235 (348)	139 (270)	-0.659 (0.745)	-0.689 (0.745)
Limited divorce	54 (82)	56 (80)	0.009 (0.100)	0.010 (0.100)
Limited divorce is convertible to divorce	520 (616)	155 (493)	2.849** (1.357)	2.736** (1.353)
Waiting period before limited divorce can be converted #	-175 (205)	-49 (161)	-0.820* (0.448)	-0.782* (0.446)
Interlocutory period	-210 (155)	-336*** (76)	-0.364 (0.238)	-0.402* (0.237)
Duration of interlocutory period #	-238 (163)	-126 (111)	-0.606** (0.279)	-0.572** (0.277)
Not a state	-500** (194)	-549*** (175)	-0.152 (0.138)	-0.167 (0.132)
No ban on legislative divorce	261*** (49)	261*** (49)	-0.033 (0.045)	-0.033 (0.045)
Ambiguous as to whether there is a ban on legislative divorce	174*** (64)	169** (63)	0.248* (0.123)	0.246* (0.123)
Public defender requirement	-72 (55)	-84 (54)	0.011 (0.132)	0.007 (0.133)
<i>R</i> <sup>2</sup>	0.8724	0.8934	0.9356	0.9360
Observations	1923	1921	1923	1921
<i>Dependent Variable</i>				
Mean	546	546	6.043	6.043
Standard Deviation	367	362	0.799	0.799
<i>Specifications (I)-(IV) are the same as (1)-(4) except that the 42 regressors other than omnibus clauses are dropped.</i>				
	(I)	(II)	(III)	(IV)
Omnibus clause	83 (95)	52 (83)	0.187 (0.205)	0.175 (0.205)
Weak omnibus clause	-360*** (39)	-359*** (39)	-0.494*** (0.052)	-0.494*** (0.052)
<i>R</i> <sup>2</sup>	0.8386	0.8603	0.8962	0.8969

*Notes:* This table is an exact replica of Table III.3, except that defective county-year observations are not dropped. Notes from that table apply here.



## CHAPTER IV

### Revealed Relative Utilitarianism<sup>132</sup>

#### 1 Introduction

##### 1.1 *The Revealed Preference Approach to Welfare Judgments*

Welfare judgments are ubiquitous in economics. One of the most prominent welfare functions is the utilitarian welfare function, according to which welfare equals a weighted sum of individuals' utilities. There are several approaches to understanding and justifying utilitarianism in economics. For this paper the difference between two particular such approaches is important. The first approach is to assume that, when making welfare judgments, we are *given* not only individuals' ranking of alternatives, but also some information about interpersonal comparisons of utility. That is, the input into the welfare judgments, or mathematically speaking the argument of the welfare function, includes interpersonal comparisons. Examples of this approach are papers by d'Aspremont and Gevers (1977) and Maskin (1978).<sup>133</sup>

The second approach to the justification of utilitarianism only uses individual preferences as input into the social welfare assessment. This approach originates with Harsanyi (1955). Harsanyi assumed every individual in society to have von Neumann-Morgenstern preferences regarding all lotteries over a given set of alternatives. Society's preference over lotteries is also assumed to satisfy the von Neumann-Morgenstern axioms. In this setting, utilitarianism means that any Bernoulli utility function representing society's preferences is a weighted sum of Bernoulli utility functions representing the individuals' preferences.<sup>134</sup> Harsanyi showed that utilitarianism in this

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<sup>132</sup> This chapter is co-authored with Tilman Börgers. We are grateful to Lars Ehlers for comments and to Philippe Mongin and John Weymark for pointers regarding the formal literature on utilitarianism. We owe special thanks to Jim Belk who suggested to us the idea on which the proof of Proposition 3 is built.

<sup>133</sup> Mongin (1994) derives the set of possible interpersonal comparisons of utility from more elementary axioms.

<sup>134</sup> It has been disputed that Harsanyi's (1955) is "really" about utilitarianism because it treats utility functions only as representations of ordinal preferences rather than as primitive concepts (see Weymark's (1991) review of the Harsanyi-Sen debate). For simplicity, we shall ignore this issue in this paper.

sense is implied by a simple “indifference axiom”: if all individuals are indifferent between two lotteries, then so should society be.<sup>135</sup> Importantly, the indifference axiom is a single profile axiom, that is, it can be checked for every profile of preferences separately. The indifference axiom implies no restrictions across preference profiles. Also, of course, the indifference axiom does not pin down the weights assigned to different individuals’ utility functions. The weights may even be negative, although this is easily ruled out by strengthening the indifference axiom to a Pareto axiom.<sup>136</sup>

But even with strictly positive weights, the weights don’t need to be equal for different individuals, and the weights may depend on the preference profile that is considered. Thus, individual 1 may always receive particularly high weight. Alternatively, an individual who ranks alternative *a* over alternative *b* may be considered to display “bad taste” and therefore may receive low weight (unless all individuals rank *a* over *b*.) In this way, the welfare function may incorporate a form of “paternalism.” Also an individual whose preferences deviate particularly strongly from those of all others may receive a particularly high weight, which might be justified as a form of “minority protection.” All of this is allowed by Harsanyi’s theorem.

“Relative utilitarianism” is one way to go further, and to come up with a single welfare definition. Relative utilitarianism defines welfare to be the sum of agents’ Bernoulli utilities where all agents have the same weight, and where agents’ Bernoulli utility functions are normalized so that each individual’s utility function assigns utility 0 to this individual’s least preferred outcome and utility 1 to this individual’s most preferred outcome. The subject of this paper is the axiomatic basis of relative utilitarianism.

To develop this axiomatic perspective we adopt a “revealed preference” approach to welfare judgments. Suppose we observed sufficiently many choices of each member of society to infer their preferences, and also sufficiently many choices of a “social planner” to infer the planner’s preferences. Suppose all these preferences satisfied the von Neumann-Morgenstern axioms. Assume also that we made observations not just for one profile of individuals’ preferences but for many. And finally, imagine that we knew that the social planner, when choosing, knew the profile

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<sup>135</sup> Note that this argument is different from the justification of utilitarianism as the rational choice criterion for a fictitious observer choosing behind the veil of ignorance, that is, not knowing which individual she herself will be in society. This justification was proposed by Harsanyi (1953). In the setting of Harsanyi’s (1953) paper, an axiomatization of the welfare definition that we discuss in this paper, “relative utilitarianism,” was provided by Karni (1998).

<sup>136</sup> For a modern statement and proof of Harsanyi’s theorem, and of versions of the theorem with the indifference axiom strengthened to a variety of Pareto axioms, see Weymark (1994).

of individuals' preferences, and that his choices satisfy a strengthened version of Harsanyi's indifference axiom, namely a Pareto axiom. Then the social planner's choices reveal, in a sense that we shall make precise, for every preference profile how much weight the planner assigns to any particular individual in comparison to any other individual. More precisely, we shall introduce a concept of the social planner's "marginal rates of substitution" between any individual  $i$  and  $j$ 's most preferred alternative, and explain how these marginal rates of substitution are revealed by the planner's choices. We shall show that three axioms about the social planner's choices imply that these marginal rates of substitution have to be equal to 1 for all preference profiles, and we shall infer from that that the planner's choices must reveal a relative utilitarian welfare function.

We can now re-phrase the difference between the two approaches to justifying utilitarianism that we distinguished above. While in the first approach, comparisons among individuals' utilities are taken as input into the welfare judgment, in the second approach the weight of different individuals in the welfare function are revealed by the planner's choices. We don't model what these comparisons are based on. Indeed, we don't ask how these comparisons "should" be made. Our approach is positive, not normative: if the planner's choices satisfy a certain set of axioms, then the planner's choices will reveal relative utilitarianism.

## 1.2 *Axioms for Revealed Relative Utilitarianism*

As we mentioned above, the key concept in our axiomatization of relative utilitarianism are the "marginal rates of substitutions" of the welfare function. The "marginal rates of substitution" are defined for a given profile of individuals' von Neumann-Morgenstern preferences and are derived from the social planner's von Neumann-Morgenstern preference that corresponds to this profile. We assume that the social planner's preference satisfies a Pareto axiom. The marginal rate of substitution between agents  $i$  and  $j$  is then the answer to the following question: To keep the social planner indifferent, how much probability of agent  $i$ 's most preferred alternative must be shifted to his least preferred alternative, if "one small unit of probability" is shifted from agent  $j$ 's least preferred alternative to his most preferred alternative? In this question we assume implicitly that the shift in probabilities from agent  $i$ 's most preferred alternative to his least preferred alternatives does not affect the utility of agents other than  $i$ , and we make the same implicit assumption for agent  $j$ . Using a theorem due to Weymark (1994) we show that, when the preference profiles satisfy a condition that is called the "Independent Prospects" condition, this is a well-defined

thought experiment for all  $i$  and  $j$ , and for every pair of  $i$  and  $j$  there is a unique number that is the answer to our question.

We then consider a social planner who assigns to many profiles of individuals' preferences a social preference that satisfies the Pareto axiom. Whenever the profile of individuals' preferences satisfies the Independent Prospects condition, then the planner's preference reveals a complete set of pairwise marginal rates of substitutions. The axioms that we study in this paper address how these marginal rates of substitution are allowed to change as individuals' preferences change. When the social preference can be represented by the relative utilitarian welfare function, then the marginal rates of substitution equal 1, regardless of individuals' preferences. The objective of our analysis is to derive this as a conclusion from more elementary axioms.

The key axiom is a separability axiom. It requires that the marginal rate of substitution between the probabilities of agent  $i$ 's and agent  $j$ 's most preferred alternatives only depends on agent  $i$  and agent  $j$ 's preferences, not on other agents' preferences. Any preference that satisfies (i) a Pareto axiom and (ii) the separability axiom can be represented as the sum of 0-1 normalized Bernoulli utilities such that each agent's weight depends only on that agent's preference, and not on the other agents' preferences. Separability thus rules out in particular that an agent's weight depends on the comparison between her preference and other agents' preferences, as in the "minority protection" example that we offered above.

We then add the "invariance axiom." This axiom requires that the marginal rates of substitution between probabilities of agents' most preferred alternatives do not change when a change in agents' preferences concerns only alternatives which all agents regard as equivalent to lotteries over the other alternatives, and which are thus "redundant." What changes in these cases is only agents' views of *which* lotteries the redundant alternatives are equivalent to. Such a change is required by our axiom not to affect the marginal rates of substitution. A short argument that is conceptually and mathematically not very deep shows that the invariance axiom has a surprisingly strong implication if the domain of preferences that is considered is sufficiently rich. It then implies that in the representation of social welfare as the sum of 0-1 normalized von Neumann-Morgenstern utilities each agent's weight must be constant, and not vary with the preference profile at all. Thus, in particular, the invariance axiom rules out the paternalism example that we offered above.

The final step of the argument is simple. We add an anonymity axiom, which requires that all agents are treated symmetrically. We then conclude that all agents' weights have to be equal, and thus that social welfare has to be relative utilitarian.

It is of technical importance for our analysis that we restrict our argument to a sub-domain of the space of all profiles of von Neumann-Morgenstern preferences. For example, we only consider preference profiles that satisfy the "Independent Prospects" condition mentioned earlier. There will be other constraints on the sub-domain that we are considering. In fact, this sub-domain is not explicitly constructed in the paper. Instead we list in the paper all properties of the sub-domain that we make use of, and we construct the sub-domain explicitly in the appendix. The sub-domain is in a natural sense "dense" in the universal domain, if we exclude from the universal domain all profiles in which some individual is completely indifferent between all alternatives. The construction of the sub-domain is somewhat artificial. Whether there is a natural axiomatization of relative utilitarianism on the domain of all profiles of von Neumann-Morgenstern preferences is an open question.

We will be able to construct the sub-domain of preferences for which our results holds only under restrictive assumptions regarding the number of agents and alternatives. Specifically, we require that there are at least three agents, and that the number of alternatives is more than six times the number of agents. The paper will make clear that the assumptions that there are more alternatives than agents, and that there are at least three agents, are made for transparent conceptual reasons. The final assumption that the number of alternatives exceeds the number of agents by a factor of more than six is made for purely mathematical reasons which the appendix clarifies. That there are many more alternatives than agents seems not unreasonable: there are probably many more possible income tax codes than there are citizens of the United States.

### 1.3 *Relation with Dhillon and Mertens's Axiomatization of Relative Utilitarianism*

Our axiomatization of relative utilitarianism is closely related to the axiomatization in Dhillon (1998). Our three axioms are in fact very similar to the three axioms that Dhillon uses.<sup>137</sup> Dhillon derives the separability axiom from a more complicated axiom, the "extended Pareto axiom," that can only be formulated in a richer framework than the one we consider here. This richer framework

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<sup>137</sup> Dhillon introduces a fourth axiom, "neutrality," but never uses it.

considers the aggregation of preferences in groups of different size. It is easy to see that the extended Pareto axiom implies the separability axiom (see our discussion following Definition 6). Using separability directly makes our paper much simpler than it would otherwise be.

Unlike Dhillon, we adopt a revealed preference approach to social welfare. In particular, we use throughout the new concept of revealed marginal rates of substitution of a social welfare function. The introduction of this concept is another factor that allows us to provide much simpler and more transparent proofs than Dhillon offered. Our approach of considering, as we mentioned earlier, only a sub-domain of the full domain of preferences also contributes to the simplification that we achieve in this paper. Dhillon works with the full domain, and, remarkably, does not use any continuity axiom.<sup>138</sup>

A paper that is closely related to Dhillon (1998) is Dhillon and Mertens (1999). They offer an axiomatization of relative utilitarianism that differs from Dhillon's by replacing the extended Pareto axiom by a very weak "monotonicity" axiom, and then requiring continuity of the social welfare function.<sup>139</sup> Unfortunately, the role of continuity in this paper is quite opaque. If continuity is not assumed, Dhillon and Mertens's axioms allow, for example, the weights of any one individual to depend on the number of other individuals with the same preferences.<sup>140</sup>

#### 1.4 *Historical Notes*

Our interpretation of welfare theory as a theory of the revealed preferences of a fictitious social planner echoes language used by Harsanyi when summarized the conclusion of his 1955 paper thus: "In the same way as ... it has been shown that a rational man ... must act *as if* he ascribed numerical subjective probabilities to all alternative hypotheses ... --- so in welfare economics we have also found that a rational man ... must likewise act *as if* he made quantitative interpersonal comparisons of utility..." (Harsanyi, 1955, p. 321).

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<sup>138</sup> Unfortunately, Dhillon (1998) contains errors that affect both the statement of the main result its proof. We elaborate on this in Appendix G. We do not know whether statement and proof of the main result in Dhillon (1998) can be repaired.

<sup>139</sup> The continuity notion that Dhillon and Mertens use is intricate. It needs to be, because with a more simple notion of continuity, Chichilnisky's (1985) impossibility result that we mention below would apply.

<sup>140</sup> See the example on page 485 in Dhillon and Mertens (1999), which they use to illustrate that the continuity axiom cannot be dropped from the theorem. This example also disproves the assertion of Dhillon and Mertens on page 483 of their paper that monotonicity implies separability, where separability is meant to mean that an individual's weight may only depend on that individual's preferences, and not other agents' preferences.

Harsanyi (1955) discussed in detail an earlier paper by Fleming (1952) that also provided axiomatic foundations for weighted utilitarianism, interpreting his own work as reaching the same conclusion as Fleming's but with weaker axioms. Harsanyi thought that the main difference between his and Fleming's framework that made it possible to drop axioms was that he considered lotteries as outcomes, while Fleming did not, and then could assume that individual and social preferences satisfied the von Neumann-Morgenstern postulates. However, Harsanyi obtained a weaker conclusion than Fleming, namely only a single profile theorem, whereas Fleming's theorem was a multi-profile theorem.<sup>141</sup> Interestingly, the axiom that Harsanyi dropped<sup>142</sup> was a separability axiom that is quite similar to the separability axiom that we use. One might thus view our work as integrating Fleming's and Harsanyi's approaches.

### 1.5 *Related Literature*

The invariance axiom in this paper is related to, but much weaker, than Arrow's (1951) "independence of irrelevant alternatives." The main difference between these axioms concerns *what* is regarded as an irrelevant alternative. According to Arrow's axiom, for the comparison of any two alternatives, *all* other alternatives are irrelevant. By contrast, according to the invariance axiom, for the social preferences over all alternatives, only those alternatives are regarded as irrelevant for which all agents agree that they are equivalent to lotteries over the given subset.

If, instead of the invariance axiom, Arrow's independence of irrelevant alternatives axiom were used, one would obtain versions of Arrow's impossibility theorem. This is not completely obvious because we are considering a social welfare function with a smaller domain than Arrow's (1951) social welfare function. Arrow considers a "full" domain, whereas we only consider expected utility preferences. But it was shown by Sen (1970, Theorem 8\*2) that Arrow's theorem remains valid on this restricted domain. Stronger versions of Sen's result were shown by Kalai and Schmeidler (1977) and Hylland (1980). This literature sometimes refers to "cardinal utilities" rather than Bernoulli utilities, but the results that we have quoted, even if they refer to cardinal utilities, can also be interpreted as results about Bernoulli utilities. Note that these results imply that relative utilitarianism does not satisfy independence of irrelevant alternatives.

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<sup>141</sup> In a comment on Harsanyi's paper, Fleming (1957) does not raise the issue of single-profile vs. multi-profile results.

<sup>142</sup> Although Harsanyi argued for the plausibility of the axiom (Harsanyi, 1955, pp. 310-312).

Chichilnisky (1985) proved another impossibility result in this area, namely the non-existence of a continuous aggregation rule for von Neumann-Morgenstern preferences that also respects unanimity and that is anonymous. Notice that relative utilitarianism is not continuous. For example, if agent 1's Bernoulli utility over three alternatives is given by the vector  $(1, 0.5 - \varepsilon, 0)$ , and agent 2's Bernoulli utility for the same three alternatives is  $(0, 0.5(1 + \varepsilon), 1)$ , then for every  $\varepsilon > 0$  the sum of these two utility vectors is  $(1, 1 + 0.5\varepsilon, 1)$ , which corresponds to the same preferences as the vector  $(1, 2, 1)$ , but in the limit, as  $\varepsilon \rightarrow 0$ , the sum of the utility vectors corresponds to complete indifference. In our development here, we shall not impose any continuity requirements.

Dhillon and Mertens (1997) proved another impossibility result in this area. They showed that the Pareto axiom and a strong form of monotonicity cannot be satisfied simultaneously. Note that this result implies that relative utilitarianism does not satisfy this strong form of monotonicity.

An axiomatization of relative utilitarianism that is very different from the one pursued in this paper was provided by Segal (2000). Whereas this paper follows Arrow's (1951) approach and considers for a variety of lists of individuals' preferences how welfare is defined, holding the set of alternatives constant, Segal considers for a variety of sets of alternatives how welfare is defined, holding the individuals' preferences fixed.

## 1.6 *Outline of the Paper*

We proceed as follows. In Sections 2 and 3 we review Harsanyi's (1955) aggregation theorem, and explain how a social preference that satisfies a Pareto Axiom reveals the marginal rates of substitution between the probabilities of different agents' most preferred alternatives. In Section 4 we extend the framework and consider multi-profile social welfare functions. In Sections 5, 6, and 7 we successively introduce the three axioms which characterize relative utilitarianism, and discuss each axiom's implications. As we develop our argument, we shall make three assumptions regarding the domain of the social welfare function. These assumptions greatly simplify our arguments. In Section 8 we provide a result that asserts the existence of a domain that satisfies our assumptions, and that is dense in the set of all preference profiles that satisfy von Neumann-Morgenstern axioms. This result is proved in an appendix. Section 9 concludes.



## 2 The Pareto Axiom

There are a finite set of alternatives,  $A = \{a_1, a_2, \dots, a_m\}$ , and a finite set of individuals  $N = \{1, 2, \dots, n\}$ . We assume that both  $n$  and  $m$  are at least 2. We denote the set of all lotteries over  $A$  by  $\Delta A$ . The set of all preference orderings over  $\Delta A$  that satisfy the von Neumann-Morgenstern axioms will be denoted by  $\bar{\mathcal{R}}$ . Every individual  $i \in N$  will be assumed to have a preference ordering  $\succeq_i \in \bar{\mathcal{R}}$ . We assume that no individual is indifferent between all lotteries. The set of all preference orderings over  $\Delta A$  that satisfy the von Neumann-Morgenstern axioms and that are not indifferent between all lotteries will be denoted by  $\mathcal{R}$ . Thus,  $\succeq_i \in \mathcal{R}$  for all  $i \in N$ . The assumption that no individual is indifferent between all alternatives is very mild. Individuals who are indifferent between all alternatives could arguably be dropped from the analysis. The strict preference derived from  $\succeq_i$  will be denoted by  $\succ_i$ , and the indifference relation derived from  $\succeq_i$  will be denoted by  $\sim_i$ .

In this and the next section we take as given and fixed a profile  $\sim = (\succeq_i)_{i \in N} \in \mathcal{R}^n$  of preferences, one for each individual. We seek to investigate a benevolent social planner's preference. We denote this preference by  $\succeq_s$ . We shall also refer to  $\succeq_s$  as the "social preference." We assume that  $\succeq_s$  satisfies the von Neumann-Morgenstern axioms. We allow for the possibility that  $\succeq_s$  is indifferent between all alternatives. Thus,  $\succeq_s \in \bar{\mathcal{R}}$ . We denote by  $\succ_s$  the strict preference order derived from  $\succeq_s$  and by  $\sim_s$  the indifference relation.

**Definition 1.** *The social preference  $\succeq_s$  satisfies the Pareto Axiom with respect to  $\succeq$  if for all  $p, q \in \Delta A$ :*

- (i) If  $p \succeq_i q$  for all  $i \in N$ , then  $p \succeq_s q$ .
- (ii) If  $p \succeq_i q$  for all  $i \in N$ , and  $p \succ_i q$  for at least one  $i \in N$ , then  $p \succ_s q$ .

The following proposition, which is closely related to Harsanyi's (1955) theorem on utilitarianism, is the first part of Theorem 3 in Weymark (1994).

**Theorem 1.** *The following two conditions are equivalent:*

- (i)  $\succeq_s$  satisfies the Pareto axiom with respect to  $\succeq$ .
- (ii) Whenever for every  $i \in N$ ,  $u_i: A \rightarrow \mathbb{R}$  is a Bernoulli utility function that represents  $\succeq_i$ , and  $u_s: A \rightarrow \mathbb{R}$  is a Bernoulli utility function that represents  $\succeq_s$ , then there are strictly positive real numbers  $w_i$  for all  $i \in N$ , and a real number  $\mu$ , such that:

$$u_s(a) = \sum_{i \in N} w_i u_i(a) + \mu \text{ for all } a \in A.$$

### 3 Revealed Marginal Rates of Substitution

We now investigate for any two agents  $i$  and  $j$  whether the social preference relation  $\succeq_s$  reveals how much “relative weight” the social preference attaches to agent  $i$ ’s and agent  $j$ ’s preferences. As our approach to relative utilitarianism in this paper is purely based on preferences, and not on their numerical representations, we shall define this “relative weight” in terms of the preferences only. We shall introduce a concept called “the social preference’s marginal rate of substitution between agents  $i$  and  $j$ .” This marginal rate of substitution indicates how much probability of agent  $j$ ’s most preferred alternative we can subtract and keep welfare constant if we raise the probability of agent  $i$ ’s most preferred alternative by one unit. Here, we shall assume that all subtractions (additions) from (to) the probability of an agent’s most preferred alternative are accompanied by equal additions (subtractions) to (from) the probability of an agent’s least preferred alternative, and we shall assume that all agents other than  $i$  and  $j$  are indifferent towards these changes in probability. If this marginal rate of substitution is large, then intuitively agent  $i$ ’s “relative weight” in comparison to agent  $j$  is large, whereas if the marginal rate of substitution is small, then intuitively agent  $i$ ’s “relative weight” in comparison to agent  $j$  is low.

To define marginal rates of substitution formally, we introduce some more notation. For any agent  $i \in N$ , we denote by  $b_i$  one of agent  $i$ ’s most preferred outcomes in  $A$  and by  $\ell_i$  one of agent  $i$ ’s least preferred outcomes in  $A$  (in each case it does not matter which one we pick, if there are multiple most or least preferred outcomes). For any two outcomes  $a, b \in A$  and for any  $\lambda \in [0,1]$  we write  $\lambda a + (1 - \lambda)b$  for the lottery in  $\Delta A$  that places probability  $\lambda$  on  $A$  and probability  $1 - \lambda$  on  $b$ . Note that for any agent  $i \in N$  and any lottery  $q \in \Delta A$ , because  $\succeq_i$  is not indifferent between all elements of  $\Delta A$ , there is a unique number  $\alpha_i(q)$  such that  $q \sim_i \alpha_i(q)b_i + (1 - \alpha_i(q))\ell_i$ . We can now define the marginal rate of substitution between agents  $i$  and  $j$  that is revealed by a social preference.

**Definition 2.** Suppose  $\succsim \in \mathcal{R}^N$ ,  $i, j \in N$ , and  $i \neq j$ . Let  $\succsim_s$  be the social preference. If there are lotteries  $p, q \in \Delta A$  such that:  $p \sim_s q$ ,  $p \sim_k q$  for all  $k \in N \setminus \{i, j\}$ ,  $p \succ_i q$ ,  $q \succ_j p$ , then  $\succsim_s$  reveals that the marginal rate of substitution between  $i$  and  $j$  is:

$$MRS_{i,j} = \frac{\alpha_i(p) - \alpha_i(q)}{\alpha_j(p) - \alpha_j(q)}$$

This definition of the revealed marginal rate of substitution is based on a movement from some lottery  $p$  to another lottery  $q$ . As in any definition of marginal rates of substitution we consider movements along a indifference curve; this is expressed in the definition by the assumption  $p \sim_s q$ . Because we want to focus on the marginal rate of substitution between agents  $i$  and  $j$ , we require that all other agents are indifferent between  $p$  and  $q$ . Finally, as we are interested in how agent  $i$ 's and agent  $j$ 's preferences are traded off against each other, we assume that  $i$  and  $j$  have strict and opposite preferences over  $p$  and  $q$ . The marginal rate of substitution is then defined as the change in the probability of the most preferred alternative of  $i$  that is for  $i$  equivalent to the movement from  $q$  to  $p$  divided by the same change, reversing the order of  $p$  and  $q$ , for  $j$ . Thus, roughly speaking, as we mentioned above, the marginal rate of substitution indicates by how much probability of agent  $j$ 's most preferred alternative we can subtract and keep welfare constant if we raise the probability of agent  $i$ 's most preferred alternative by one unit.

Before we can use the concept of revealed marginal rate of substitution, we have to address whether such rates always exist, and whether, if they exist, they are unique. We begin with existence. Not every social preference that satisfies the Pareto axiom reveals a marginal rate of substitution. Suppose, for example, that two individuals have identical preferences. Then, regardless of the other agents' preferences, and regardless of what the social preference is, it will be impossible to reveal a marginal rate of substitution that involves either of these two individuals because lotteries satisfying the conditions of Definition 2 don't exist.

In addition to the preference profiles in the previous paragraph, there are also profiles  $\succsim$  such that *some, but not all* social preferences that satisfy the Pareto axiom reveal a marginal rate of substitution between  $i$  and  $j$ . Here is an example. Suppose society consists of just two individuals, 1 and 2, and there are just two alternatives,  $a$  and  $b$ . Suppose the preference profile is such that 1 prefers  $a$  to  $b$  but 2 prefers  $b$  to  $a$ . The social preference where society is indifferent between  $a$  and

$b$  reveals that the marginal rate of substitution between 1 and 2 is 1. In contrast, the social preference where society prefers  $a$  to  $b$  fails to reveal a marginal rate of substitution between 1 and 2, because there do not exist lotteries  $p$  and  $q$  such that 1 prefers the former, 2 prefers the latter, and society is indifferent between the two.

We now ask: For which preference profiles  $\succsim$  does *any* social preference  $\succsim_s$  that satisfies the Pareto axiom reveal at least one marginal rate of substitution between  $i$  and  $j$  for all  $i, j \in N$  with  $i \neq j$ ? A sufficient condition for this to be the case was introduced by Fishburn (1984), who used it for a slightly different purpose than we do. Weymark (1994) introduced the name “Independent Prospects” for this condition. One may interpret this condition as saying that for every individual  $i$  in society there is at least one pair of lotteries such that the difference between these lotteries is a private matter of that individual, and is of no concern to any other individual.

**Definition 3.** A profile of preferences  $\succsim \in \mathcal{R}^n$  satisfies the *Independent Prospects* condition if for every  $i \in N$  there are lotteries  $p_i, q_i \in \Delta A$  such that  $p_i \succ_i q_i$ , and  $p_i \sim_k q_i$  for all  $k \in N \setminus \{i\}$ .

**Proposition 1.** Suppose  $\succsim$  satisfies the *Independent Prospects* condition, and suppose that the social preference  $\succsim_s$  satisfies the Pareto axiom. Then  $\succsim_s$  reveals a marginal rate of substitution between every pair  $i, j \in N$ ,  $i \neq j$  of agents.

*Proof.* Let  $i, j \in N$ ,  $i \neq j$ . To prove the Proposition, it suffices to construct lotteries  $p, q$  that satisfy the conditions in Definition 2. We start with the lotteries  $p_i, q_i, p_j, q_j$  whose existence is given by Definition 3. For any  $\alpha \in [0, 0.25]$  let:

$$p(\alpha) = (0.5 - \alpha)p_i + \alpha q_i + (0.25 - \alpha)p_j + (0.25 + \alpha)q_j. \quad (1)$$

$$q(\alpha) = \alpha p_i + (0.5 - \alpha)q_i + (0.25 + \alpha)p_j + (0.25 - \alpha)q_j. \quad (2)$$

If  $\alpha = 0$ , then  $p(\alpha) \succ_i q(\alpha)$  and  $p(\alpha) \sim_k q(\alpha)$  for all  $k \neq i$ , so that by the Pareto axiom,  $p(\alpha) \succ_s q(\alpha)$ . Conversely, if  $\alpha = 0.25$ , then  $q(\alpha) \succ_j p(\alpha)$  and  $q(\alpha) \sim_k p(\alpha)$  for all  $k \neq j$ , so that by the Pareto axiom,  $q(\alpha) \succ_s p(\alpha)$ . Hence, by the continuity of von Neumann-Morgenstern preferences, there exists  $\bar{\alpha} \in (0, 1)$  such that  $p(\bar{\alpha}) \sim_s q(\bar{\alpha})$ . We now set  $p \equiv p(\bar{\alpha})$  and  $q \equiv q(\bar{\alpha})$ . By construction  $p \sim_s q$ . The claim is proved if we show that  $p \succ_i q$  and  $q \succ_j p$ . But this follows directly from the fact that  $\bar{\alpha}$  is in the interior of  $[0, 0.25]$ . ■

Suppose next that a social preference that satisfies the Pareto axiom does reveal at least one marginal rate of substitution between agents  $i$  and  $j$ . Is this marginal rate of substitution uniquely determined, or could several values of the marginal rate of substitution be revealed? It is one of the implications of the following result that the marginal rate of substitution is uniquely determined.

But first, some notation: For any  $\succsim_i \in \mathcal{R}$  let  $u(\succsim_i)$  denote the Bernoulli utility function that represents  $\succsim_i$  and that is normalized:  $u(\succsim_i)(b_i) = 1$  and  $u(\succsim_i)(\ell_i) = 0$ . If it is clear from the context that individual  $i$ 's preference relation is  $\succsim_i$ , then we shall write  $u_i(a)$  instead of  $u(\succsim_i)(a)$ .

**Proposition 2.** *Consider a given preference profile  $\succsim \in \mathcal{R}^n$ , and let  $\succsim_s \in \bar{\mathcal{R}}$  be the corresponding social preference. Suppose that  $\sum_{i \in N} w_i u_i(\succsim_i)$  is a Bernoulli utility function that represents  $\succsim_s$ , where each  $w_i \in \mathbb{R}_{++}$ . Suppose that the social preference  $\succsim_s$  reveals that the marginal rate of substitution between  $i$  and  $j$  is  $MRS_{i,j}$ . Then:*

$$MRS_{i,j} = \frac{w_j}{w_i}.$$

There may be multiple pairs of lotteries  $p, q$  that satisfy the conditions of Definition 2. But under the conditions of Proposition 2 for all such pairs of lotteries the revealed marginal rate of substitution equals  $w_j / w_i$ , and therefore the revealed marginal rate of substitution is unique.

*Proof.* Because the social preference is indifferent between  $p$  and  $q$ :

$$\sum_{k \in N} w_k u_k(p) = \sum_{k \in N} w_k u_k(q) \quad (3)$$

Because agents other than  $i$  and  $j$  are indifferent between  $p$  and  $q$ , this is equivalent to:

$$\sum_{k \in \{i,j\}} w_k u_k(p) = \sum_{k \in \{i,j\}} w_k u_k(q) \quad (4)$$

which simplifies to:

$$\frac{u_i(p) - u_i(q)}{u_j(q) - u_j(p)} = \frac{w_j}{w_i} \quad (5)$$

Because the utility functions  $u_k$  are normalized so that the utility of  $u_k(b_k) = 1$  and  $u_k(w_k) = 0$ , we can replace  $u_k(p)$  by  $\alpha_k(p)$  and  $u_k(q)$  by  $\alpha_k(q)$  for  $k = i, j$ , and we obtain the desired result. ■

#### 4 Social Welfare Functions

We now consider preference aggregation not only for one preference profile, but for every preference profile in some set of preference profiles. Our interest is in the full domain  $\mathcal{R}^n$ . But for most of the paper it is useful to restrict attention to a subset  $\mathcal{R}$  of  $\mathcal{R}^n$ . We won't specify this set here, but rather throughout the paper we will make assumptions regarding this set as we use them, and in Section 8 and in the appendix we shall construct an example of a domain that satisfies all our assumptions. The set  $\mathcal{R}$  will later be assumed to be topologically dense in  $\mathcal{R}^n$ .

**Assumption 1.**  *$\mathcal{R}$  is the Cartesian product of non-empty sets of preferences for each agent. That is,  $\mathcal{R} = \times_{i \in N} \mathcal{R}_i$ , where for each  $i \in N$ ,  $\emptyset \neq \mathcal{R}_i \subset \mathcal{R}$ . Moreover, every  $\succsim \in \mathcal{R}$  satisfies the Independent Prospects condition.*

Before we comment on this assumption, we define the object of our study in this paper.

**Definition 4.** A *social welfare function* (SWF) is a function:  $\varphi: \mathcal{R} \rightarrow \bar{\mathcal{R}}$ .

We now comment on Assumption 1. If  $\mathcal{R}$  were not a Cartesian product, the set of preferences of some agent  $i$  that we consider would depend on the preferences of all other agents. In other words, our study of preference aggregation would implicitly assume a form of correlation among agents' preferences. We see no good intuitive reason to introduce such a correlation. Moreover, the Cartesian product assumption simplifies our terminology and notation and makes our main arguments, for example in the next section, easier to follow. On the other hand, this assumption complicates our construction of the set  $\mathcal{R}$  in the appendix. For us the transparency of the arguments in the main text of the paper is more important. The second part of Assumption 1 is that every  $\succsim$

$\in \mathcal{R}$  satisfies the Independent Prospects condition. This will allow us to infer from the social preference  $\varphi(\succsim)$  unique marginal rates of substitution for each preference profile  $\succsim$  and each pair of agents  $i, j$  with  $i \neq j$ .

Our focus will be on the SWFs that satisfy the *Pareto Axiom*. We extend this axiom from single profiles to SWFs as follows.

**Definition 5.** A SWF  $\varphi$  satisfies the *Pareto Axiom* if for all preference profiles  $\succsim \in \mathcal{R}$ , the social preference  $\varphi(\succsim)$  satisfies the Pareto Axiom with respect to  $\succsim$ .

Let  $\varphi$  be a SWF that satisfies the Pareto Axiom. Then for every  $\succsim \in \mathcal{R}$  and all  $i, j \in N$  with  $i \neq j$ , we can identify the revealed marginal rate of substitution for  $i$  and  $j$ . We denote these marginal rate of substitution by  $MRS_{i,j}(\succsim)$ . In the next three sections we shall consider the implications of three axioms regarding the marginal rates of substitution.

## 5 Separability of Revealed Marginal Rates of Substitution

Our axiomatization of relative utilitarianism will focus on the marginal rates of substitution revealed by a utilitarian welfare function. The first axiom is separability.

**Definition 6.** Suppose that the domain  $\mathcal{R}$  of a SWF  $\varphi$  satisfies Assumption 1, and that  $\varphi$  itself satisfies the Pareto Axiom. Then we say that  $\varphi$  satisfies in addition also the *Separability Axiom* if for all  $i, j \in N$  with  $i \neq j$  and for all  $\succsim, \hat{\succsim} \in \mathcal{R}$  such that  $\succsim_i = \hat{\succsim}_i$  and  $\succsim_{j \neq i} = \hat{\succsim}_{j \neq i}$  we have:

$$MRS_{i,j}(\succsim) = MRS_{i,j}(\hat{\succsim})$$

Separability is implied by Axiom 1 in Dhillon (1998).<sup>143</sup> The idea underlying this axiom offers one possible motivation for requiring separability. Suppose, instead of aggregating the preferences of all agents in  $N$  simultaneously, we proceeded in two steps: First, we aggregated the preferences of the sub-group consisting of only two individuals,  $i$  and  $j$ , and then we treated the subgroup as if

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<sup>143</sup> The idea of this axiom also appears in Dhillon and Mertens (1999, pp. 481-2).

it was one individual with preference equal to the social preference of the subgroup, and aggregated this artificial individual's preference and the preferences of all individuals in  $N \setminus \{i, j\}$ . Dhillon's Axiom 1 requires this two step procedure to lead to the same social preference as the aggregation of all agents' preferences simultaneously.<sup>144</sup> She formalizes this by postulating that for any subset of  $N$  there is a social welfare function that assigns to each vector of preferences of the individuals in this subset a social preference, and by postulating that these social welfare functions are consistent with each other in the sense that for any group of agents the social preference could be obtained by partitioning this group into subsets, aggregating each subset's preferences separately according to the social welfare function for that subset, and then aggregating the preferences that one has obtained in that way. Moreover, she requires that each social welfare function satisfies the Pareto Axiom, and thus has the utilitarian form. Our Separability Axiom restricts attention to groups of two. It is an implication of Dhillon's axiom because implicit in Dhillon's construction is that the social welfare function for the group consisting of  $i$  and  $j$  is independent of the preferences of the other members of  $N$ .

As mentioned in the Introduction, separability was also a key axiom in Fleming's (1952) axiomatization of utilitarianism. Harsanyi (1955) provided an eloquent defense of separability, although he did not use it in his own theorem. Harsanyi draws a parallel with the Pareto axiom, and writes that "both postulates make social choice dependent solely on the *individual* interests directly affected. They leave no room for the separate interests of a superindividual state or of impersonal cultural values ..." (Harsanyi, 1955, p. 311).

**Theorem 2.** *Suppose  $n \geq 3$  and let the domain  $\mathcal{Z}$  of the social welfare function  $\varphi$  satisfy Assumption 1. Then  $\varphi$  satisfies the Pareto and the Separability Axioms if and only if for every  $i \in N$  there are functions  $\lambda_i: \mathcal{Z}_i \rightarrow \mathbb{R}_{++}$  such that for every  $\mathbf{z} \in \mathcal{Z}$  the social preference  $\varphi(\mathbf{z})$  can be represented by:*

$$u_s = \sum_{i \in N} \lambda_i(\mathbf{z}_i) u_i(\mathbf{z}_i).$$

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<sup>144</sup> Axiom 1 in Dhillon (1998) is not phrased as we describe it here. But Dhillon's comments following Axiom 1 indicate that her Axiom 1 is equivalent to the condition that we describe.



*Proof.* The “if part” is obvious. We prove the “only if part”. For every  $\succsim \in \mathcal{R}$  let the Bernoulli utility function  $\sum_{i \in N} w_i(\succsim_i) u_i(\succsim_i)$  represent  $\varphi(\succsim)$ . In the following proof we shall construct the weights  $\lambda_i(\succsim_i)$  the existence of which is asserted in Theorem 2. To be able to appeal to standard results on additive separability we shall use the logarithms of the weights in the welfare function. We define for every  $\succsim \in \mathcal{R}$  and every  $i \in N$ :

$$v_i(\succsim) = \ln w_i(\succsim). \quad (6)$$

The Separability Axiom implies for all  $i, j \in N$ :

$$v_i(\succsim) - v_j(\succsim) = v_i(\widehat{\succsim}) - v_j(\widehat{\succsim}). \quad (7)$$

whenever  $\succsim_i = \widehat{\succsim}_i$  and  $\succsim_j = \widehat{\succsim}_j$ . Define for every  $i \in N$  a function  $h_i: \mathcal{R}_i \times \mathcal{R}_{i+1} \rightarrow \mathbb{R}$  such that:

$$h_i(\succsim_i, \succsim_{i+1}) = v_{i+1}(\succsim) - v_i(\succsim) \quad (8)$$

where, because of the Separability Axiom, it does not matter which preference profile  $\succsim$  we consider as long as  $i$ 's preference in this profile is  $\succsim_i$ , and  $i + 1$ 's preference in the profile is  $\succsim_{i+1}$ . We can extend this definition to the case  $i = n$  by identifying  $n + 1$  with 1.

Now notice that for all  $\succsim \in \mathcal{R}$  we have:

$$v_1(\succsim) = v_1(\widehat{\succsim}) + \sum_{i=1}^n h_i(\succsim_i, \succsim_{i+1}) \Leftrightarrow \quad (9)$$

$$\sum_{i=1}^n h_i(\succsim_i, \succsim_{i+1}) = 0. \quad (10)$$

This implies that for any  $\succsim, \widehat{\succsim} \in \mathcal{R}$  we have:

$$\sum_{i=1}^n h_i(\succsim_i, \succsim_{i+1}) = \sum_{i=1}^n h_i(\widehat{\succsim}_i, \widehat{\succsim}_{i+1}). \quad (11)$$

In the special case in which  $\succsim_j = \widehat{\succsim}_j$  for all  $j$  except one  $i$ , this equation can be simplified by dropping all terms that appear on both sides of the equation. We then obtain:

$$h_{i-1}(\succsim_{i-1}, \succsim_i) - h_{i-1}(\succsim_{i-1}, \widehat{\succsim}_i) = h_i(\widehat{\succsim}_i, \succsim_{i+1}) - h_i(\succsim_i, \succsim_{i+1}) \quad (12)$$

Because  $n \geq 3$ , we know that  $i - 1 \neq i + 1$ . This means, that in this equation the left hand side must not depend on  $\succsim_{i-1}$ , because this preference does not appear on the right hand side. This applies in fact to all  $i$  and all  $\succsim \in \mathcal{D}$ . Thus the increments of the function  $h_i$  when the second argument is changed, must not depend on the first argument, and also the increments of the function  $h_i$ , when the first argument is changed, must not depend on the second argument. These conditions imply by standard arguments that the functions  $h_i$  are additively separable, i.e. there exist functions  $f_i: \mathcal{D}_i \rightarrow \mathbb{R}$  and  $g_i: \mathcal{D}_i \rightarrow \mathbb{R}$  such that:

$$h_i(\succsim_i, \succsim_{i+1}) = f_i(\succsim_i) + g_{i+1}(\succsim_{i+1}) \quad (13)$$

for all  $i \in N$  and all  $\succsim \in \mathcal{D}$ .

Plugging equation (13) into equation (10) we get:

$$\sum_{i=1}^n (f_i(\succsim_i) + g_{i+1}(\succsim_{i+1})) = 0, \quad (14)$$

which is, of course, the same equation as:

$$\sum_{i=1}^n (f_i(\succsim_i) + g_i(\succsim_i)) = 0, \quad (15)$$

This equation can be true for all  $\succsim \in \mathcal{D}$  only if each of the terms in the sum on the left hand side is a constant that is independent of  $\succsim_i$ , i.e. there is some  $k_i \in \mathbb{R}$  such that:

$$f_i(\succsim_i) + g_i(\succsim_i) = k_i \quad (16)$$

for every  $z_i \in \mathcal{R}_i$ . Using this, we can re-write (13) as:

$$h_i(z_i, z_{i+1}) = f_i(z_i) + k_{i+1} - f_{i+1}(z_{i+1}). \quad (17)$$

Substituting this into (8) we obtain:

$$v_{i+1}(z) - v_i(z) = f_i(z_i) + k_{i+1} - f_{i+1}(z_{i+1}). \quad (18)$$

Now we return to the original variables that we are interested in, rather than their logarithms. We define for every  $i \in \mathbb{N}$  and for every  $z_i \in \mathcal{R}_i$ :

$$\psi_i(z_i) = \exp(-f_i(z_i)), \quad (19)$$

and:

$$\alpha_i = \exp(k_i). \quad (20)$$

We can now apply the exponential function to both sides of (18) and get:

$$\frac{w_{i+1}(z)}{w_i(z)} = \alpha_{i+1} \frac{\psi_{i+1}(z)}{\psi_i(z)} \quad (21)$$

Now if we define for every  $i \in \mathbb{N}$ :

$$\lambda_i(z_i) = \alpha_1 \cdot \alpha_2 \cdot \dots \cdot \alpha_i \cdot \psi_i(z_i), \quad (22)$$

then:

$$\frac{\lambda_{i+1}(z_{i+1})}{\lambda_i(z_i)} = \alpha_{i+1} \frac{\psi_{i+1}(z_{i+1})}{\psi_i(z_i)}, \quad (23)$$

and thus the vector  $(\lambda_1, \dots, \lambda_n)$  is proportional to the vector  $(w_1, \dots, w_n)$ . Therefore,

$$u_s = \sum_{i \in N} \lambda_i(z_i) u(z_i) \quad (22)$$

is a representation of the social preference. ■

## 6 Invariance of Marginal Rates of Substitution

We now introduce our third axiom. This axiom, together with the previous two axioms, implies that the marginal rates of substitution remain the same across all preference profiles. In this axiom, if  $A' \subseteq A$ , we denote by  $\succeq_i|_{\Delta(A')}$  the restriction of the preference relation  $\succeq_i$  to lotteries that have support in  $A'$ .

**Definition 7.** A SWF  $\varphi$  that satisfies the Pareto Axiom, satisfies in addition also the *Invariance Axiom* if for all  $i \in N$ ,  $\succeq, \widehat{\succeq} \in \mathcal{R}$ , and  $a, b, c \in A$  (all different from each other) the following holds. If

- $\succeq_j = \widehat{\succeq}_j$  for all  $j \in N \setminus \{i\}$ ,
- $a \sim_j b \sim_j c$  for all  $j \in N \setminus \{i\}$ ,
- $\succeq_i|_{\Delta(A \setminus \{b\})} = \widehat{\succeq}_i|_{\Delta(A \setminus \{b\})}$ ,
- $a \succeq_i b \succeq_i c$  and  $a \widehat{\succeq}_i b \widehat{\succeq}_i c$ ,

then:

$$\text{MRS}_{i,j}(\succeq) = \text{MRS}_{i,j}(\widehat{\succeq}) \text{ for all } j \in N, j \neq i.$$

In words, the axiom requires that, under certain conditions, the marginal rates of substitution involving agent  $i$  don't change if agent  $i$ 's preference alone changes while all other agents' preferences stay the same. If we required this regardless of what agent  $i$ 's and all other agents' preferences are, then we would assume our intended conclusion, as long as we also imposed the Pareto and the Separability axioms. However, it is sufficient to require invariance of the marginal rates of substitution under much more restrictive conditions, namely those listed in the bullet points in Definition 7. These conditions are that there are alternatives  $a, b$  and  $c$  such that (i) all agents other

than  $i$  are indifferent between  $a$ ,  $b$  and  $c$ , whereas agent  $i$  ranks  $b$  between  $a$  and  $c$ , and (ii) only  $i$ 's preferences regarding lotteries assigning positive probability to  $b$  change, leaving his preferences on  $\Delta(A \setminus \{b\})$  unchanged, and also leaving unchanged that  $b$  is ranked between  $a$  and  $c$ .

Why is it interesting to explore the implications for the social welfare function of the assumption that, in these circumstances, marginal rates of substitution don't change? Before the change of preference, there is a lottery over  $a$  and  $c$  such that all agents are indifferent between that lottery and the alternative  $b$ . After the change of preference, there is some (potentially different) lottery over  $a$  and  $c$  such that the same is true. Hence, both before and after the change of agent  $i$ 's preference alternative  $b$  is, in the words of Dhillon and Mertens, "redundant." It might be plausible to argue that  $i$ 's preferences over a redundant alternative should not affect the marginal rates of substitution involving  $i$ .

Dhillon and Mertens motivate their version of the invariance axiom by pointing out that the preference change that is considered in the invariance axiom leaves the set of vectors of expected utilities that correspond to lotteries over  $A$  unchanged. Thus, if one assumes that what matters for welfare is only the image of the choice space in expected utility space, then the Invariance Axiom follows.

The Invariance Axiom has bite only if the domain of the welfare function is sufficiently rich. Assumption 2 below ensures this richness. We first need a definition:

**Definition 8.** A "simple modification" of a preference  $\succsim_i \in \mathcal{R}_i$  is a preference  $\widehat{\succsim}_i \in \mathcal{R}_i$  such that  $u(\widehat{\succsim}_i)$  assigns the same utility to all alternatives in  $A$  as  $u(\succsim_i)$  except to one alternative  $b \in A$ , and moreover such that there is an alternative  $a \neq b$  to which  $u(\succsim_i)$  assigns 1, and also an alternative  $c \neq b$  to which  $u(\succsim_i)$  assigns 0. We say that "a preference relation  $\widehat{\succsim}_i \in \mathcal{R}_i$  can be reached from a preference relation  $\succsim_i \in \mathcal{R}_i$  through a sequence of simple modifications" if there is a sequence  $(\succsim_i^k)_{k=1,2,\dots,K}$  of elements of  $\mathcal{R}_i$  such that  $\succsim_i^1 = \succsim_i$ ,  $\succsim_i^K = \widehat{\succsim}_i$ , and for every  $k = 1, 2, \dots, K - 1$  the preference relation  $(\succsim_i^{k+1})$  is a simple modification of the preference relation  $\succsim_i^k$ .

In Figure IV.1 we illustrate how one preference can be reached from another through simple modifications. Each row corresponds to an alternative, each column corresponds to a preference, and preferences are represented by von Neumann-Morgenstern utility functions the values of

which constitute the entries in the table in Figure IV.1. The sequence of simple modifications by which  $\tilde{z}_i$  is reached from  $z_i$  proceeds from the left to the right.

	$z_i$	$z_i^2$	$z_i^3$	$z_i^4$	$z_i^5$	$\tilde{z}_i$
a	1	1	0.1	0.1	0.1	0.1
b	0.6	0.6	0.6	0	0	0
c	0.4	1	1	1	1	1
d	0.2	0.2	0.2	0.2	0.2	0.5
e	0	0	0	0	0.2	0.2

FIGURE IV.1.  $\tilde{z}_i \in \mathcal{R}_i$  CAN BE REACHED FROM  $z_i \in \mathcal{R}_i$  THROUGH A SEQUENCE OF SIMPLE MODIFICATIONS.

The starting and end points of the sequence in Figure IV.1 have been chosen quite arbitrarily. This is to suggest that it is in fact easy to connect any pair of preferences through a sequence of simple modifications as long as the sets  $\mathcal{R}_i$  are sufficiently large. Implicitly, part (i) of Assumption 2 below is therefore a richness assumption for the domain of the SWF that we are considering.

**Assumption 2.** (i) For every  $i \in N$ , every preference  $\tilde{z}_i \in \mathcal{R}_i$  can be reached from every other preference  $z_i \in \mathcal{R}_i$  through a sequence of simple modifications.

(ii) For every  $i \in N$ , for any three alternatives  $a, b, c \in A$ , there is a preference  $z_i \in \mathcal{R}_i$  such that  $a \sim_i b \sim_i c$ .

**Theorem 3.** Suppose  $n \geq 3$  and suppose that  $\mathcal{R}$  satisfies Assumptions 1 and 2. Then a SWF  $\varphi$  satisfies the Pareto, Separability, and Invariance Axioms if and only if for every  $i \in N$  there is a number  $\lambda_i \in \mathbb{R}_{++}$  such that for every  $z \in \mathcal{R}$  the social preference  $\varphi(z)$  can be represented by:

$$u_s = \sum_{i \in N} \lambda_i u(z_i).$$

*Proof.* The “if part” is obvious. We prove the “only if part”. By Theorem 2 there are functions  $\lambda_i: \mathcal{R}_i \rightarrow \mathbb{R}_{++}$  such that for every  $z \in \mathcal{R}$  the social preference  $\varphi(z)$  can be represented by:  $u_s = \sum_{i \in N} \lambda_i(z_i) u(z_i)$ . It remains to show that for every  $i \in N$  and all  $z_i, \tilde{z}_i$  we have:  $\lambda_i(z_i) = \lambda_i(\tilde{z}_i)$ .

By part (i) of Assumption 2  $\widehat{\succsim}_i$  can be reached from  $\succsim_i$  through a sequence of simple modifications  $(\succsim_i^k)_{k=1,2,\dots,K}$ . We shall prove the claim by showing that for every  $k = 1, 2, \dots, K - 1$  we have  $\lambda_i(\succsim_i^k) = \lambda_i(\succsim_i^{k+1})$ .

We first construct for given  $k \in \{1, 2, \dots, K - 1\}$  a preference profile  $(\succsim_i^k)_{j \neq i} \equiv \succsim_{-i}^k$  such that the Invariance Axiom applies when agent  $i$ 's preference changes from  $\succsim_i^k$  to  $\succsim_i^{k+1}$  while all other agents' preferences remain  $\succsim_{-i}^k$ . Denote by  $b$  the alternative whose utility changes when agent  $i$ 's preferences switch from  $\succsim_i^k$  to  $\succsim_i^{k+1}$ , denote by  $a$  an alternative other than  $b$  that is ranked top by  $\succsim_i^k$ , and by  $c$  an alternative other than  $b$  that is ranked bottom by  $\succsim_i^k$ . These alternatives exist because  $\succsim_i^{k+1}$  is a simple modification of  $\succsim_i^k$ . For every  $j \neq i$  we now pick some preference  $\succsim_j^k \in \mathcal{R}_j$  such that  $a \sim_j^k b \sim_j^k c$ . Part (ii) of Assumption 2 implies that such a preference exists. Let  $\succsim_{-i}^k$ , be the list of the preferences  $\succsim_j^k$ , for all  $j \neq i$ .

The Invariance Axiom implies that for every  $j \neq i$  the marginal rate of substitution for agent  $i$  and agent  $j$  is the same for  $(\succsim_i^k, \succsim_{-i}^k)$  and  $(\succsim_i^{k+1}, \succsim_{-i}^k)$ . This is the case if and only if  $\lambda_i(\succsim_i^k) = \lambda_i(\succsim_i^{k+1})$ . ■

## 7 Anonymity

We now add an anonymity axiom to obtain the conclusion that all marginal rates of substitution must equal 1, and therefore that the SWF must be Relative Utilitarian. A natural definition of anonymity may seem to be the requirement that for all preference profiles  $(\succsim_k)_{k \in N}$ , all permutations  $\pi$  of  $n$ , and all  $i, j \in N, i \neq j$  the marginal rate of substitution  $\text{MRS}_{i,j}((\succsim_k)_{k \in N})$  equals the marginal rate of substitution  $\text{MRS}_{\pi(i),\pi(j)}((\succsim_{\pi(k)})_{k \in N})$ . Unfortunately, given our domain restrictions, any two individuals' sets of possible preferences are disjoint, so that for any non-trivial permutation  $\pi$  if  $(\succsim_k)_{k \in N} \in \mathcal{D}$  then  $(\succsim_{\pi(k)})_{k \in N} \notin \mathcal{D}$ .

We shall instead work with an ‘‘approximate’’ version of anonymity. Roughly speaking, it will require that if  $(\succsim_k)_{k \in N} \in \mathcal{D}$ , if  $\pi$  is a permutation of  $n$ , and if  $(\widehat{\succsim}_{\pi(k)})_{k \in N} \in \mathcal{D}$  is ‘‘close to’’  $(\succsim_{\pi(k)})_{k \in N}$ , then the marginal rate of substitution  $\text{MRS}_{i,j}((\succsim_k)_{k \in N})$  is ‘‘close to’’ the marginal rate of substitution  $\text{MRS}_{\pi(i),\pi(j)}((\widehat{\succsim}_{\pi(k)})_{k \in N})$  for all  $i, j \in N, i \neq j$ .

To formalize this requirement, we need to introduce a metric on von Neumann-Morgenstern preferences. We shall define the distance between two preferences  $\succsim, \widehat{\succsim} \in \mathcal{R}$  to be the Euclidean distance between their normalized von Neumann-Morgenstern representations:  $\|u(\succsim) - u(\widehat{\succsim})\|$ . For our definition of anonymity it only matters which sequences of preferences are convergent. It is simple to verify that a sequence  $(\succsim^v)_{v \in \mathbb{N}}$  of elements of  $\mathcal{R}$  converges to  $\succsim \in \mathcal{R}$  if and only if the upper contour sets of  $\succsim^v$  converge in Hausdorff distance to the upper contour sets of  $\succsim$ . Thus, the notion of convergence that we use can be defined in purely ordinal terms.

**Definition 9.** A SWF  $\varphi$  that satisfies the Pareto axiom satisfies in addition the *Anonymity* axiom if for any preference profile  $\succsim \in \mathcal{D}$ , any permutation  $\pi$  of  $n$ , and any sequence of preference profiles  $(\succsim^v)_{v \in \mathbb{N}}$  in  $\mathcal{D}$  such that  $\succsim_{\pi(i)}^v \rightarrow \succsim_i$  for all  $i \in N$  we have:

$$\text{MRS}_{\pi(i), \pi(j)}(\succsim^v) \rightarrow \text{MRS}_{i,j}(\succsim) \quad (25)$$

for all  $i, j \in N, i \neq j$ .

Whether our formalization of anonymity has bite depends on the richness of the domain of the SWF. If the domain is finite, for example, then anonymity, as defined above, will always be satisfied, because no sequence of preferences of some agent  $i$  will ever converge to a preference of some other agent  $j$ . Therefore, to derive any further implications from the additional condition of anonymity, we have to make a richness assumption for the domain. We shall make a very strong assumption that allows a simple argument.

**Assumption 3.** For every  $i \in N$  the set of possible preferences of agent  $i$ ,  $\mathcal{D}_i$  is a dense subset of the set  $\mathcal{R}$  of all von Neumann-Morgenstern preferences over lotteries over  $A$ .

**Theorem 4.** Suppose  $n \geq 3$ , and that  $\mathcal{D}$  satisfies Assumptions 1, 2 and 3. Then a SWF  $\varphi$  satisfies the Pareto, Separability, Invariance, and Anonymity axioms if and only if for every  $\succsim \in \mathcal{D}$  the social preference  $\varphi(\succsim)$  can be represented by:

$$u_s = \sum_{i \in N} u(\succsim_i).$$



*Proof.* The “if part” of the result is obvious. We only prove the “only if part.” Assumption 3 implies that for any preference profile  $\succeq \in \mathcal{R}$  and any permutation  $\pi$  of  $n$ , there is a sequence of preference profiles  $(\succeq^v)_{v \in \mathbb{N}}$  in  $\mathcal{R}$  such that  $\succeq_{\pi(i)}^v \rightarrow \succeq_i$  for all  $i \in N$ . From Theorem 3 and Proposition 2 we can infer that the sequence of marginal rates of substitution on the left hand side of condition (25) converges to  $\lambda_{\pi(i)} / \lambda_{\pi(j)}$  whereas the marginal rate of substitution on the right hand side of that condition equals  $\lambda_i / \lambda_j$ . We conclude that to satisfy the anonymity axiom we must have for every permutation  $\pi$  of  $n$  that  $\lambda_{\pi(i)} / \lambda_{\pi(j)} = \lambda_i / \lambda_j$  for all  $i, j \in N, i \neq j$ . But this implies  $\lambda_i = \lambda_j$  for all  $i, j \in N$ , and hence, without loss of generality, we can set  $\lambda_i = 1$  for all  $i \in N$ . This implies that the social preference can be represented by the utility function shown in the theorem. ■

Our formalization of anonymity in this section appears to be closely related to the requirement that the SWF be continuous. This raises the question how our result is compatible with the impossibility result due to Chichilnisky (1985) that we cited in the Introduction, and in which the continuity axiom is crucial to the result. The key point is that continuity in Chichilnisky’s work refers to the way in which the social preference itself depends on the individuals’ preference profile. By contrast, in our definitions above we refer to the way in which the marginal rates of substitution revealed by the social preference depend on the individuals’ preference profile.

## 8 Constructing the Domain

In this section we demonstrate the existence of an example of a domain  $\mathcal{R}$  of a social welfare function that satisfies all assumptions that we have made in this paper. We go, in fact, one step further and also show that one can construct such a domain that is dense in the full domain  $\mathcal{R}^n$ . Denseness is interesting because it emphasizes that our construction does not leave any “holes” in the set of all preference profiles. To make this claim precise, we have to endow  $\mathcal{R}^n$  with a metric. The metric that we use is defined by setting the difference between two preferences  $\succeq_i$  and  $\widehat{\succeq}_i$  equal to the Euclidean distance of their normalized utility representations:  $\|u(\succeq_i) - u(\widehat{\succeq}_i)\|$ . The metric on  $\mathcal{R}^n$  is then the product metric.

The following result will be proved in the appendix, where we construct explicitly a domain that has all the properties listed in the Proposition. The construction is simple, but assumes that the

number of alternatives is “much larger” than the number of agents:  $m > 6n$ . Recall that so far, our assumptions regarding the number of alternatives and agents have been:  $m > n \geq 3$ .

**Proposition 3.** If  $m > 6n$ , then there exists at least one set  $\mathcal{D} \subseteq \mathcal{R}^n$  that is the union of sets of preference profiles that each satisfy Assumptions 1, 2, and 3.

One might ask whether Proposition 3 would remain true if we also required  $\mathcal{D}$  to be open. Unfortunately, if  $\mathcal{R} = \times_{i \in N} \mathcal{R}_i$  is open and dense in  $\mathcal{R}^n$ , then there is a preference profile  $(z_i)_{i \in N} \in \mathcal{R}$  which violates Independent Prospects. To see this note that if  $\mathcal{R}$  is open and dense in  $\mathcal{R}^n$  then also each  $\mathcal{R}_i$  is open and dense in  $\mathcal{R}$ . Pick any  $z_1 \in \mathcal{R}_1$ . Since  $\mathcal{R}_1$  is open, there exists an open ball  $b$  around  $z_1$  with  $B \subseteq \mathcal{R}_1$ . Now, since  $\mathcal{R}_2$  is dense in  $\mathcal{R}$ , it must be that  $\mathcal{R}_2 \cap B$  is non-empty. Pick any  $z \in \mathcal{R}_2 \cap B$ . Note that since  $B \subset \mathcal{R}_1$ , it follows that  $z \in \mathcal{R}_1$ . For each  $i \geq 3$ , pick any  $z_i \in \mathcal{R}_i$ . The profile  $(z, z, z_3, \dots, z_n) \in \mathcal{R}$  clearly violates Independent Prospects.

## 9 Conclusion

This paper’s main purpose has been to develop a simple and transparent axiomatization of relative utilitarianism using the concept of the revealed marginal rates of substitution. We have done so considering a subset of the set of all preference profiles. We could try to extend our result by considering the complete set of all profiles of von Neumann-Morgenstern preferences by requiring continuity of the marginal rates of substitution with respect to the topology for the domain introduced in the previous section. We would then obtain that for all profiles for which the social welfare function reveals a marginal rate of substitution between two agents  $i$  and  $j$  these two agents must have the same weight in the social welfare function. Nothing would follow if the social welfare function does not reveal a marginal rate of substitution, a possibility that we discussed in Section 3. When the social welfare function does not reveal any marginal rate of substitution for some pair of agents  $i$  and  $j$  (this can only be true for profiles that violate the Independent Prospects Condition) then our approach does not have any implications for the relative weight of  $i$  and  $j$  in the social welfare function. It seems natural that in such a case an approach based on revealed marginal rates of substitution does not make any predictions about how the social planner would choose.

In this paper we have made strong assumptions regarding the number of individuals and the number of alternatives. It appears worthwhile to investigate the implications of our axioms on domains that do not satisfy these assumptions. Further future work can include the investigation of the consequences of alternative axioms in our framework.

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## 10 Appendix: Proof of Proposition 3

It will be convenient to sometimes write the set of alternatives is  $A = \{1, 2, \dots, m\}$  and at other times write it as  $A = \{a_1, a_2, \dots, a_m\}$ . We first construct for each agent  $i$  the set  $U_i \subset [0,1]^m$  of possible von Neumann-Morgenstern utility representations of her preferences. We then define that agent's set of possible preference relations by:

$$\mathcal{R}_i = \{\succsim_i \in \mathcal{R} \mid \exists u_i \in U_i : u(\succsim_i) = u_i\}. \quad (26)$$

Let  $p: \mathbb{N} \rightarrow \mathbb{R}$  be the map that assigns to every  $x \in \mathbb{N}$  the square root of the  $x^{\text{th}}$  prime number (so  $p(1) = \sqrt{2}$ ,  $p(2) = \sqrt{3}$ ,  $p(3) = \sqrt{5}$ ,  $p(4) = \sqrt{7}$ , etc.). Define, for each  $i \in N$  and each  $a \in A$ :

$$T_{i,a} = \{qe^{p(im+a)} \mid q \in \mathbb{Q}\} \cap (0,1). \quad (27)$$

Now define  $U_i$  to be the set of vectors  $u_i = (u_{i,1}, u_{i,2}, \dots, u_{i,m})$  with these properties: Each  $u_{i,a} \in T_{i,a} \cup \{0,1\}$ ; and the number of entries in  $u_i$  which read 1 is one, two, or three, while the number which read 0 is one or two. This completes our construction, for each  $i \in N$ , of the set  $U_i$  and hence also the set  $\mathcal{R}_i$ . Define  $\mathcal{R} = \mathcal{R}_1 \times \mathcal{R}_2 \times \dots \times \mathcal{R}_n$ . We now verify that  $\mathcal{R}$  is a domain that satisfies the three assumptions.

*Assumption 1:* The first sentence is obviously satisfied. It remains to prove that every profile  $\succsim = (\succsim_1, \succsim_2, \dots, \succsim_n) \in \mathcal{R}$  satisfies Independent Prospects. The preference relations  $\succsim_1, \succsim_2, \dots, \succsim_n$  correspond to the normalized utility vectors  $u_1, u_2, \dots, u_n$ .

Use these vectors to form this  $m \times (n + 1)$  matrix:

$$\begin{pmatrix} | & | & \dots & | & 1 \\ | & | & \dots & | & \vdots \\ u_1 & u_2 & \dots & u_n & 1 \\ | & | & \dots & | & \vdots \\ | & | & \dots & | & 1 \end{pmatrix} \quad (28)$$

By construction, each  $u_i$  has at most 5 entries that are not elements of some  $T_{i,a}$ . Hence, the above matrix has at most  $5n$  rows that contain an entry that reads either 0 or 1. By the assumption that  $m > 6n$ , this means that there are at least  $n + 1$  rows of the above matrix whose entries are all members of some  $T_{i,a}$ . Take any such  $n + 1$  rows to form this  $(n + 1) \times (n + 1)$  sub-matrix:

$$\begin{pmatrix} | & | & \dots & | & 1 \\ | & | & \dots & | & \vdots \\ v_1 & v_2 & \dots & v_n & 1 \\ | & | & \dots & | & \vdots \\ | & | & \dots & | & 1 \end{pmatrix}_{(n+1) \times (n+1)} \quad (29)$$

We claim that the determinant of this sub-matrix is non-zero. The argument is as follows. This determinant can be expressed as a non-trivial rational polynomial in  $e^{p(1)}, e^{p(2)}, \dots, e^{p(n \cdot m)}$ . The Lindemann-Weierstrass Theorem (Theorem 1.4 in Baker (1975)) says that such a polynomial is non-zero if the numbers  $p(1), p(2), \dots, p(n \cdot m)$  are algebraic and linearly independent over  $\mathbb{Q}$ . That they are algebraic is obvious. That they are linearly independent over  $\mathbb{Q}$  is shown in Theorem 2 in Besicovitch (1940).

Because the determinant of the above sub-matrix is non-zero, we can find for every  $i$ , some non-zero vector  $r_i \in \mathbb{R}^{n+1}$  such that  $r_i \cdot v_i \neq 0$ ,  $r_i \cdot \mathbf{1} = 0$ , and for all  $j \neq i$ ,  $r_i \cdot v_j = 0$ . Pick any  $\hat{p}_i \in \mathbb{R}_+^{n+1} \setminus \{\mathbf{0}\}$  such that  $\hat{p}_i \gg r_i$ . Let  $\hat{q}_i = \hat{p}_i - r_i$ . Observe that  $\hat{q}_i \in \mathbb{R}_+^{n+1} \setminus \{\mathbf{0}\}$  and that  $\hat{q}_i \cdot \mathbf{1} = (\hat{p}_i - r_i) \cdot \mathbf{1} = \hat{p}_i \cdot \mathbf{1} - r_i \cdot \mathbf{1} = \hat{p}_i \cdot \mathbf{1}$ . Now divide both  $\hat{p}_i$  and  $\hat{q}_i$  by  $\hat{p}_i \cdot \mathbf{1}$  to get  $\tilde{p}_i = \hat{p}_i / (\hat{p}_i \cdot \mathbf{1})$  and  $\tilde{q}_i = \hat{q}_i / (\hat{p}_i \cdot \mathbf{1})$ . Let  $p_i$  be the lottery that assigns to the  $n + 1$  alternatives (that were involved in forming the sub-matrix) probability weights as per the probability vector  $\tilde{p}_i$  and assigns to all other alternatives probability weight 0. Analogously, let  $q_i$  be the lottery that assigns to the  $n + 1$  alternatives probability weights as per the probability vector  $\tilde{q}_i$  and assigns to all other alternatives probability weight 0. We now verify that the lotteries  $p_i, q_i$  satisfy the conditions in Independent Prospects.

For any  $j \neq i$ ,

$$\begin{aligned} p_i \cdot u_i - q_i \cdot u_j &= \tilde{p}_i \cdot v_j - \tilde{q}_i \cdot v_j \\ &= (\tilde{p}_i - \tilde{q}_i) \cdot v_j = (\hat{p}_i - \hat{q}_i) \cdot v_j / \hat{p}_i \cdot \mathbf{1} \\ &= r_i \cdot v_j / \hat{p}_i \cdot \mathbf{1} = 0 / \hat{p}_i \cdot \mathbf{1} = 0. \end{aligned}$$

So  $p_i \cdot u_j = q_i \cdot u_j$ , that is to say,  $p_i \sim_j q_i$ . On the other hand,

$$\begin{aligned} p_i \cdot u_i - q_i \cdot u_j &= \tilde{p}_i \cdot v_i - \tilde{q}_i \cdot v_i = (\tilde{p}_i - \tilde{q}_i) \cdot v_i \\ &= (\hat{p}_i - \hat{q}_i) \cdot v_i / \hat{p}_i \cdot \mathbf{1} = r_i \cdot v_i / \hat{p}_i \cdot \mathbf{1} \neq 0. \end{aligned}$$

So  $p_i \cdot u_i \neq q_i \cdot u_i$ , that is to say,  $p_i \not\sim q_i$ .

*Assumption 2:* (ii) is obviously satisfied. We prove (i). Let  $\succsim_i = \succsim_i^1$ ,  $\widehat{\succsim}_i = \succsim_i^K \in \mathcal{R}$ . If  $\succsim_i^1$  ranks more than one alternative top, then pick any top alternative (call it  $a_1$ ). Let  $\succsim_i^2 \in \mathcal{D}_i$  be the preference relation that assigns to the alternative  $a_1$  some Bernoulli utility from the set  $T_{i,a_1}$  and assigns to all other alternatives the same Bernoulli utility as did  $\succsim_i^1$ . Repeat this procedure as many times as is possible, to arrive at some  $\succsim_j^a \in \mathcal{D}_i$  that ranks exactly one alternative top (call this alternative  $a_a$ ). Through an analogous procedure, we can arrive at some  $\succsim_j^b \in \mathcal{D}_i$  that ranks exactly one alternative bottom (call it  $a_b$ ) and still ranks  $a_a$  as the only top alternative.

Now pick any alternative  $a_{b+1}$  that isn't  $a_b$  or  $a_a$ . Let  $\succsim_j^{b+1} \in \mathcal{D}_i$  be the preference relation that ranks  $a_{b+1}$  top and assigns to all other alternatives the same Bernoulli utility as did  $\succsim_j^b$ . So now  $\succsim_i^{b+1}$  ranks  $a_a$  and  $a_{b+1}$  as the only top alternatives and  $a_b$  as the only bottom alternative.

Now pick any alternative  $a_c$  that is ranked bottom by  $\widehat{\succsim}_i$ . If  $a_c = a_b$  (meaning that  $\succsim_j^{b+1}$  already ranked  $a_c$  bottom), then simply let  $\succsim_i^c = \succsim_i^{b+1}$ . Otherwise, let  $\succsim_i^{b+2} \in \mathcal{D}_i$  be the preference relation that ranks  $a_c$  bottom and assigns to all other alternatives the same Bernoulli utility as did  $\succsim_i^{b+1}$ . So now  $\succsim_i^{b+2}$  ranks as top only  $a_{b+1}$  (and also  $a_a$ , if  $a_a \neq a_c$ ) as the only top alternatives and as bottom only  $a_b$  and  $a_c$ . Next, let  $\succsim_i^c \in \mathcal{D}_i$  be the preference relation that assigns to the alternative  $a_b$  some Bernoulli utility from the set  $T_{i,a_b}$  and assigns to all other alternatives the same Bernoulli utility as did  $\succsim_i^{b+2}$ . So now  $\succsim_i^c$  ranks  $a_c$  as the only bottom alternative.

Next pick any alternative  $a_d$  that is ranked top by  $\widehat{\succsim}_i$ . Through similar steps, we can get from  $\succsim_i^c$  to some  $\succsim_i^d$  that continues to rank  $a_c$  as the only bottom, but now also ranks  $a_d$  as the only top.

Now construct  $\succsim_i^{d+1}, \succsim_i^{d+2}, \dots, \succsim_i^{d+m}$  as follows: Let  $\succsim_i^{d+s} \in \mathcal{D}_i$  be the preference relation that assigns to the alternative  $a_s$  the same Bernoulli utility as does  $\widehat{\succsim}_i$  and assigns to all other alternatives the same Bernoulli utility as did  $\succsim_i^{d+s-1}$ . We have that  $\succsim_i^{d+m} = \succsim_i^K = \widehat{\succsim}_i$ . This completes the construction of a sequence of single modifications connecting  $\succsim_i$  to  $\succsim_i^K$ .

*Assumption 3:* Each of the constructed sets  $T_{i,a}$  is obviously dense in  $[0,1]$ . So  $\mathcal{D}_i$  is dense in  $[0,1]^m$ . Thus  $\mathcal{R}_i$  is dense in  $\mathcal{R}$ .

## **APPENDICES**

## APPENDIX A

### Sources of US Divorce Data Used in Chapter II

For every year except for 1999, US CDR is calculated as “total divorces  $\times$  1000  $\div$  total population”. The 1999 US CDR of 4.1 is taken from source 4 below. Unless otherwise noted, Alaska and Hawaii are included from 1940 onwards.

Here are the sources for total US divorces:

1. 1860-1866: Jacobson (1959, p. 90).
2. 1867-1939: *Statistical Abstract of the US* (1948, p. 89).
3. 1940-1990: Advance Report of Final Divorce Statistics, 1989 and 1990, p. 9. Note that this source does not include divorces for Alaska for 1940-1958 or for Hawaii for 1940-1959. Thus, for these years, I add in Alaska and Hawaii divorces (see next subsection for sources of state divorces).
4. 1991-1997: National Center for Health Statistics Press Room blog, <https://nchspress-room.files.wordpress.com/2007/07/divorce.pdf> (retrieved on 2015-07-06-1025).
5. 1998: National Vital Statistics Reports From the Centers for Disease Control and Prevention, v. 47, no. 21, July 6, 1999.
6. 2000-2012: Center for Disease Control and Prevention, [http://www.cdc.gov/nchs/nvss/marriage\\_divorce\\_tables.htm](http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm) (retrieved on 2015-07-06-1030). As noted, divorce and population totals exclude data for California, Indiana, Louisiana, and Oklahoma for the years 2000 and 2001; for California, Hawaii, Indiana, and Oklahoma for 2002; for California, Indiana, and Oklahoma for 2003; for California, Georgia, Hawaii, Indiana, and Louisiana for 2004; and for California, Georgia, Hawaii, Indiana, Louisiana, and Minnesota for the years 2005 through 2012.

Here are the sources for total US population:

7. 1860-1899: *Historical Statistics of the United States, Colonial Times to 1970, Part I* (p. 8).



8. 1900-1999: US Census Bureau, <http://www.census.gov/popest/data/national/totals/pre-1980/tables/popclockest.txt> (retrieved on 2015-07-06-1126). Note that this source does not include population for Alaska or Hawaii for 1940-1949. Thus, for these years, I add in Alaska and Hawaii population (see next subsection for sources of state population).
9. 2000-2012: Same as source 6 above.

TABLE A.1—US ANNUAL TOTAL DIVORCES, POPULATION, AND CRUDE DIVORCE RATE, 1860-2012

Year	Divorces	Population	CDR	1898	47849	73494000	0.65	1937	249000	128824829	1.93	1975	1036000	215973199	4.80
1860	7380	31513000	0.23	1899	51437	74799000	0.69	1938	244000	129824939	1.88	1976	1083000	218035164	4.97
1861	6540	32351000	0.20	1900	55751	76094000	0.73	1939	251000	130879718	1.92	1977	1091000	220239425	4.95
1862	6230	33188000	0.19	1901	60984	77584000	0.79	1940	265154	132625446	2.00	1978	1130000	222584545	5.08
1863	6760	34026000	0.20	1902	61480	79163000	0.78	1941	294398	133949471	2.20	1979	1181000	225055487	5.25
1864	8940	34863000	0.26	1903	64925	80632000	0.81	1942	322753	135582553	2.38	1980	1189000	227224681	5.23
1865	10090	35701000	0.28	1904	66199	82166000	0.81	1943	360932	137622353	2.62	1981	1213000	229465714	5.29
1866	11530	36538000	0.32	1905	67976	83822000	0.81	1944	401936	139441345	2.88	1982	1170000	231664458	5.05
1867	9937	37376000	0.27	1906	72062	85450000	0.84	1945	486837	140882165	3.46	1983	1158000	233791994	4.95
1868	10150	38213000	0.27	1907	76571	87008000	0.88	1946	611838	142032566	4.31	1984	1169000	235824902	4.96
1869	10939	39051000	0.28	1908	76852	88710000	0.87	1947	484532	144760071	3.35	1985	1190000	237923795	5.00
1870	10962	39905000	0.27	1909	79671	90490000	0.88	1948	409738	147268302	2.78	1986	1178000	240132887	4.91
1871	11586	40938000	0.28	1910	83045	92407000	0.90	1949	398464	149829130	2.66	1987	1166000	242288918	4.81
1872	12390	41972000	0.30	1911	89219	93863000	0.95	1950	386624	152271417	2.54	1988	1167000	244498982	4.77
1873	13156	43006000	0.31	1912	94318	95335000	0.99	1951	382098	154877889	2.47	1989	1157000	246819230	4.69
1874	13989	44040000	0.32	1913	91307	97225000	0.94	1952	393754	157552740	2.50	1990	1182000	249464396	4.74
1875	14212	45073000	0.32	1914	100584	99111000	1.01	1953	391853	160184192	2.45	1991	1187000	252153092	4.71
1876	14800	46107000	0.32	1915	104298	100546000	1.04	1954	380813	163025854	2.34	1992	1215000	255029699	4.76
1877	15687	47141000	0.33	1916	114000	101961000	1.12	1955	378902	165931202	2.28	1993	1187000	257782608	4.60
1878	16089	48174000	0.33	1917	121564	103414000	1.18	1956	383888	168903031	2.27	1994	1191000	260327021	4.58
1879	17083	49208000	0.35	1918	116254	104550000	1.11	1957	382734	171984130	2.23	1995	1169000	262803276	4.45
1880	19663	50262000	0.39	1919	141527	105063000	1.35	1958	369808	174881904	2.11	1996	1150000	265228572	4.34
1881	20762	51542000	0.40	1920	170505	106461000	1.60	1959	396378	177829628	2.23	1997	1163000	267783607	4.34
1882	22112	52821000	0.42	1921	159580	108538000	1.47	1960	393000	180671158	2.18	1998	1135000	270248003	4.20
1883	23198	54100000	0.43	1922	148815	110049000	1.35	1961	414000	183691481	2.25	1999	-	272690813	4.10
1884	22994	55379000	0.42	1923	165096	111947000	1.47	1962	413000	186537737	2.21	2000	944000	233550143	4.04
1885	23472	56658000	0.41	1924	170952	114109000	1.50	1963	428000	189241798	2.26	2001	940000	236416762	3.98
1886	25535	57938000	0.44	1925	175449	115829000	1.51	1964	450000	191888791	2.35	2002	955000	243108303	3.93
1887	27919	59217000	0.47	1926	184678	117397000	1.57	1965	479000	194302963	2.47	2003	927000	243902090	3.80
1888	28669	60496000	0.47	1927	196292	119035000	1.65	1966	499000	196560338	2.54	2004	879000	236402656	3.72
1889	31735	61775000	0.51	1928	200176	120509000	1.66	1967	523000	198712056	2.63	2005	847000	233495163	3.63
1890	33461	63056000	0.53	1929	205876	121767000	1.69	1968	584000	200706052	2.91	2006	872000	236094277	3.69
1891	35540	64361000	0.55	1930	195961	123076741	1.59	1969	639000	202676946	3.15	2007	856000	238352850	3.59
1892	36579	65666000	0.56	1931	188003	124039648	1.52	1970	708000	205052174	3.45	2008	844000	240545163	3.51
1893	37468	66970000	0.56	1932	164241	124840471	1.32	1971	773000	207660677	3.72	2009	840000	242610561	3.46
1894	37568	68275000	0.55	1933	165000	125578763	1.31	1972	845000	209896021	4.03	2010	872000	244122529	3.57
1895	40387	69580000	0.58	1934	204000	126373773	1.61	1973	915000	211908788	4.32	2011	877000	246273366	3.56
1896	42937	70885000	0.61	1935	218000	127250232	1.71	1974	977000	213853928	4.57	2012	851000	248041986	3.43
1897	44699	72189000	0.62	1936	236000	128053180	1.84								

Notes: See accompanying text for explanation and sources.

## APPENDIX B

### Sources of State Divorce Data Used in Chapter II

For each state and each year, CDR is calculated as “total divorces  $\times$  1000  $\div$  total population”.

Here are the sources for state annual divorce totals:

10. 1922-1932: Vital Statistics Special Reports, Vol. 9, No. 60, p. 832-3, 1938. These data cover the lower 48 states and the District of Columbia.
11. 1933-1935: Stouffer & Spencer (1936) who state in turn that “Figures for 1933, 1934, and 1935 are from state annual reports and correspondence with state registrars of vital statistics.” These data cover only these states: AL, CT, FL, IN, IA, KS, ME, MD, MA, MI, MS, NE, NV, NH, OR, RI, SD, VT, VA, WI.
12. 1936: Stouffer & Spencer (1939). These data cover the same states as were covered by the data for 1933-1935, less IN, KS, MS, and RI.
13. 1937-1939: Vital Statistics Special Reports, Vol. 15, No. 18, p. 196, 1942. These data cover the lower 48 states and the District of Columbia.
14. 1940-1949: Vital Statistics Special Reports, Vol. 36, No 1-23, p. 22, 1949. As noted, “By place of occurrence. Includes reported annulments and partial or incomplete estimates for some States.” Again, these data cover the lower 48 states and the District of Columbia.
15. 1950-1951: Vital Statistics Special Reports, Vol. 38, No. 7, p. 136, 1951. As noted, “Includes reported annulments.” Again, these data cover the lower 48 states and the District of Columbia.
16. 1952-1955: Vital Statistics Special Reports, Vol. 46, No. 17, p. 332, 1957. As noted, “By place of occurrence. Includes only events (divorces and reported annulments) occurring within the continental United States.” Again, these data cover the lower 48 states and the District of Columbia.
17. 1940-1955 Alaska and Hawaii data: Vital Statistics Special Reports, Vol. 50, No. 7, p. 191, 1957. As noted, “By place of occurrence. Includes reported annulments.”

18. 1956-60: 1960 *Vital Statistics of the United States* (VSUS), Vol. III, Table 3-B (page 3-17).  
These data and data sources 18 through 24 cover all 50 states and the District of Columbia.
19. 1961-66: 1966 VSUS, Vol III, Table 2-2 (page 2-6).
20. 1967-72: 1972 VSUS, Vol III, Table 2-2 (page 2-6).
21. 1973-78: 1978 VSUS, Vol III, Table 2-2 (page 2-6).
22. 1979-83: 1983 VSUS, Vol III, Table 2-3 (page 2-6).
23. 1984-88: 1988 VSUS, Vol III, Table 2-3 (page 2-3).
24. 1989-90: Same as source 3 above.

Here are the sources for state annual population totals. The July 1<sup>st</sup> estimate of each year is used, except in the cases of 1970, 1980, and 1990, where instead the April 1<sup>st</sup> estimate is used.

25. 1922-1929: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st2029ts.txt> (retrieved on 2015-07-06-1151). These data cover the lower 48 states and the District of Columbia.
26. 1930-1939: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st3039ts.txt> (retrieved on 2015-07-06-1151). Again, these data cover the lower 48 states and the District of Columbia.
27. 1940-1949: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st4049ts.txt> (retrieved on 2015-07-06-1151). Again, these data cover the lower 48 states and the District of Columbia.
28. 1940-1949 Alaska and Hawaii population: *Statistical Abstract of the United States, 79<sup>th</sup> Annual Edition*, 1958, p. 908.
29. 1950-1959: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st5060ts.txt> (retrieved on 2015-07-06-1151). These data and data sources 30 through 32 cover all 50 states and the District of Columbia.
30. 1960-1969: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st6070ts.txt> (retrieved on 2015-07-06-1151).
31. 1970-1979: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st7080ts.txt> (retrieved on 2015-07-06-1151).
32. 1980-1990: US Census Bureau, <http://www.census.gov/popest/data/state/asrh/1980s/tables/st8090ts.txt> (retrieved on 2015-07-06-1151).

Here are the sources for California total divorce filings:

33. 1926-1928: *Second Report of the Judicial Council of California to the Governor and the Legislature*, Appendix F.
34. 1929-1940: *Eleventh Biennial Report of the Judicial Council of California*, p. 16.
35. 1941-1948: *Thirteenth Biennial Report of the Judicial Council of California*, p. 14.
36. 1949-1951: *Seventeenth Biennial Report of the Judicial Council of California*, p. 69.
37. 1952-1962: *Nineteenth Biennial Report of the Judicial Council of California*, p. 139.
38. 1963-1990: *Vital Statistics of California*, various editions.

## APPENDIX C

### Sources of Other Countries' Divorce Data Used in Chapter II

Here are the sources used to construct the 1946-1989 CDRs of England and Wales, Australia, New Zealand, Canada, Scotland, Germany, and France.

39. England and Wales: Office for National Statistics, “Mid-1838 to Mid-2012 Population Estimates: Total persons, Single year of age and Quinary age groups for England and Wales; estimated resident population.” and “Number of divorces, age at divorce and marital status before marriage”.
40. Australia: Australian Bureau of Statistics, “3105.0.65.001 Australian Historical Population Statistics, 2008”—Tables 1 and 12 ; “3101.0 Australian Demographic Statistics. Table 4. Estimated Resident Population, States and Territories (Number)”; “3310.0 Marriages and Divorces, Australia, 2012”.
41. New Zealand: *New Zealand Official Year Book* 1932, 1943, 1951-2, 2012, Historical population estimates tables, Statistics New Zealand Table reference VSM003AA.
42. Canada: Statistics Canada, “Chart 6 Crude marriage rate and crude divorce rate, Canada, 1926 to 2008” and “Number of marriages and divorces, Canada, 1926 to 2008”; *North Report* (p. 428); Snell (1991, p. 10).
43. Scotland: “Mid-year population estimates: Scotland, all ages by sex: 1855 to 2012” and “Divorces, Scotland, 1855 to 2011”.
44. West Germany: Statistisches Bundesamt; <http://www.gesis.org/histat/en/table/details/28C85274A6D453BCED20443C68DBA6D3> (retrieved 2015-07-06-1411); Kuller (2004, p. 47); *The Nation*, “Divorces and Suicides in Germany” (1924, v. 119, No. 3093, p. 428).
45. France (metropolitan): Institut national de la statistique et des études économiques, “Évolution de la population” and “Bilan démographique 2013 - Trois mariages pour deux Pacs”.

## APPENDIX D

### Sources of Enactment and Repeal Dates of Omnibus Clauses

46. Iowa. Enactment: *Laws*, 1846, Ch. 24, p. 23, approved January 17<sup>th</sup>, 1846. Abolition: *Laws*, 1855, Ch. 76, pp. 112-113, approved January 24<sup>th</sup>, 1855.
47. Minnesota. Enactment: *Session Laws*, 1855, Ch. 17, pp. 61-62. Abolition: Minnesota's omnibus clause is absent from the General Statutes of 1866 (Ch. 62, pp. 408-412). Although I cannot be certain that it had not been repealed even before 1866, both Kingsley (1932, p. 257) and the *Minnesota Law Review* (1951, p. 173) say it was the revision of 1866 that repealed it.
48. North Carolina. Enactment: *Acts*, 1827-1828, Ch. 29, pp. 19-20. In 1837, the wording of North Carolina's omnibus clause was changed to: "or that any other just cause for a divorce exists" (*Revised Statutes*, 1837, Vol. I, Ch. 39, pp. 238-239). Abolition: *Acts*, 1871-1872, Ch. 193, pp. 339-340.
49. Indiana. Enactment: *Revised Laws*, 1824, Ch. 32, pp. 156-157, approved January 22, 1824. The precise wording of Indiana's omnibus clause changed thrice. In 1831, to "for any other cause, and in any other case where the court, in their discretion, shall consider it reasonable and proper that a divorce should be granted" (*Revised Laws*, 1831, Ch. 31, pp. 213-215). In 1838, to "in any other case where the court in the exercise of sound discretion, shall deem it reasonable and proper that a divorce should be granted" (*Revised Laws*, 1838, Ch. 31, pp. 242-244). And in 1852, to "Any other cause for which the court shall deem it proper that a divorce should be granted." (*Revised Laws*, 1852, Ch. 4, pp. 233-238, approved May 13, 1852). Abolition: *Revised Laws*, 1873, Ch. 43, pp. 107-112, approved March 10, 1873.
50. Illinois. Enactment: *Revised Laws*, 1833, pp. 234-235—In force December 4, 1832. Abolition: *Revised Statutes*, 1874, Ch. 40, pp. 420-422—Approved March 10, 1874. In force July 1, 1874.
51. Louisiana. Enactment: *Acts*, 1870, No. 76, p. 108, approved March 9, 1870. Abolition: *Acts*, 1877, No. 122, p. 192, approved April 30, 1877.

52. Connecticut. Enactment: *Public Acts*, 1849 May Session, Ch. XXI, p. 17, approved June 19<sup>th</sup>, 1849. Abolition: *Public Acts*, 1878 Session, Ch. LXXI, p. 305, approved March 27, 1878.
53. Utah. Enactment: First Session of the Legislative Assembly of the Territory of Utah, p. 83, approved March 6<sup>th</sup>, 1852. Abolition: *Session Laws*, 1878, Ch. 1, pp. 1-2, approved February 2, 1878.
54. Maine. Enactment: *Acts and Resolves*, 1847, Ch. 13, pp. 8-9, approved July 13, 1847. Abolition: *Acts and Resolves*, 1883, Ch. 212, pp. 175-176, approved March 13, 1883.
55. Washington. Enactment: The First Session of the Legislative Assembly of the Territory of Washington, *1854 Statutes*, pp. 405-407. I came across only one change to the wording of Washington's omnibus clause: "a divorce may be granted ... for any other cause deemed by the court sufficient, ~~or~~ and the court shall be satisfied that the parties can no longer live together" (*Pierce's Code*, 1919, Vol. 2, p. 2216). Abolition: *Session Laws*, 1921, Ch. 109, pp. 331-333, approved by the Governor March 17, 1921. The omnibus clause, formerly appended to the end of paragraph 7 of §982, is now dropped.
56. Rhode Island. Enactment: *General Assembly of the Governor and Company of the English Colony of Rhode-Island, and Providence-Plantations, in New-England, in America; begun and held at South-Kingston in said Colony, the last Wednesday of October, in the Year of our LORD, One Thousand Seven Hundred and Forty Nine*, pp. 53-54. In 1822, the wording was changed slightly: "for any other gross misbehavior and wickedness in either of the parties, repugnant to and in violation of the marriage covenant" (*Public Laws*, 1822, pp. 367-370). Abolition: Never. Same [today](#) as it was in 1822.
57. Arizona. Enactment: *Compiled Laws, from 1864 to 1871 inclusive*, pp. 303-304, approved February 26, 1871. Abolition: *Revised Statutes*, 1887, pp. 373-375, approved February 28, 1887, took effect July 1, 1887.
58. Montana. Enactment: *Acts*, 1907, Ch. 118, pp. 297-298, approved March 6, 1907. Abolition: This broad definition of cruelty remained until the 1975 adoption of the Uniform Marriage and Divorce Act, which abolished all grounds for divorce save one—irretrievable breakdown. (*Laws*, 1975, Ch. 536, p. 1520, approved May 6, 1975, effective January 1, 1976.)

## APPENDIX E

### Sources of Divorce Data Used in Chapter III

Annual county-level divorce counts are compiled from these two sources:

59. 1867-1886: *Wright Report*, Table I, pp. 214-441. (To illustrate, Figure E.1 partially reproduces pp. 216-217.)
60. 1887-1906: *North Report, Part II*, Tables 18-20 (pp. 707-825).

I take note of instances where the data are defective. As stated in the *Wright Report* (p. 130), for 1867-1886, for 161 out of 2,627 counties “the figures do not cover the whole of the twenty years” because “the records, either of marriage or divorce, have been destroyed by fire or otherwise”. But aside from Cook county, Illinois and Hamilton county, Ohio, “the counties whose records have been destroyed are small.” And as similarly stated in the *North Report* (p. 6), for 1887-1906, there were, similarly, “a considerable number of counties for which records of marriages or divorces were lacking for a part of the period” (p. 6), of which the most notable instance was San Francisco county, whose records were destroyed in the 1906 earthquake. Such destruction, absence, or defects of data were documented as footnotes to the tables.

For example, for DeKalb county, Alabama, the *Wright Report* (p. 216, n. *b*, reproduced in Figure 1) states that “The divorce records are defective.” No dates are specified. Hence, I code the 1867-1886 divorce data for DeKalb county as being defective. In contrast, for King William county, Virginia, the *Wright Report* (p. 422, n. *a*) specifies that “Divorce records destroyed by fire January 18, 1885.” And so King William observations up to and including 1885 are coded as being defective, but not that for 1886.



TABLE I.—MARRIAGES AND DIVORCES, 1867 TO 1886, BY COUNTIES—Cont'd.

**ALABAMA—Continued.**

Counties.	Population.		Mar- riages and divorces.	1867.	1868.	1869.	1870.	1871.	1872.
	1870.	1880.							
23 Dale (a) .....	11,325	12,677	{ Mar Div.....						
24 Dallas .....	40,705	48,433	{ Mar Div.....	2	4	5	4	6	4
25 De Kalb (b) .....	7,126	12,675	{ Mar Div.....	1	3		3		
26 Elmore .....	14,475	17,860	{ Mar Div.....						
27 .....	.....	.....	{ Mar Div.....	0	0	11	0	0	1
45 Marengo .....	26,151	30,896	{ Mar Div.....	1		1			

<sup>a</sup> Marriage and divorce records destroyed by fire November 26, 1884. Divorces for Geneva county are included.  
<sup>b</sup> The divorce records are defective.  
<sup>c</sup> Organized in 1868. Prior to February, 1885, divorces are included with those for Conecuh county.

TABLE I.—MARRIAGES AND DIVORCES, 1867 TO 1886, BY COUNTIES—Cont'd.

**ALABAMA—Continued.**

																	Total.
1873.	1874.	1875.	1876.	1877.	1878.	1879.	1880.	1881.	1882.	1883.	1884.	1885.	1886.				
													128	149	278	} 23	
													4	7	11		
	3	6	4	5	9	10	25	24	16	24	29	24	38	43	291	} 24	
			2	2	5	2	2	6	2	3	6	3	4	1	44	} 25	
	1	1	1		1	2	9	3	8	11	16	3	2	60	} 26		

FIGURE E.1. EXCERPTS FROM *WRIGHT REPORT* (PP. 216-217)

Note that often, even though the records were defective, they were not completely missing. DeKalb county is a case in point: Even though its divorce records were defective, some divorce records were still obtained (see Figure E.1). Still, I simply code DeKalb county’s 1867-1886 observations as defective.

Note also that the *Wright* and *North Reports* already took into account changes in county boundaries and names. I have therefore made no additional effort to account for such changes.

One final note is that no effort is made to correct for any errors that the authors of the reports did not seem to notice. For example, although the 1903 divorce numbers for Rhode Island, as reported by the *North Report* (p. 735), are probably incorrect,<sup>145</sup> I do not correct them.

Decennial county-level population counts are compiled from:

61. US Census Bureau, “Population of States and Counties of the United States: 1790 to 1990”, Part III: Population of Counties, Earliest Census to 1990, [http://www.census.gov/population/www/censusdata/Population\\_PartIII.xls](http://www.census.gov/population/www/censusdata/Population_PartIII.xls) (Excel file, retrieved 2015-07-06-1406).

Intercensal county-level population estimates are then obtained through simple interpolation.

For each state and each year, total divorces and population are calculated as the sum of divorces and population across all counties in the state. In the primary analysis, the defective county-year data are dropped. Each state’s annual CDR is then calculated as “total divorces × 1000000 ÷ total population”.

<sup>145</sup> The 1903 divorce numbers for the five counties of Rhode Island—Bristol, Kent, Newport, Providence, and Washington—are given as 1, 8, 11, 177, and 13 divorces, for a total of 210 divorces (*North Report*, p. 735). These numbers are anomalous. They are about half those reported for the adjacent years. They are also inconsistent with those reported in the *50th Report relating to the Registry and Return of Births, Marriages, and Deaths, and of Divorces in the State of Rhode Island*, which instead reports the five counties as having had 9, 28, 17, 355, and 18 divorces, for a total of 427 divorces. For the adjacent years, the Rhode Island reports have numbers similar to those in the *North Report*.

## APPENDIX F

### How the Divorce Law Coding in Chapter III Was Compiled

The sources for the divorce law coding were the various state statutes and state session laws were:

62. HeinOnline, State Statutes: A Historical Archive, <http://heinonline.org/HOL/Index?index=sstatutesstates&collection=sstatutes> (retrieved 2015-07-06-1540).
63. HeinOnline, Session Laws Library, <http://www.heinonline.org/HOL/Index?collection=ssl> (retrieved 2015-07-06-1540).

To illustrate how the coding was compiled, consider the example of Georgia. Georgia published a compiled code in each of 1867, 1873, 1882, 1895 (with a 1901 Supplement), and 1910. And so, to obtain the coding for Georgia in 1873, the 1873 *Code* is examined (p. 297 is partially reproduced in Figure F.1). Based on §1712, Georgia in 1873 is coded as having absolute divorce on the following grounds: consanguinity, insanity at time of marriage, impotency, fraud, pregnant, adultery, desertion (three years), and conviction of felony.

The remainder of the coding for Georgia 1873 is similarly obtained, on the basis of other information furnished by the 1873 *Code*. The coding for Georgia in the years 1867, 1882, 1895, 1901, and 1910 is likewise obtained from the information given in the aforementioned published codes (and supplement).

To code the intervening years, it is helpful that Georgia's published codes explicitly state when each section of the law was last enacted or amended. So for example, as shown in Figure F.1, the 1873 *Code* tells us that §1712 was last enacted or amended by the Act of 1850. This would suggest that the 1872 law was the same. For confirmation, the 1867 Code is checked. There it is found that §1712 is indeed exactly the same as in 1873. Also checked are the session laws in each of the intervening years, to make sure that indeed, no amendments were made to this particular section between 1867 and 1873.

§1712. (1711.) *Grounds for total divorce.* The following grounds <sup>Act of 1850, C. p. 226.</sup> shall be sufficient to authorize the granting of a total divorce:

1. Intermarriage by persons within the prohibited degrees of consanguinity and affinity.
2. Mental incapacity at the time of the marriage.  
A ground: 27 Ga., 102. Proceeding to declare marriage a nullity on this ground. *Id.*
3. Impotency at the time of the marriage.
4. Forces, menaces, duress, or fraud, in obtaining the marriage.
5. Pregnancy of the wife, at the time of marriage, unknown to the husband.  
Alimony in such case: 18 Ga., 273.
6. Adultery in either of the parties after marriage.  
See *Cook vs. Cook*, July term, 1872.
7. Willful and continued desertion by either of the parties for the term of three years.  
Evidence that it was willful, and plaintiff consenting: 29 Ga., 281. Husband witness: 41 Ga., 618.
8. The conviction of either party for an offense involving moral turpitude, and under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer.

GENERAL NOTE ON THIS SECTION.—Grounds for divorce at common law: 2 Kelly, 191; under our Constitution: *Id.*

FIGURE F.1. EXCERPT FROM CODE OF THE STATE OF GEORGIA, 1873, P. 297

The coding for other states was obtained through similar means. It must however be noted that not all states were as straightforward to code as Georgia. Numerous judgment calls have had to be made, while coding the divorce laws of the multiple states across forty years.

Another caveat is that the many nuances of the laws are not fully accounted for. For example, the variously-worded cruelty clauses are not finely differentiated. As another example, consider the matter of whether a state had a residency requirement. In one state, the requirement might simply be that the petitioner was a *bona fide* resident of the state. In another, it might be that the couple had married and cohabited in that state. Such nuances are, however, not accounted for; both states would be coded equally as simply having a residency requirement.

### References for Appendices A-F

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## APPENDIX G

### A Note on Dhillon (1998)

This note provides a counterexample to Theorem 1 in Amrita Dhillon, *Extended Pareto Rules and Relative Utilitarianism*, *Social Choice and Welfare* 15 (1998), 521-542. The paper concerns the aggregation of von Neumann Morgenstern utilities of individuals into a social preference. Theorem 1 is a characterization of social welfare functions (SWFs) that satisfy an axiom that Dhillon calls the “extended Pareto axiom.” According to Theorem 1 the axiom is satisfied if and only if social welfare is the expected value of a weighted sum of individuals’ von Neumann-Morgenstern utilities, where the weight of an individual may depend on the individual’s identity and preference, but not on the other individuals’ preferences.

We use the notation and the definitions from Dhillon (1998). We begin by reproducing the “Extended Pareto Axiom” from Dhillon (1998).

**Extended Pareto Axiom (EP)** For any profile of preferences  $\mathcal{R}^N \in \mathcal{L}^N$  and for any 2 element partition  $\{G_1, G_2\}$  of  $N$ ,  $\exists \psi_{G_1}, \psi_{G_2}$  such that: for any pair of lotteries  $p$  and  $q$

$$\begin{aligned} p \mathcal{R}_{G_i} q \quad i=1,2 \\ \Rightarrow p \mathcal{R} q \end{aligned}$$

And if further,  $p \mathcal{P}_{G_i} q$ , then

$$p \mathcal{P} q.$$

As stated, this axiom does, in fact, not say what Dhillon has in mind. This is because, as stated, in the axiom the group aggregation functions  $\psi_{G_1}$  and  $\psi_{G_2}$  are allowed to be different for different preference profiles  $\mathcal{R}^N$ . But then it is clear that the axiom cannot have any implications for the

way in which the weights of an individual's utility function in social welfare depend on the preference profile. So, Theorem 1, stated below, cannot possibly follow from EP. In this note, we assume that this is a simple oversight, and that Dhillon, in fact, meant to write:

**Extended Pareto Axiom (EP)** For every  $G \subset N$  there exists a group aggregation rule  $\psi_G$  such that for any profile of preferences  $\mathcal{D}^N \in \mathcal{D}^N$ , any 2 element partition  $\{G_1, G_2\}$  of  $N$ , and any pair of lotteries  $p$  and  $q$

$$p \mathcal{R}_{G_i} q \quad i=1,2$$

$$\Rightarrow p \mathcal{R} q$$

And if further,  $p \mathcal{D}_{G_1} q$ , then

$$p \mathcal{D} q.$$

We next reproduce Theorem 1 from Dhillon (1998). We only reproduce part (A) of the result, because our counterexample will be a counterexample to part (A).

**Theorem 1:**

(A) If  $A \geq 4$  and  $N \geq 4$ , a SWF satisfies EP iff it can be represented by:

$$U = \sum_{n \in N} u'_n(\mathcal{D}_n), \text{ whenever } d(\vec{u}) > 2, \tag{1}$$

where  $U$  is a  $vN$ - $M$  utility representation of social preferences, and each  $u'_n$  is a (unique, up to the function  $F_n$ ) representation of individual preferences, such that

$$u'_n(a) = (h(u_n)(a))/F_n((h(u_n)(\cdot))) \tag{2}$$

where  $h(u_N) = u_N \vee \min_{a \in A} u_N(a)$ , is a utility function in  $\mathbb{R}^A$ , and  $F_N: \mathbb{R}^A \rightarrow \mathbb{R}_+$  is positively homogeneous of degree 1 (if  $u_N$  is not constant) and translation invariant.<sup>146</sup>

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<sup>146</sup> Note that  $F_N((h_n(u-n)(\cdot) + F_n((u_n)(\cdot))))$  by translation invariance. If  $u_n$  is constant define  $F_n(u_n) = 1$ . (Dhillon's footnote.)

The result thus claims necessary and sufficient conditions for a social welfare function to satisfy (EP). However, Theorem 1 imposes no restrictions on social preferences when the rank of the collection of real vectors corresponding to the individuals' Bernoulli utility functions, *i.e.* the rank of the collection of vectors  $(u_i(a))_{a \in A}$  for every  $i \in N$ , is less than 3. The conditions provided therefore cannot be sufficient. A sufficient condition must also impose restrictions on profiles of utility functions with a rank below 3. If, for example, all utility functions are identical, thus the rank of the collection is 1, but society's preference is represented by a Bernoulli utility function that corresponds to preferences that are different from all individuals' preferences, then the extended Pareto axiom does not hold for this social welfare function, even if it satisfies the condition of Dhillon's Theorem 1(A). We assume that this is a simple oversight, and that Dhillon intended to restrict the domain of SWFs to utility profiles that satisfy the condition  $d(\vec{u}) > 2$ .

With the domain restriction provided in the previous paragraph, Dhillon's conditions is obviously sufficient for EP. We argue here that it is not necessary. We first note that Dhillon's proof contains errors. Specifically, we shall show that equation (10) on page 529 of Dhillon (1998) is incorrect. To show this, we provide a counterexample. Let:

$$\#A = 4, u = (1, 1, 0, 0), v = (0, 1, 0, 0), w = (0, 0, 1, 1), U'_G = (1, 2, 0, 0), U_G = (1, 3, 1, 1).$$

Note that the dimension of the collection of vectors  $\{u, v, w\}$  is three, as required in Dhillon's claim. We also note that the extended Pareto axiom is not violated. Indeed,  $U_G$  is a possible representation of the relative utilitarian welfare function. (If we add up the individuals' utility functions, we obtain the vector  $(1, 4, 1, 1)$ , but, of course, this vector and  $U_G = (1, 3, 1, 1)$  represent the same preferences.)

Trivial calculations show:

$$\lambda_{i,G'}(u, v) = 1, \lambda_{j,G'}(u, v) = 1, \lambda_{i,G}(u, v) = 1, \lambda_{j,G}(u, v) = 2,$$

which contradicts Dhillon's equation (10) which we reproduce here:

$$\frac{\lambda_{i,G'}(u, v)}{\lambda_{j,G'}(u, v)} = \frac{\lambda_{i,G}(u, v)}{\lambda_{j,G}(u, v)}$$

In this example, whether Dhillon’s equation (10) holds depends on the representation of the preferences of group  $G$  that we choose. The proof to which equation (10) belongs, however, begins with the words (page 526): “A fixed utility representation  $u_n$ , is assumed for individual  $n$ . Similarly  $U_G$  and  $U$  are fixed (up to translation) utility representations of group (respective social) preferences.” The example shows that if these representations are chosen arbitrarily, then the proof need not hold. It is an open question whether there exists at least one choice of the representations of individuals’ and group preferences for which the claim of (10) goes through.

We conclude this note by providing a fully-fledged counterexample to Dhillon’s Theorem 1 (A) where we interpret the theorem as described above. Our counterexample will satisfy (EP), but not the condition in Dhillon’s theorem. Thus, the condition provided by Dhillon, although in our interpretation of the result clearly sufficient, is not necessary for (EP). Some additional notation will be convenient: If  $v, w \in \mathbb{R}^A$ , then  $v \sim w$  means that  $v$  and  $w$  both represent the same preference. Also,  $u$  denotes the map that assigns to each von Neumann Morgenstern preference  $\mathcal{R}$  that is not complete indifference the unique 0-1 normalized von Neumann Morgenstern utility representation. We interpret  $u(\mathcal{R})$  as a vector in  $\mathbb{R}^A$ .

TABLE G.1—DEFINITION OF GROUP AGGREGATION RULES

The preference ordering	can be represented by
$\psi_{12}(\mathcal{R}_1, \mathcal{R}_2)$	$6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) =: u_{12}(\mathcal{R}_1, \mathcal{R}_2)$ for all $(\mathcal{R}_1, \mathcal{R}_2)$
$\psi_{13}(\mathcal{R}_1, \mathcal{R}_3)$	$6u(\mathcal{R}_1) + 5u(\mathcal{R}_3) =: u_{13}(\mathcal{R}_1, \mathcal{R}_3)$ for all $(\mathcal{R}_1, \mathcal{R}_3)$
$\psi_{14}(\mathcal{R}_1, \mathcal{R}_4)$	$6u(\mathcal{R}_1) + u(\mathcal{R}_4) =: u_{14}(\mathcal{R}_1, \mathcal{R}_4)$ for all $(\mathcal{R}_1, \mathcal{R}_4)$
$\psi_{23}(\mathcal{R}_2, \mathcal{R}_3)$	$9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) =: u_{23}(\mathcal{R}_2, \mathcal{R}_3)$ for all $(\mathcal{R}_2, \mathcal{R}_3)$
$\psi_{24}(\mathcal{R}_2, \mathcal{R}_4)$	$9u(\mathcal{R}_2) + u(\mathcal{R}_4) =: u_{24}(\mathcal{R}_2, \mathcal{R}_4)$ for all $(\mathcal{R}_2, \mathcal{R}_4)$
$\psi_{34}(\mathcal{R}_3, \mathcal{R}_4)$	$5u(\mathcal{R}_3) + u(\mathcal{R}_4) =: u_{34}(\mathcal{R}_3, \mathcal{R}_4)$ for all $(\mathcal{R}_3, \mathcal{R}_4)$
$\psi_{123}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_3)$	$6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) =: u_{123}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_3)$ for all $(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_3)$
$\psi_{124}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_4)$	$6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) + u(\mathcal{R}_4) =: u_{124}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_4)$ for all $(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_4)$
$\psi_{134}(\mathcal{R}_1, \mathcal{R}_3, \mathcal{R}_4)$	$6u(\mathcal{R}_1) + 5u(\mathcal{R}_3) + u(\mathcal{R}_4) =: u_{134}(\mathcal{R}_1, \mathcal{R}_3, \mathcal{R}_4)$ for all $(\mathcal{R}_1, \mathcal{R}_3, \mathcal{R}_4)$
$\psi_{234}(\mathcal{R}_2, \mathcal{R}_3, \mathcal{R}_4)$	$9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) + u(\mathcal{R}_4) =: u_{234}(\mathcal{R}_2, \mathcal{R}_3, \mathcal{R}_4)$ for all $(\mathcal{R}_2, \mathcal{R}_3, \mathcal{R}_4)$

We now construct our counterexample. Let  $N = \{1, 2, 3, 4\}$  and  $A = \{a_1, a_2, a_3, a_4\}$ . Let the preference profile  $\widehat{\mathcal{R}}^N = (\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4)$  be defined by:

$$\{u(\widehat{\mathcal{R}}_1), u(\widehat{\mathcal{R}}_2), u(\widehat{\mathcal{R}}_3), u(\widehat{\mathcal{R}}_4)\} = \{(1,0,0,0), (0,1,0,0), (0,0,1,1), (1,1,0,0)\}.$$

Note that  $\widehat{\mathcal{R}}^N$  satisfies the dimension condition  $d(\vec{u}) > 2$ . Construct the SWF  $\varphi$  so that  $\varphi(\widehat{\mathcal{R}}^N)$  can be represented by

$$2u(\widehat{\mathcal{R}}_1) + 3u(\widehat{\mathcal{R}}_2) + 2u(\widehat{\mathcal{R}}_3) + u(\widehat{\mathcal{R}}_4)$$

and, for all other preference profiles  $\mathcal{R}^N = (\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_3, \mathcal{R}_4)$  in the domain,  $\varphi(\mathcal{R}^N)$  can be represented by

$$6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) + u(\mathcal{R}_4).$$

This completes the construction of our counterexample.

We now show first that  $\varphi$  satisfies EP. We then show that  $\varphi$  does not satisfy the condition of Theorem 1 (A). To show that EP is satisfied, we construct group aggregation rules  $\psi_{12}, \psi_{13}, \psi_{14}, \psi_{23}, \psi_{24}, \psi_{34}: \mathcal{L}^2 \rightarrow \mathcal{L}$  and  $\psi_{124}, \psi_{134}, \psi_{234}: \mathcal{L}^3 \rightarrow \mathcal{L}$ . We show the definition of these aggregation rules in Table 1.

We now verify that  $\varphi$  indeed satisfies EP. We do this by showing that whenever we partition  $N$  into two subsets, society's preference can be represented by a weighted utility function that is a weighted sum of utility functions that represent the two groups preferences, where all weights are strictly positive, and where the groups' preferences are determined by the group aggregation rules in Table 1. This clearly implies EP.

Consider any preference profile  $\mathcal{R}^N \neq \widehat{\mathcal{R}}^N$ . By construction, the social preference  $\varphi(\mathcal{R}^N)$  can be represented by  $6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) + u(\mathcal{R}_4)$ . It can be easily seen that:

$$\begin{aligned} 6u(\mathcal{R}_1) + 9u(\mathcal{R}_2) + 5u(\mathcal{R}_3) + u(\mathcal{R}_4) &\sim u_{12}(\mathcal{R}_1, \mathcal{R}_2) + u_{34}(\mathcal{R}_3, \mathcal{R}_4) \\ \sim u_{13}(\mathcal{R}_1, \mathcal{R}_3) + u_{24}(\mathcal{R}_2, \mathcal{R}_4) &\sim u_{14}(\mathcal{R}_1, \mathcal{R}_4) + u_{23}(\mathcal{R}_2, \mathcal{R}_3) \\ \sim u_{123}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_3) + u(\mathcal{R}_4) &\sim u_{124}(\mathcal{R}_1, \mathcal{R}_2, \mathcal{R}_4) + u(\mathcal{R}_3) \\ \sim u_{134}(\mathcal{R}_1, \mathcal{R}_3, \mathcal{R}_4) + u(\mathcal{R}_2) &\sim u_{234}(\mathcal{R}_2, \mathcal{R}_3, \mathcal{R}_4) + u(\mathcal{R}_1) \end{aligned}$$



Next consider the preference profile  $\widehat{\mathcal{R}}^N$ . The social preference  $\varphi(\widehat{\mathcal{R}}^N)$  can be represented by  $2u(\widehat{\mathcal{R}}_1) + 3u(\widehat{\mathcal{R}}_2) + 2u(\widehat{\mathcal{R}}_3) + u(\widehat{\mathcal{R}}_4) = (3, 4, 2, 2) \sim (1, 2, 0, 0)$ . It is not difficult to verify that:

$$\begin{aligned}
(1, 2, 0, 0) &\sim \frac{4}{3}u_{12}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_2) + u_{34}(\widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4) \\
&\sim \frac{8}{7}u_{13}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_3) + u_{24}(\widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_4) &&\sim \frac{14}{13}u_{14}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_4) + u_{23}(\widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3) \\
&\sim \frac{1}{2}u_{123}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3) + u(\widehat{\mathcal{R}}_4) &&\sim \frac{1}{4}u_{124}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_4) + u(\widehat{\mathcal{R}}_3) \\
&\sim \frac{1}{8}u_{134}(\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4) + u(\widehat{\mathcal{R}}_2) &&\sim \frac{2}{13}u_{234}(\widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4) + u(\widehat{\mathcal{R}}_1)
\end{aligned}$$

This completes the proof that  $\varphi$  satisfies EP.

Dhillon's Theorem 1(A) now claims that for every SWF that satisfies EP there exist functions  $\lambda_i$  with  $\lambda_i(\mathcal{I})=0$  and  $\lambda_i(\mathcal{R}_i) > 0$  for all  $\mathcal{R}_i \neq \mathcal{I}$  (recall that  $\mathcal{I}$  denotes complete indifference), such that for all  $\mathcal{R}^N$ ,  $\varphi(\mathcal{R}^N)$  can be represented by  $\sum_{i \in N} \lambda_i(\mathcal{R}_i)u(\mathcal{R}_i)$ . We now show that such functions do not exist. Consider the profile  $\widehat{\mathcal{R}}^N$  (already given above) and in addition also the profiles  $\widetilde{\mathcal{R}} \equiv (\widehat{\mathcal{R}}_1, \widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3, \mathcal{I})$  and  $\dot{\mathcal{R}}^N = (\widehat{\mathcal{R}}_1, \mathcal{I}, \widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4)$ . (Note that these latter two profiles also satisfy the dimension condition). Observe that  $\varphi(\widehat{\mathcal{R}}^N)$ ,  $\varphi(\widetilde{\mathcal{R}})$ , and  $\varphi(\dot{\mathcal{R}}^N)$  can be represented by  $(1, 2, 0, 0)$ ,  $(1, 4, 0, 0)$ , and  $(3, 0, 2, 2)$ . Suppose, for contradiction, that the functions  $\lambda_i$  do exist. Then:

$$\begin{aligned}
(1, 2, 0, 0) &\sim \lambda_1(\widehat{\mathcal{R}}_1)(1, 0, 0, 0) + \lambda_2(\widehat{\mathcal{R}}_2)(0, 1, 0, 0) + \lambda_3(\widehat{\mathcal{R}}_3)(0, 0, 1, 1) + \lambda_4(\widehat{\mathcal{R}}_4)(1, 1, 0, 0) \\
&= (\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4), \lambda_2(\widehat{\mathcal{R}}_2) + \lambda_4(\widehat{\mathcal{R}}_4), \lambda_3(\widehat{\mathcal{R}}_3), \lambda_3(\widehat{\mathcal{R}}_3)) \\
(1, 4, 0, 0) &\sim \lambda_1(\widehat{\mathcal{R}}_1)(1, 0, 0, 0) + \lambda_2(\widehat{\mathcal{R}}_2)(0, 1, 0, 0) + \lambda_3(\widehat{\mathcal{R}}_3)(0, 0, 1, 1) + \lambda_4(\mathcal{I})(1, 1, 1, 1) \\
&= (\lambda_1(\widehat{\mathcal{R}}_1), \lambda_2(\widehat{\mathcal{R}}_2), \lambda_3(\widehat{\mathcal{R}}_3), \lambda_3(\widehat{\mathcal{R}}_3)) \\
(3, 0, 2, 2) &\sim \lambda_1(\widehat{\mathcal{R}}_1)(1, 0, 0, 0) + \lambda_2(\mathcal{I})(1, 1, 1, 1) + \lambda_3(\widehat{\mathcal{R}}_3)(0, 0, 1, 1) + \lambda_4(\widehat{\mathcal{R}}_4)(1, 1, 0, 0) \\
&= (\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4), \lambda_4(\widehat{\mathcal{R}}_4), \lambda_3(\widehat{\mathcal{R}}_3), \lambda_3(\widehat{\mathcal{R}}_3))
\end{aligned}$$

And so there exist  $x_1, x_2, x_3 > 0, y_1, y_2, y_3 \in \mathbb{R}$  such that:

$$\begin{aligned}
(1, 2, 0, 0) &= (x_1[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4)] + y_1, x_1[\lambda_2(\widehat{\mathcal{R}}_2) + \lambda_4(\widehat{\mathcal{R}}_4)] + y_1, \\
&\quad x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1) \tag{3}
\end{aligned}$$

$$(1, 4, 0, 0) = (x_2[\lambda_1(\widehat{\mathcal{R}}_1)] + y_2, x_2[\lambda_2(\widehat{\mathcal{R}}_2)] + y_2, x_2[\lambda_3(\widehat{\mathcal{R}}_3)] + y_2, x_2[\lambda_3(\widehat{\mathcal{R}}_3)] + y_2) \quad (4)$$

$$(3, 0, 2, 2) = (x_3[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4)] + y_3, x_3[\lambda_4(\widehat{\mathcal{R}}_4)] + y_3, x_3[\lambda_3(\widehat{\mathcal{R}}_3)] + y_3, x_3[\lambda_3(\widehat{\mathcal{R}}_3)] + y_3) \quad (5)$$

Subtracting the first entry from the second in equation (3), we have  $2 - 1 = 1 = x_1[\lambda_2(\widehat{\mathcal{R}}_2) - \lambda_1(\widehat{\mathcal{R}}_1)]$ . Doing the same for equation (4), we have  $4 - 1 = 3 = x_2[\lambda_2(\widehat{\mathcal{R}}_2) - \lambda_1(\widehat{\mathcal{R}}_1)]$ . Hence,  $x_2 = 3x_1$ . We can thus rewrite equation (4) as :

$$\left(\frac{1}{3}, \frac{4}{3}, 0, 0\right) = \left(x_1[\lambda_1(\widehat{\mathcal{R}}_1)] + \frac{y_2}{3}, x_1[\lambda_2(\widehat{\mathcal{R}}_2)] + \frac{y_2}{3}, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + \frac{y_2}{3}, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + \frac{y_2}{3}\right) \quad (6)$$

Comparing the fourth entries of equations (3) and (6), we see that  $\frac{y_2}{3} = y_1$ . So equation (6) can further be rewritten as:

$$\left(\frac{1}{3}, \frac{4}{3}, 0, 0\right) = (x_1[\lambda_1(\widehat{\mathcal{R}}_1)] + y_1, x_1[\lambda_2(\widehat{\mathcal{R}}_2)] + y_1, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1) \quad (7)$$

Now subtract the first entry of equation (7) from that of equation (3) to get

$$x_1\lambda_4(\widehat{\mathcal{R}}_4) = \frac{2}{3}.$$

Next, subtract the third entry from the first in equation (3) to get  $1 - 0 = 1 = x_1[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4) - \lambda_3(\widehat{\mathcal{R}}_3)]$ . Do the same for equation (5) to get  $3 - 2 = 1 = x_3[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4) - \lambda_3(\widehat{\mathcal{R}}_3)]$ . Hence,  $x_1 = 3x_3$ . We can thus rewrite equation (5) as:

$$(3, 0, 2, 2) = (x_1[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4)] + y_3, x_1[\lambda_4(\widehat{\mathcal{R}}_4)] + y_3, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_3, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_3) \quad (8)$$

Comparing the fourth entries in equations (3) and (8), we see that  $y_3 = y_1 + 2$ . So equation (8) can be further rewritten as:

$$(1, -2, 0, 0) = (x_1[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4)] + y_1, x_1[\lambda_4(\widehat{\mathcal{R}}_4)] + y_1, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1, x_1[\lambda_3(\widehat{\mathcal{R}}_3)] + y_1) \quad (9)$$

The second entry of this equation says that  $x_1[\lambda_4(\widehat{\mathcal{R}}_4)] + y_1 = -2$ . Since  $x_1\lambda_4(\widehat{\mathcal{R}}_4) = \frac{2}{3}$ , we have also that  $y_1 = -\frac{8}{3}$ . Equation (9) can be rewritten as

$$\left(\frac{11}{3}, \frac{2}{3}, \frac{8}{3}, \frac{8}{3}\right) = (x_1[\lambda_1(\widehat{\mathcal{R}}_1) + \lambda_4(\widehat{\mathcal{R}}_4)], x_1[\lambda_4(\widehat{\mathcal{R}}_4)], x_1[\lambda_3(\widehat{\mathcal{R}}_3)], x_1[\lambda_3(\widehat{\mathcal{R}}_3)]) \quad (10)$$

Examining equations (7) and (10), we see that

$$\lambda_1(\widehat{\mathcal{R}}_1) : \lambda_2(\widehat{\mathcal{R}}_2) : \lambda_3(\widehat{\mathcal{R}}_3) : \lambda_4(\widehat{\mathcal{R}}_4) = 9 : 12 : 8 : 2 \quad (11)$$

Now consider profile  $\bar{\mathcal{R}} = (\mathcal{I}, \widehat{\mathcal{R}}_2, \widehat{\mathcal{R}}_3, \widehat{\mathcal{R}}_4)$  (note that this satisfies the dimension condition). By our construction of  $\varphi$ , the social preference ordering  $\varphi(\bar{\mathcal{R}})$  can be represented by  $(0, 9, 4, 4)$ . Given the functions  $\lambda_i$ , it can also be represented by  $\lambda_2(\widehat{\mathcal{R}}_2)(0, 1, 0, 0) + \lambda_3(\widehat{\mathcal{R}}_3)(0, 0, 1, 1) + \lambda_4(\widehat{\mathcal{R}}_4)(1, 1, 0, 0)$ , which, given equation (11), is some multiple of  $12(0, 1, 0, 0) + 8(0, 0, 1, 1) + 2(1, 1, 0, 0) = (2, 14, 8, 8) \sim (0, 12, 6, 6) \sim (0, 2, 1, 1)$ . We now have a contradiction, because clearly  $(0, 9, 4, 4)$  and  $(0, 2, 1, 1)$  do not represent the same preference ordering. This completes our proof that Dhillon's Theorem 1 (A) is incorrect.

## **APPENDIX H**

### **Sources of No-Fault Approval and Effective Dates**

The following 492 pages contain the documentation that was used to determine the approval and effective dates of each state's first no-fault divorce law.

Approved August 4, 1971.

Time: 5:40 P.M.

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Act No. 221

S. 283—Wilson

AN ACT

To make an additional appropriation from the State treasury to the use of the Legislative Reference Service for the payment of salaries and other expenses.

*Be It Enacted by the Legislature of Alabama:*

**Section 1.** The sum of \$25,000, or so much thereof as may be necessary, is hereby appropriated from any funds in the State treasury not otherwise appropriated to the use of the Legislative Reference Service for the payment of salaries, equipment and any other expenses related to the operations of that agency. The appropriation herein made shall be in addition to all other appropriations heretofore made by law for the payment of the expenses of the Legislative Reference Service.

**Section 2.** This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved August 4, 1971.

Time: 5:42 P.M.

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Act No. 222

S. 39—Lybrand

AN ACT

Further amending Code of Alabama 1940, Title 34, Section 20; relating to marriage and divorce; making incompatibility of temperament a ground for divorce.

*Be It Enacted by the Legislature of Alabama:*

**Section 1.** Code of Alabama 1940, Title 34, Section 20, is hereby amended to read as follows:

“Section 20. DIVORCE; BY WHAT COURT, AND ON WHAT GROUNDS GRANTED.—The Circuit Court in equity has power to divorce persons from the bonds of matrimony, upon bill filed by the aggrieved party, for the causes following: 1. In favor of either party, when the other was, at the time of the marriage physically and incurably incapacitated from entering

into the marriage state. 2. For adultery. 3. For voluntary abandonment from bed and board for one year next preceding the filing of the bill. 4. Imprisonment in the penitentiary of this or any other state, for two years, the sentence being for seven years or longer. 5. The commission of the crime against nature, whether with mankind or beast, either before or after marriage. 6. For becoming addicted after marriage to habitual drunkenness or to habitual use opium, morphine, cocaine or other like drug. 7. Upon application of either the husband or wife, when the court is satisfied from all the testimony in the case, that there exists such a complete incompatibility of temperament that the parties can no longer live together. 8. In favor of either party, when the other, after marriage, shall have been confined in an insane asylum for a period of five successive years; if such party from whom a divorce is sought is hopelessly and incurably insane at the time of the filing of the bill. Provided, however, that the superintendent of the insane asylum in which such person is confined shall make a certified statement, under oath, that it is his opinion and belief, after a complete and full study and examination of such person, that such person is hopelessly and incurably insane."

Section 2. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

This Act became a law on August 12, 1971 under Section 125 of the Constitution without approval by the Governor.

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Act No. 223

S. 748—Lybrand

**AN ACT**

To provide for an expense allowance for the Tax Assessor, Tax Collector, Probate Judge, Circuit Court Clerk, Chairman of the County Commission, Judge of County Court and Register in Equity, Judge of Juvenile Court, Commissioner of Licenses, and Associate Commissioners in all counties having populations of not less than 95,000 nor more than 115,000 according to the most recent federal decennial census.

*Be It Enacted by the Legislature of Alabama:*

Section 1. This Act shall apply to all counties having populations of not less than 95,000 nor more than 115,000 according to the most recent federal decennial census.

Section 2. The governing bodies of all such counties shall have authority to pay an annual expense allowance of the following sums to said officers in said counties:

it originated or in which amendments thereto shall have originated, shall immediately be enrolled and certified by the presiding officer and the clerk and sent to the other house for consideration. (85-48-USC).

**Sec. 480. Veto power.** Except as herein provided, all bills passed by the Legislature shall, in order to be valid, be signed by the Governor. That every bill which shall have passed the Legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the Governor. If he approves it, he shall sign it and it shall become a law at the expiration of ninety days thereafter, unless sooner given effect by a two-thirds vote of said Legislature. If the Governor does not approve such bill, he may return it, with his objections, to the Legislature. He may veto any specific item or items in any bill which appropriates money for specific purposes, but shall veto other bills, if at all, only as a whole. That upon the receipt of a veto message from the Governor each house of the Legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal. If, after such reconsideration, such bill or part of a bill shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become a law. That if the Governor neither signs nor vetoes a bill within three days (Sunday excepted) after it is delivered to him, it shall become a law without his signature, unless the Legislature adjourns sine die prior to the expiration of such three days. If any bill shall be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by its adjournment, prevents the return of the bill, in which case it shall not be a law. (86-48-USC).

**Sec. 481. Payment of legislative expenses.** There shall be annually

appropriated by Congress a sum sufficient to pay the salaries of members and authorized employees of the Legislature of Alaska, the printing of laws, and other incidental expenses thereof; the said sums shall be disbursed by the Governor of Alaska, under sole instructions from the Secretary of the Treasury, and he shall account quarterly to the Secretary for the manner in which the said funds shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by the Governor or by the Legislature for objects not authorized by the Acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects. (87-48-USC).

Appropriation in general appropriation act by Territorial Legislature for per diem for president of the senate and speaker of the house for supervising preparation of journals of respective houses after legislature adjourns, held valid, since such compensation does not come within the limitation of the Organic Act, section 83, Title 48, U.S.C.

Appropriation by Territorial Legislature for clerical help to compile and compare journals of respective houses of legislature, held valid.

*Wickersham vs. Smith*, 7 Alaska 522.

Appropriation by Territorial Legislature during session for over time to subordinate officers of legislature, during session held invalid, since their compensation is fixed by the laws of the United States, and cannot be increased by legislature. *Id.*

**Sec. 482. Transmission of copies of law.** The Governor of Alaska shall within ninety days after the close of each session of the Legislature transmit a copy of all the laws and resolutions passed by the said Legislature, certified to by the Secretary of the Territory, with the seal of the Territory attached, one copy to the President of the United States and one to the Secretary of State of the United States. (88-48-USC).

**Sec. 483. Printing and distribution of laws.** The Legislature shall make provisions for printing the session laws and resolutions within ninety days after the close of each session and for their distribution to public

Effective date. Section 3. This Act to be in full force and effect from and after its passage and approval.

Approved March 13, 1935.

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CHAPTER 54.

AN ACT

[S. B. 52]

To amend Section 3990 of the Compiled Laws of Alaska, 1933, prescribing grounds for divorce.

*Be it enacted by the Legislature of the Territory of Alaska:*

That Section 3990, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

Divorce—For what causes marriage may be dissolved.

Section 3990. For what causes marriage contracts may be dissolved.

First: Impotency existing at the time of the marriage and continuing at the commencement of the action.

Second: Adultery.

Third: Conviction of a felony.

Fourth: Wilful desertion for a period of one year.

Fifth: Cruel and inhuman treatment calculated to impair health or endanger life or personal indignities rendering life burdensome or incompatibility of temperament.

Sixth: Habitual gross drunkenness contracted since marriage and continuing for one year prior to the commencement of the action.



Seventh: Wilful neglect of the husband for the period of twelve months to provide for his wife the common necessities of life, he having the ability to do so, or his failure to do so by reason of idleness, profligacy or dissipation.

Eighth: Insanity: When adjudged by a court of competent jurisdiction and continuing for three years immediately prior to the commencement of the action.

Approved March 13, 1935.

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## CHAPTER 55.

### AN ACT

[S. B. 54]

To amend sub-section (a) of Section 3188, Compiled Laws of Alaska 1933, relative to collateral security the Treasurer may accept to secure Territorial deposits.

*Be it enacted by the Legislature of the Territory of Alaska:*

The sub-section (a) of Section 3188, Compiled Laws of Alaska, 1933, be, and the same is hereby amended to read as follows:

"Sec. 3188. Duties. The Treasurer shall exercise the following functions and discharge the following duties: Prescribing duties of Territorial Treasurer.

"(a) He shall demand, sue for, collect, receive and safely keep all moneys of the Territory from whatever source derived, which are not by law entrusted to the care and custody of some other officer. The Treasurer shall keep these funds in three or more solvent banks in the Territory and the amounts so deposited in the several banks shall be apportioned between such banks in proportion to the amount of funds in the

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\*\*\* Legislation is current through the 2014 Second Extraordinary Session \*\*\*  
\*\*\* and updates received from the Arkansas Code Revision Commission \*\*\*  
\*\*\* through December 12, 2014. \*\*\*

Title 9 Family Law  
Subtitle 2. Domestic Relations  
Chapter 12 Divorce and Annulment  
Subchapter 3 Actions for Divorce or Alimony

A.C.A. § 9-12-301 (2015)

9-12-301. Grounds for divorce.

(a) A plaintiff who seeks to dissolve and set aside a covenant marriage shall state in his or her petition for divorce that he or she is seeking to dissolve a covenant marriage as authorized under the Covenant Marriage Act of 2001, § 9-11-801 et seq.

(b) The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

(1) When either party, at the time of the contract, was and still is impotent;

(2) When either party shall be convicted of a felony or other infamous crime;

(3) When either party shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable;

(4) When either party shall have committed adultery subsequent to the marriage;

(5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether the separation was the voluntary act of one (1) party or by the mutual consent of both parties or due to the fault of either party or both parties;

(6) (A) In all cases in which a husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by reason of the incurable insanity of one (1) of them, the court shall grant a decree of absolute divorce upon the petition of the sane spouse if the proof shows that the insane spouse has been committed to an institution for the care

and treatment of the insane for three (3) or more years prior to the filing of the suit, has been adjudged to be of unsound mind by a court of competent jurisdiction, and has not been discharged from such adjudication by the court and the proof of insanity is supported by the evidence of two (2) reputable physicians familiar with the mental condition of the spouse, one (1) of whom shall be a regularly practicing physician in the community wherein the spouse resided, and when the insane spouse has been confined in an institution for the care and treatment of the insane, that the proof in the case is supported by the evidence of the superintendent or one (1) of the physicians of the institution wherein the insane spouse has been confined.

(B) (i) In all decrees granted under this subdivision (b)(6), the court shall require the plaintiff to provide for the care and maintenance of the insane defendant so long as he or she may live.

(ii) The trial court will retain jurisdiction of the parties and the cause from term to term for the purpose of making such further orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish funds for such care and maintenance.

(C) (i) Service of process upon an insane spouse shall be had by service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or upon a duly appointed guardian ad litem for the insane spouse, and when the insane spouse is confined in an institution for the care of the insane, upon the superintendent or physician in charge of the institution wherein the insane spouse is at the time confined.

(ii) However, when the insane spouse is not confined in an institution, service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or duly appointed guardian ad litem and thereafter personal service or constructive service on an insane defendant by publication of warning order for four (4) weeks shall be sufficient; and

(7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessities of life, willfully fails to do so.

**HISTORY:** Civil Code, § 464; Acts 1873, No. 88, § 1[464], p. 213; C. & M. Dig., § 3500; Acts 1937, No. 167, § 1; Pope's Dig., § 4381; Acts 1939, No. 20, §§ 1, 2; 1943, No. 428, § 1; 1947, No. 159, § 1; 1953, No. 161, § 1; 1953, No. 348, § 2; 1963, No. 74, § 1; 1981, No. 633, § 5; 1985, No. 360, § 1; A.S.A. 1947, § 34-1202; Acts 1991, No. 131, §§ 1, 2; 2005, No. 1890, § 1.

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such amount as the court in its discretion deems reasonable, considering the services performed.

B. WHEN A PERSON IS CHARGED WITH A CAPITAL OFFENSE THE COURT MAY ON ITS OWN INITIATIVE AND SHALL UPON APPLICATION OF THE DEFENDANT AND A SHOWING THAT THE DEFENDANT IS FINANCIALLY UNABLE TO PAY FOR SUCH SERVICES, APPOINT SUCH INVESTIGATORS AND EXPERT WITNESSES AS ARE REASONABLY NECESSARY ADEQUATELY TO PRESENT HIS DEFENSE AT TRIAL AND AT ANY SUBSEQUENT PROCEEDING. COMPENSATION FOR SUCH INVESTIGATORS AND EXPERT WITNESSES SHALL BE SUCH AMOUNT AS THE COURT IN ITS DISCRETION DEEMS REASONABLE AND SHALL BE PAID BY THE COUNTY.

**Sec. 10. Severability of sentence clause**

In the event the death penalty is held to be unconstitutional on final appeal, a person convicted of first degree murder or another offense punishable by death who has been sentenced to die shall be resentenced by the sentencing court to life imprisonment without possibility of parole until the person has served a minimum of twenty-five calendar years.

(Failed to pass the Senate with sufficient vote to enact the emergency clause)

Approved by the Governor—May 14, 1973

Filed in the Office of the Secretary of State—May 14, 1973

## CHAPTER 139

Senate Bill 1007

## AN ACT

RELATING TO MARITAL AND DOMESTIC RELATIONS; PROVIDING FOR DISSOLUTION OF MARRIAGE; PRESCRIBING PROCEDURES, GROUNDS AND RIGHTS OF PARTIES; PRESCRIBING PROCEDURES FOR DETERMINATION OF CUSTODY AND SUPPORT OF CHILDREN; AMENDING LAWS RELATING TO

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COURT OF CONCILIATION; REPEALING TITLE 25, CHAPTER 3, ARTICLES 2 THROUGH 6, ARIZONA REVISED STATUTES; AND AMENDING TITLE 25, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING NEW ARTICLES 2 AND 3, AND AMENDING SECTIONS 25-381.08, 25-381.09, 25-381.17, 25-381.18, 25-381.19, 25-381.20, 25-381.21 AND 25-381.22, ARIZONA REVISED STATUTES.

**Be it enacted by the Legislature of the State of Arizona:**

**Section 1. Repeal**

Title 25, chapter 3, articles 2 through 6, Arizona Revised Statutes, are repealed.

Sec. 2. Title 25, chapter 3, Arizona Revised Statutes, is amended by adding new articles 2 and 3, to read:

**ARTICLE 2. DISSOLUTION OF MARRIAGE**

**25-311. Jurisdiction; form of petition; award of decree**

A. THE SUPERIOR COURT IS VESTED WITH ORIGINAL JURISDICTION TO HEAR AND DECIDE ALL MATTERS ARISING PURSUANT TO THIS CHAPTER.

B. A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION SHALL BE ENTITLED, "IN RE THE MARRIAGE OF \_\_\_\_\_ AND \_\_\_\_\_." A CUSTODY OR SUPPORT PROCEEDING SHALL BE ENTITLED, "IN RE THE (CUSTODY) (SUPPORT) OF \_\_\_\_\_."

C. THE INITIAL PLEADING IN ALL PROCEEDINGS UNDER THIS CHAPTER SHALL BE DENOMINATED A PETITION. A RESPONSIVE PLEADING SHALL BE DENOMINATED A RESPONSE.

D. A DECREE OF DISSOLUTION OR OF LEGAL SEPARATION, IF MADE, SHALL NOT BE AWARDED TO ONE OF THE PARTIES, BUT SHALL PROVIDE THAT IT AFFECTS THE STATUS PREVIOUSLY EXISTING BETWEEN THE PARTIES IN THE MANNER DECREED.

**25-312. Dissolution of marriage; findings necessary**

THE COURT SHALL ENTER A DECREE OF DISSOLUTION OF MARRIAGE IF IT FINDS EACH OF THE FOLLOWING:

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1. THAT ONE OF THE PARTIES, AT THE TIME THE ACTION WAS COMMENCED, WAS DOMICILED IN THIS STATE, OR WAS STATIONED IN THIS STATE WHILE A MEMBER OF THE ARMED SERVICES, AND THAT IN EITHER CASE THE DOMICILE OR MILITARY PRESENCE HAS BEEN MAINTAINED FOR NINETY DAYS.
2. THE CONCILIATION PROVISIONS OF SECTION 25-381.09 EITHER DO NOT APPLY OR HAVE BEEN MET.
3. THE MARRIAGE IS IRRETRIEVABLY BROKEN.
4. TO THE EXTENT IT HAS JURISDICTION TO DO SO, THE COURT HAS CONSIDERED, APPROVED, AND MADE PROVISION FOR CHILD CUSTODY, THE SUPPORT OF ANY, NATURAL OR ADOPTED, CHILD COMMON TO THE PARTIES OF THE MARRIAGE ENTITLED TO SUPPORT, THE MAINTENANCE OF EITHER SPOUSE AND THE DISPOSITION OF PROPERTY.

**25-313. Decree of legal separation; findings necessary**

THE COURT SHALL ENTER A DECREE OF LEGAL SEPARATION IF IT FINDS EACH OF THE FOLLOWING:

1. THAT ONE OF THE PARTIES AT THE TIME THE ACTION COMMENCED WAS DOMICILED IN THIS STATE OR WAS STATIONED IN THIS STATE WHILE A MEMBER OF THE ARMED SERVICES.
2. THE CONCILIATION PROVISIONS OF SECTION 25-381.09 EITHER DO NOT APPLY OR HAVE BEEN MET.
3. THE MARRIAGE IS IRRETRIEVABLY BROKEN.
4. THE OTHER PARTY DOES NOT OBJECT TO A DECREE OF LEGAL SEPARATION. IF THE OTHER PARTY OBJECTS TO A DECREE OF LEGAL SEPARATION, THE COURT SHALL UPON ONE OF THE PARTIES MEETING THE REQUIRED DOMICILE FOR DISSOLUTION OF MARRIAGE DIRECT THAT THE PLEADINGS BE AMENDED TO SEEK A DISSOLUTION OF THE MARRIAGE.
5. TO THE EXTENT IT HAS JURISDICTION TO DO SO, THE COURT HAS CONSIDERED, APPROVED OR MADE PROVISIONS FOR CHILD CUSTODY, THE SUPPORT OF ANY NATURAL OR ADOPTED CHILD

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COMMON TO THE PARTIES OF THE MARRIAGE ENTITLED TO SUPPORT, THE MAINTENANCE OF EITHER SPOUSE AND THE DISPOSITION OF THE PROPERTY.

**25-314. Pleadings; contents; defense; joinder of parties**

A. THE VERIFIED PETITION IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION SHALL ALLEGE THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN AND SHALL SET FORTH:

1. THE AGE, OCCUPATION AND ADDRESS OF EACH PARTY AND HIS LENGTH OF DOMICILE IN THIS STATE.

2. THE DATE OF THE MARRIAGE AND THE PLACE AT WHICH IT WAS PERFORMED.

3. THE NAMES, AGES AND ADDRESSES OF ALL LIVING CHILDREN, NATURAL OR ADOPTED, COMMON TO THE PARTIES AND WHETHER THE WIFE IS PREGNANT.

4. THE DETAILS OF ANY AGREEMENTS BETWEEN THE PARTIES AS TO SUPPORT, CUSTODY AND VISITATION OF THE CHILDREN AND MAINTENANCE OF A SPOUSE.

5. THE RELIEF SOUGHT.

B. EITHER OR BOTH PARTIES TO THE MARRIAGE MAY INITIATE THE PROCEEDING.

C. THE ONLY DEFENSE TO A PETITION FOR THE DISSOLUTION OF A MARRIAGE OR LEGAL SEPARATION SHALL BE THAT THE MARRIAGE IS NOT IRRETRIEVABLY BROKEN.

D. THE COURT MAY JOIN ADDITIONAL PARTIES NECESSARY FOR THE EXERCISE OF ITS AUTHORITY.

**25-315. Temporary order or preliminary injunction; effect**

A. IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL SEPARATION, OR FOR MAINTENANCE OR SUPPORT FOLLOWING DISSOLUTION OF THE MARRIAGE BY A COURT WHICH LACKED PERSONAL JURISDICTION OVER THE ABSENT SPOUSE, EITHER PARTY MAY MOVE FOR TEMPORARY

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MAINTENANCE OR TEMPORARY SUPPORT OF A CHILD, NATURAL OR ADOPTED, COMMON TO THE PARTIES ENTITLED TO SUPPORT. THE MOTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT SETTING FORTH THE FACTUAL BASIS FOR THE MOTION AND THE AMOUNTS REQUESTED.

B. AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION ACCOMPANIED BY AFFIDAVIT, EITHER PARTY MAY REQUEST THE COURT TO ISSUE A PRELIMINARY INJUNCTION FOR ANY OF THE FOLLOWING RELIEF:

1. RESTRAINING ANY PERSON FROM TRANSFERRING, ENCUMBERING, CONCEALING OR OTHERWISE DISPOSING OF ANY PROPERTY EXCEPT IN THE USUAL COURSE OF BUSINESS OR FOR THE NECESSITIES OF LIFE, AND, IF SO RESTRAINED, REQUIRING HIM TO NOTIFY THE MOVING PARTY OF ANY PROPOSED EXTRAORDINARY EXPENDITURES MADE AFTER THE ORDER IS ISSUED.

2. ENJOINING A PARTY FROM MOLESTING OR DISTURBING THE PEACE OF THE OTHER PARTY OR OF ANY CHILD.

3. EXCLUDING A PARTY FROM THE FAMILY HOME OR FROM THE HOME OF THE OTHER PARTY UPON A SHOWING THAT PHYSICAL OR EMOTIONAL HARM MAY OTHERWISE RESULT.

4. ENJOINING A PARTY FROM REMOVING A CHILD FROM THE JURISDICTION OF THE COURT.

5. PROVIDING OTHER INJUNCTIVE RELIEF PROPER IN THE CIRCUMSTANCES.

C. THE COURT MAY ISSUE A TEMPORARY RESTRAINING ORDER WITHOUT REQUIRING NOTICE TO THE OTHER PARTY ONLY IF IT FINDS ON THE BASIS OF THE MOVING AFFIDAVIT OR OTHER EVIDENCE THAT IRREPARABLE INJURY WILL RESULT TO THE MOVING PARTY IF NO ORDER IS ISSUED UNTIL THE TIME FOR RESPONDING HAS ELAPSED. NO BOND SHALL BE REQUIRED UNLESS THE COURT DEEMS IT APPROPRIATE.

D. ON THE BASIS OF THE SHOWING MADE, AND IN CONFORMITY WITH SECTIONS 25-318 AND 25-319, THE COURT MAY ISSUE A PRELIMINARY INJUNCTION AND AN ORDER FOR TEMPORARY MAINTENANCE OR SUPPORT IN AMOUNTS AND ON TERMS JUST AND PROPER IN THE CIRCUMSTANCES.



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## E. A TEMPORARY ORDER OR PRELIMINARY INJUNCTION:

1. DOES NOT PREJUDICE THE RIGHTS OF THE PARTIES OR ANY CHILD WHICH ARE TO BE ADJUDICATED AT THE SUBSEQUENT HEARINGS IN THE PROCEEDING.
2. MAY BE REVOKED OR MODIFIED BEFORE FINAL DECREE ON A SHOWING BY AFFIDAVIT OF THE FACTS NECESSARY TO REVOCATION OR MODIFICATION OF A FINAL DECREE UNDER SECTION 25-327.
3. TERMINATES WHEN THE FINAL DECREE IS ENTERED OR WHEN THE PETITION FOR DISSOLUTION OR LEGAL SEPARATION IS DISMISSED.

25-316. **Irretrievable breakdown; finding**

A. IF BOTH OF THE PARTIES BY PETITION OR OTHERWISE HAVE STATED UNDER OATH OR AFFIRMATION THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN, OR ONE OF THE PARTIES HAS SO STATED AND THE OTHER HAS NOT DENIED IT, THE COURT, AFTER HEARING, SHALL MAKE A FINDING WHETHER OR NOT THE MARRIAGE IS IRRETRIEVABLY BROKEN.

B. IF ONE OF THE PARTIES HAS DENIED UNDER OATH OR AFFIRMATION THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN, THE COURT SHALL, UPON HEARING, CONSIDER ALL RELEVANT FACTORS AS TO THE PROSPECT OF RECONCILIATION, AND SHALL EITHER:

1. MAKE A FINDING WHETHER OR NOT THE MARRIAGE IS IRRETRIEVABLY BROKEN; OR
2. CONTINUE THE MATTER FOR FURTHER HEARING, NOT MORE THAN SIXTY DAYS LATER. THE COURT, AT THE REQUEST OF EITHER PARTY, OR ON ITS OWN MOTION MAY ORDER A CONCILIATION CONFERENCE. AT THE ADJOURNED HEARING THE COURT SHALL MAKE A FINDING WHETHER OR NOT THE MARRIAGE IS IRRETRIEVABLY BROKEN.

C. A FINDING THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN IS A DETERMINATION THAT THERE IS NO REASONABLE PROSPECT OF RECONCILIATION.

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## 25-317. Separation agreement; effect

A. TO PROMOTE AMICABLE SETTLEMENT OF DISPUTES BETWEEN PARTIES TO A MARRIAGE ATTENDANT UPON THEIR SEPARATION OR THE DISSOLUTION OF THEIR MARRIAGE, THE PARTIES MAY ENTER INTO A WRITTEN SEPARATION AGREEMENT CONTAINING PROVISIONS FOR DISPOSITION OF ANY PROPERTY OWNED BY EITHER OF THEM, MAINTENANCE OF EITHER OF THEM, AND SUPPORT, CUSTODY AND VISITATION OF THEIR CHILDREN.

B. IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL SEPARATION, THE TERMS OF THE SEPARATION AGREEMENT, EXCEPT THOSE PROVIDING FOR THE SUPPORT, CUSTODY AND VISITATION OF CHILDREN, ARE BINDING UPON THE COURT UNLESS IT FINDS, AFTER CONSIDERING THE ECONOMIC CIRCUMSTANCES OF THE PARTIES AND ANY OTHER RELEVANT EVIDENCE PRODUCED BY THE PARTIES, ON THEIR OWN MOTION OR ON REQUEST OF THE COURT, THAT THE SEPARATION AGREEMENT IS UNFAIR.

C. IF THE COURT FINDS THE SEPARATION AGREEMENT UNFAIR AS TO DISPOSITION OF PROPERTY OR MAINTENANCE, IT MAY REQUEST THE PARTIES TO SUBMIT A REVISED SEPARATION AGREEMENT OR MAY MAKE ORDERS FOR THE DISPOSITION OF PROPERTY OR MAINTENANCE.

D. IF THE COURT FINDS THAT THE SEPARATION AGREEMENT IS NOT UNFAIR AS TO DISPOSITION OF PROPERTY OR MAINTENANCE, AND THAT IT IS REASONABLE AS TO SUPPORT, CUSTODY AND VISITATION OF CHILDREN, THE SEPARATION AGREEMENT SHALL BE SET FORTH OR INCORPORATED BY REFERENCE IN THE DECREE OF DISSOLUTION OR LEGAL SEPARATION AND THE PARTIES SHALL BE ORDERED TO PERFORM THEM. IF THE SEPARATION AGREEMENT PROVIDES THAT ITS TERMS SHALL NOT BE SET FORTH IN THE DECREE, THE DECREE SHALL IDENTIFY THE SEPARATION AGREEMENT AS INCORPORATED BY REFERENCE AND STATE THAT THE COURT HAS FOUND THE TERMS AS TO PROPERTY DISPOSITION AND MAINTENANCE NOT UNFAIR AND THE TERMS AS TO SUPPORT, CUSTODY AND VISITATION OF CHILDREN REASONABLE.

E. TERMS OF THE AGREEMENT SET FORTH OR INCORPORATED BY REFERENCE IN THE DECREE ARE ENFORCEABLE BY ALL

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REMEDIES AVAILABLE FOR ENFORCEMENT OF A JUDGMENT,  
INCLUDING CONTEMPT.

F. EXCEPT FOR TERMS CONCERNING THE MAINTENANCE OF EITHER PARTY AND THE SUPPORT, CUSTODY OR VISITATION OF CHILDREN, ENTRY OF THE DECREE SHALL THEREAFTER PRECLUDE THE MODIFICATION OF THE TERMS OF THE DECREE AND THE PROPERTY SETTLEMENT AGREEMENT, IF ANY, SET FORTH OR INCORPORATED BY REFERENCE THEREIN.

**25-318. Disposition of property**

IN A PROCEEDING FOR DISSOLUTION OF THE MARRIAGE, OR FOR LEGAL SEPARATION, OR IN A PROCEEDING FOR DISPOSITION OF PROPERTY FOLLOWING DISSOLUTION OF THE MARRIAGE BY A COURT WHICH PREVIOUSLY LACKED PERSONAL JURISDICTION OVER THE ABSENT SPOUSE OR PREVIOUSLY LACKED JURISDICTION TO DISPOSE OF THE PROPERTY, THE COURT SHALL ASSIGN EACH SPOUSE'S SOLE AND SEPARATE PROPERTY TO HIM. IT SHALL ALSO DIVIDE THE COMMUNITY, JOINT TENANCY, AND OTHER PROPERTY HELD IN COMMON EQUITABLY, THOUGH NOT NECESSARILY IN KIND, WITHOUT REGARD TO MARITAL MISCONDUCT. FOR PURPOSES OF THIS SECTION ONLY, PROPERTY ACQUIRED BY EITHER SPOUSE OUTSIDE THE STATE SHALL BE DEEMED TO BE COMMUNITY PROPERTY IF SAID PROPERTY WOULD HAVE BEEN COMMUNITY PROPERTY IF ACQUIRED IN THIS STATE. NOTHING IN THIS SECTION SHALL PREVENT THE COURT FROM CONSIDERING EXCESSIVE OR ABNORMAL EXPENDITURES, DESTRUCTION, CONCEALMENT OR FRAUDULENT DISPOSITION OF COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON.

**25-319. Maintenance; computation factors**

A. IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION, OR A PROCEEDING FOR MAINTENANCE FOLLOWING DISSOLUTION OF THE MARRIAGE BY A COURT WHICH LACKED PERSONAL JURISDICTION OVER THE ABSENT SPOUSE, THE COURT MAY GRANT A MAINTENANCE ORDER FOR EITHER SPOUSE ONLY IF IT FINDS THAT THE SPOUSE SEEKING MAINTENANCE:

1. LACKS SUFFICIENT PROPERTY, INCLUDING PROPERTY APPORTIONED TO HIM, TO PROVIDE FOR HIS REASONABLE NEEDS; AND

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2. IS UNABLE TO SUPPORT HIMSELF THROUGH APPROPRIATE EMPLOYMENT OR IS THE CUSTODIAN OF A CHILD WHOSE AGE OR CONDITION IS SUCH THAT THE CUSTODIAN SHOULD NOT BE REQUIRED TO SEEK EMPLOYMENT OUTSIDE THE HOME.

B. THE MAINTENANCE ORDER SHALL BE IN SUCH AMOUNTS AND FOR SUCH PERIODS OF TIME AS THE COURT DEEMS JUST, WITHOUT REGARD TO MARITAL MISCONDUCT, AND AFTER CONSIDERING ALL RELEVANT FACTORS, INCLUDING:

1. THE FINANCIAL RESOURCES OF THE PARTY SEEKING MAINTENANCE, INCLUDING MARITAL PROPERTY APPORTIONED TO HIM, AND HIS ABILITY TO MEET HIS NEEDS INDEPENDENTLY.

2. THE TIME NECESSARY TO ACQUIRE SUFFICIENT EDUCATION OR TRAINING TO ENABLE THE PARTY SEEKING MAINTENANCE TO FIND APPROPRIATE EMPLOYMENT.

3. THE STANDARD OF LIVING ESTABLISHED DURING THE MARRIAGE.

4. THE DURATION OF THE MARRIAGE.

5. THE AGE AND THE PHYSICAL AND EMOTIONAL CONDITION OF THE SPOUSE SEEKING MAINTENANCE.

6. THE ABILITY OF THE SPOUSE FROM WHOM MAINTENANCE IS SOUGHT TO MEET HIS NEEDS WHILE MEETING THOSE OF THE SPOUSE SEEKING MAINTENANCE.

7. EXCESSIVE OR ABNORMAL EXPENDITURES, DESTRUCTION, CONCEALMENT OR FRAUDULENT DISPOSITION OF COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON.

**25-320. Child support; factors**

A. IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, MAINTENANCE, OR CHILD SUPPORT, THE COURT MAY ORDER EITHER OR BOTH PARENTS OWING A DUTY OF SUPPORT TO A CHILD, BORN TO OR ADOPTED BY THE PARENTS, TO PAY AN AMOUNT REASONABLE AND NECESSARY FOR HIS SUPPORT, WITHOUT REGARD TO MARITAL MISCONDUCT, AFTER CONSIDERING ALL RELEVANT FACTORS, INCLUDING:

1. THE FINANCIAL RESOURCES AND NEEDS OF THE CHILD.

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2. THE FINANCIAL RESOURCES AND NEEDS OF THE CUSTODIAL PARENT.

3. THE STANDARD OF LIVING THE CHILD WOULD HAVE ENJOYED HAD THE MARRIAGE NOT BEEN DISSOLVED.

4. THE PHYSICAL AND EMOTIONAL CONDITION OF THE CHILD, AND HIS EDUCATIONAL NEEDS.

5. THE FINANCIAL RESOURCES AND NEEDS OF THE NONCUSTODIAL PARENT.

6. EXCESSIVE OR ABNORMAL EXPENDITURES, DESTRUCTION, CONCEALMENT OR FRAUDULENT DISPOSITION OF COMMUNITY, JOINT TENANCY AND OTHER PROPERTY HELD IN COMMON.

B. IN THE CASE OF A MENTALLY OR PHYSICALLY DISABLED CHILD, IF THE COURT, AFTER CONSIDERING THE FACTORS SET FORTH IN SUBSECTION A, DEEMS IT APPROPRIATE, THE COURT MAY ORDER SUPPORT TO CONTINUE PAST THE AGE OF EMANCIPATION AND TO BE PAID TO THE CUSTODIAL PARENT, GUARDIAN OR CHILD.

**25-321. Representation of child by counsel; fees**

THE COURT MAY APPOINT AN ATTORNEY TO REPRESENT THE INTERESTS OF A MINOR OR DEPENDENT CHILD WITH RESPECT TO HIS SUPPORT, CUSTODY AND VISITATION. THE COURT MAY ENTER AN ORDER FOR COSTS, FEES AND DISBURSEMENTS IN FAVOR OF THE CHILD'S ATTORNEY. THE ORDER MAY BE MADE AGAINST EITHER OR BOTH PARENTS.

**25-322. Payment of maintenance or support to courts; records**

A. UPON ITS OWN MOTION OR UPON MOTION OF EITHER PARTY, THE COURT MAY ORDER AT ANY TIME THAT MAINTENANCE OR SUPPORT PAYMENTS BE MADE TO THE CLERK OF COURT FOR REMITTANCE TO THE PERSON ENTITLED TO RECEIVE THE PAYMENTS.

B. THE CLERK OF COURT SHALL MAINTAIN RECORDS LISTING THE AMOUNT OF PAYMENTS, THE DATE PAYMENTS ARE REQUIRED TO BE MADE, AND THE NAMES AND ADDRESSES OF THE PARTIES AFFECTED BY THE ORDER.

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C. THE PARTIES AFFECTED BY THE ORDER SHALL INFORM THE CLERK OF COURT OF ANY CHANGE OF ADDRESS.

D. IF THE PERSON OBLIGATED TO PAY SUPPORT HAS LEFT OR IS BEYOND THE JURISDICTION OF THE COURT, ANY PARTY MAY INSTITUTE ANY OTHER PROCEEDING AVAILABLE UNDER THE LAWS OF THIS STATE FOR ENFORCEMENT OF THE DUTIES OF SUPPORT AND MAINTENANCE.

25-323. Assignments

IN THE EVENT A PERSON OBLIGATED TO PAY CHILD SUPPORT IS IN ARREARS FOR AT LEAST TWO MONTHS THE COURT MAY ORDER THE PERSON OBLIGATED TO PAY CHILD SUPPORT TO MAKE AN ASSIGNMENT OF A PART OF HIS PERIODIC EARNINGS OR TRUST INCOME TO THE PERSON ENTITLED TO RECEIVE THE PAYMENTS. THE ASSIGNMENT IS BINDING ON THE EMPLOYER, TRUSTEE, OR OTHER PAYOR OF THE FUNDS TWO WEEKS AFTER SERVICE UPON SUCH PERSON OF NOTICE THAT THE ASSIGNMENT HAS BEEN MADE. THE PAYOR SHALL WITHHOLD FROM THE EARNINGS OR TRUST INCOME PAYABLE TO THE PERSON OBLIGATED TO SUPPORT THE AMOUNT SPECIFIED IN THE ASSIGNMENT AND SHALL TRANSMIT THE PAYMENTS TO THE CLERK OF THE SUPERIOR COURT. THE PAYOR MAY DEDUCT FROM EACH PAYMENT A SUM NOT EXCEEDING ONE DOLLAR AS REIMBURSEMENTS FOR COSTS. AN EMPLOYER SHALL NOT DISCHARGE OR OTHERWISE DISCIPLINE AN EMPLOYEE AS A RESULT OF A WAGE OR SALARY ASSIGNMENT AUTHORIZED BY THIS SECTION.

25-324. Attorney's fees

THE COURT FROM TIME TO TIME, AFTER CONSIDERING THE FINANCIAL RESOURCES OF BOTH PARTIES, MAY ORDER A PARTY TO PAY A REASONABLE AMOUNT TO THE OTHER PARTY FOR THE COSTS AND EXPENSES OF MAINTAINING OR DEFENDING ANY PROCEEDING UNDER THIS CHAPTER. FOR THE PURPOSE OF THIS SECTION COSTS AND EXPENSES MAY INCLUDE ATTORNEY'S FEES, DEPOSITION COSTS AND SUCH OTHER REASONABLE EXPENSES AS THE COURT FINDS NECESSARY TO THE FULL AND PROPER PRESENTATION OF THE ACTION, INCLUDING ANY APPEAL. THE COURT MAY ORDER ALL SUCH AMOUNTS PAID DIRECTLY TO THE ATTORNEY, WHO MAY ENFORCE THE ORDER IN HIS NAME WITH THE SAME FORCE AND

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EFFECT, AND IN THE SAME MANNER, AS IF THE ORDER HAD BEEN MADE ON BEHALF OF ANY PARTY TO THE ACTION.

**25-325. Decree; finality; restoration of maiden name**

A. A DECREE OF DISSOLUTION OF MARRIAGE OR OF LEGAL SEPARATION IS FINAL WHEN ENTERED, SUBJECT TO THE RIGHT OF APPEAL. AN APPEAL FROM THE DECREE OF DISSOLUTION THAT DOES NOT CHALLENGE THE FINDING THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN DOES NOT DELAY THE FINALITY OF THAT PROVISION OF THE DECREE WHICH DISSOLVES THE MARRIAGE BEYOND THE TIME FOR APPEALING FROM THAT PROVISION, AND EITHER OF THE PARTIES MAY REMARRY PENDING APPEAL. AN ORDER DIRECTING PAYMENT OF MONEY FOR SUPPORT OR MAINTENANCE OF THE SPOUSE OR THE MINOR CHILD OR CHILDREN, SHALL NOT BE SUSPENDED OR THE EXECUTION THEREOF STAYED PENDING THE APPEAL.

B. THE COURT MAY UPON HEARING WITHIN SIX MONTHS AFTER THE ENTRY OF A DECREE OF LEGAL SEPARATION, CONVERT THE DECREE TO A DECREE OF DISSOLUTION OF MARRIAGE.

C. THE COURT SHALL UPON MOTION OF EITHER PARTY AFTER EXPIRATION OF SIX MONTHS FROM THE ENTRY OF A LEGAL SEPARATION, CONVERT THE DECREE TO A DECREE OF DISSOLUTION OF MARRIAGE.

D. UPON REQUEST BY A WIFE WHOSE MARRIAGE IS DISSOLVED OR DECLARED INVALID, THE COURT SHALL ORDER HER MAIDEN NAME OR A FORMER NAME RESTORED.

**25-326. Independence of provisions of decree or temporary order**

IF A PARTY FAILS TO COMPLY WITH A PROVISION OF A DECREE OR TEMPORARY ORDER OR INJUNCTION, THE OBLIGATION OF THE OTHER PARTY TO MAKE PAYMENTS FOR SUPPORT OR MAINTENANCE OR TO PERMIT VISITATION IS NOT SUSPENDED, BUT HE MAY MOVE THE COURT TO GRANT AN APPROPRIATE ORDER.

**25-327. Modification and termination of provisions for maintenance, support and property disposition**

## LAWS OF ARIZONA

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION F OF SECTION 25-317, THE PROVISIONS OF ANY DECREE RESPECTING MAINTENANCE OR SUPPORT MAY BE MODIFIED ONLY AS TO INSTALLMENTS ACCRUING SUBSEQUENT TO THE MOTION FOR MODIFICATION AND ONLY UPON A SHOWING OF CHANGED CIRCUMSTANCES WHICH ARE SUBSTANTIAL AND CONTINUING. THE PROVISIONS AS TO PROPERTY DISPOSITION MAY NOT BE REVOKED OR MODIFIED, UNLESS THE COURT FINDS THE EXISTENCE OF CONDITIONS THAT JUSTIFY THE REOPENING OF A JUDGMENT UNDER THE LAWS OF THIS STATE.

B. UNLESS OTHERWISE AGREED IN WRITING OR EXPRESSLY PROVIDED IN THE DECREE, THE OBLIGATION TO PAY FUTURE MAINTENANCE IS TERMINATED UPON THE DEATH OF EITHER PARTY OR THE REMARRIAGE OF THE PARTY RECEIVING MAINTENANCE.

C. UNLESS OTHERWISE AGREED IN WRITING OR EXPRESSLY PROVIDED IN THE DECREE, PROVISIONS FOR THE SUPPORT OF A MINOR CHILD ARE NOT TERMINATED BY THE DEATH OF A PARENT OBLIGATED TO SUPPORT THE CHILD. WHEN A PARENT OBLIGATED TO PAY SUPPORT DIES, THE AMOUNT OF SUPPORT MAY BE MODIFIED, REVOKED OR COMMUTED TO A LUMP SUM PAYMENT TO THE EXTENT JUST AND APPROPRIATE IN THE CIRCUMSTANCES.

**25-328. Separate trials when custody or visitation is an issue**

A. IN ALL CASES WHEN CUSTODY OR VISITATION IS A CONTESTED ISSUE, THE COURT SHALL FIRST HEAR ALL OTHER ISSUES INCLUDING MAINTENANCE AND CHILD SUPPORT. THE CONTESTED ISSUE OF CUSTODY OR VISITATION SHALL NOT BE HEARD AT ANY HEARING INVOLVING OTHER ISSUES EVEN UPON AGREEMENT OF ATTORNEYS.

B. AFTER ALL OTHER ISSUES HAVE BEEN DECIDED AND THE AMOUNT OF MAINTENANCE AND CHILD SUPPORT ESTABLISHED BY THE COURT, THEN THE ISSUES OF CUSTODY OR VISITATION MAY BE HEARD.

**ARTICLE 3. CHILD CUSTODY**

**25-331. Jurisdiction; commencement of proceedings**



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A. THE SUPERIOR COURT FOR THE STATE OF ARIZONA IS VESTED WITH JURISDICTION TO DECIDE CHILD CUSTODY MATTERS BY INITIAL DETERMINATION OR BY MODIFICATION DECREE IF:

1. THIS STATE IS THE DOMICILE OF THE CHILD AT THE TIME OF COMMENCEMENT OF THE PROCEEDING, OR HAD BEEN THE CHILD'S DOMICILE WITHIN SIX MONTHS BEFORE COMMENCEMENT OF THE PROCEEDING AND THE CHILD IS ABSENT FROM THIS STATE BECAUSE OF HIS REMOVAL OR RETENTION BY A PERSON CLAIMING HIS CUSTODY OR FOR OTHER REASON, AND A PARENT OR PERSON ACTING AS PARENT CONTINUES TO LIVE IN THIS STATE; OR

2. IT IS IN THE BEST INTEREST OF THE CHILD THAT A COURT OF THIS STATE ASSUME JURISDICTION BECAUSE THE CHILD AND HIS PARENTS, OR THE CHILD AND AT LEAST ONE CONTESTANT, HAVE A SIGNIFICANT CONNECTION WITH THIS STATE, AND THERE IS AVAILABLE IN THIS STATE SUBSTANTIAL EVIDENCE CONCERNING THE CHILD'S PRESENT OR FUTURE CARE, PROTECTION, TRAINING, AND PERSONAL RELATIONSHIPS; OR

3. THE CHILD IS PHYSICALLY PRESENT IN THIS STATE AND HAS BEEN ABANDONED OR IT IS NECESSARY IN AN EMERGENCY TO PROTECT HIM BECAUSE HE HAS BEEN SUBJECTED TO OR THREATENED WITH MISTREATMENT OR ABUSE OR IS NEGLECTED OR DEPENDENT; OR

4. NO OTHER STATE HAS JURISDICTION UNDER PREREQUISITES SUBSTANTIALLY IN ACCORDANCE WITH PARAGRAPH 1, 2 OR 3, OR ANOTHER STATE HAS DECLINED TO EXERCISE JURISDICTION ON THE GROUND THAT THIS STATE IS THE MORE APPROPRIATE FORUM TO DETERMINE CUSTODY OF THE CHILD, AND IT IS IN HIS BEST INTEREST THAT THE COURT ASSUME JURISDICTION.

B. EXCEPT UNDER PARAGRAPHS 3 AND 4 OF SUBSECTION A, PHYSICAL PRESENCE IN THIS STATE OF THE CHILD, OR OF THE CHILD AND ONE OF THE CONTESTANTS, IS NOT ALONE SUFFICIENT TO CONFER JURISDICTION ON A COURT OF THIS STATE TO MAKE A CHILD CUSTODY DETERMINATION.

C. PHYSICAL PRESENCE OF THE CHILD, WHILE DESIRABLE, IS NOT A PREREQUISITE FOR JURISDICTION TO DETERMINE HIS CUSTODY.

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D. A CHILD CUSTODY PROCEEDING IS COMMENCED IN THE SUPERIOR COURT:

1. BY A PARENT, BY FILING A PETITION:

(a) FOR DISSOLUTION OR LEGAL SEPARATION; OR

(b) FOR CUSTODY OF THE CHILD IN THE COUNTY IN WHICH THE CHILD IS PERMANENTLY RESIDENT OR FOUND; OR

2. BY A PERSON OTHER THAN A PARENT, BY FILING A PETITION FOR CUSTODY OF THE CHILD IN THE COUNTY IN WHICH HE IS PERMANENTLY RESIDENT OR FOUND, BUT ONLY IF HE IS NOT IN THE PHYSICAL CUSTODY OF ONE OF HIS PARENTS.

E. NOTICE OF A CHILD CUSTODY PROCEEDING SHALL BE GIVEN TO THE CHILD'S PARENT, GUARDIAN, AND CUSTODIAN, WHO MAY APPEAR, BE HEARD, AND FILE A RESPONSIVE PLEADING. THE COURT, UPON A SHOWING OF GOOD CAUSE, MAY PERMIT INTERVENTION OF OTHER INTERESTED PARTIES.

25-332. **Best interest of child; modification of decree; fees**

A. THE COURT SHALL DETERMINE CUSTODY, EITHER ORIGINALLY OR UPON PETITION FOR MODIFICATION, IN ACCORDANCE WITH THE BEST INTERESTS OF THE CHILD. THE COURT MAY CONSIDER ALL RELEVANT FACTORS, INCLUDING:

1. THE WISHES OF THE CHILD'S PARENT OR PARENTS AS TO HIS CUSTODY.

2. THE WISHES OF THE CHILD AS TO HIS CUSTODIAN.

3. THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD WITH HIS PARENT OR PARENTS, HIS SIBLINGS, AND ANY OTHER PERSON WHO MAY SIGNIFICANTLY AFFECT THE CHILD'S BEST INTEREST.

4. THE CHILD'S ADJUSTMENT TO HIS HOME, SCHOOL AND COMMUNITY.

5. THE MENTAL AND PHYSICAL HEALTH OF ALL INDIVIDUALS INVOLVED.

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B. NO MOTION TO MODIFY A CUSTODY DECREE MAY BE MADE EARLIER THAN ONE YEAR AFTER ITS DATE, UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THE CHILD'S PRESENT ENVIRONMENT MAY ENDANGER SERIOUSLY HIS PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH.

C. ATTORNEY FEES AND COSTS SHALL BE ASSESSED AGAINST A PARTY SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS VEXATIOUS AND CONSTITUTES HARRASSMENT.

**25-333. Temporary orders**

A. A PARTY TO A CUSTODY PROCEEDING MAY MOVE FOR A TEMPORARY CUSTODY ORDER. THIS MOTION MUST BE SUPPORTED BY PLEADINGS AS PROVIDED IN SECTION 25-339. THE COURT MAY AWARD TEMPORARY CUSTODY UNDER THE STANDARDS OF SECTION 25-332 AFTER A HEARING, OR, IF THERE IS NO OBJECTION, SOLELY ON THE BASIS OF THE PLEADINGS.

B. IF A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS DISMISSED, ANY TEMPORARY CUSTODY ORDER IS VACATED UNLESS A PARENT OR THE CHILD'S CUSTODIAN MOVES THAT THE PROCEEDING CONTINUE AS A CUSTODY PROCEEDING AND THE COURT FINDS, AFTER A HEARING, THAT THE CIRCUMSTANCES OF THE PARENTS AND THE BEST INTEREST OF THE CHILD REQUIRE THAT A CUSTODY DECREE BE ISSUED.

C. IF A CUSTODY PROCEEDING COMMENCED IN THE ABSENCE OF A PETITION FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION IS DISMISSED, ANY TEMPORARY CUSTODY ORDER THEREBY IS VACATED.

**25-334. Interviews by court; professional assistance**

A. THE COURT MAY INTERVIEW THE CHILD IN CHAMBERS TO ASCERTAIN THE CHILD'S WISHES AS TO HIS CUSTODIAN AND AS TO VISITATION.

B. THE COURT MAY SEEK THE ADVICE OF PROFESSIONAL PERSONNEL, WHETHER OR NOT EMPLOYED BY THE COURT ON A REGULAR BASIS. THE ADVICE GIVEN SHALL BE IN WRITING AND

## LAWS OF ARIZONA

SHALL BE MADE AVAILABLE BY THE COURT TO COUNSEL, UPON REQUEST, UNDER SUCH TERMS AS THE COURT DETERMINES. COUNSEL MAY EXAMINE AS A WITNESS ANY PROFESSIONAL PERSONNEL CONSULTED BY THE COURT, UNLESS SUCH RIGHT IS WAIVED.

**25-335. Investigations and reports**

A. IN CONTESTED CUSTODY PROCEEDINGS, AND IN OTHER CUSTODY PROCEEDINGS IF A PARENT OR THE CHILD'S CUSTODIAN SO REQUESTS, THE COURT MAY ORDER AN INVESTIGATION AND REPORT CONCERNING CUSTODIAL ARRANGEMENTS FOR THE CHILD. THE INVESTIGATION AND REPORT MAY BE MADE BY THE COURT SOCIAL SERVICE AGENCY, THE STAFF OF THE JUVENILE COURT, THE LOCAL PROBATION OR WELFARE DEPARTMENT, OR A PRIVATE AGENCY EMPLOYED BY THE COURT FOR THE PURPOSE.

B. IN PREPARING HIS REPORT CONCERNING A CHILD, THE INVESTIGATOR MAY CONSULT ANY PERSON WHO MAY HAVE INFORMATION ABOUT THE CHILD OR HIS POTENTIAL CUSTODIAL ARRANGEMENTS.

C. THE COURT SHALL MAIL THE INVESTIGATOR'S REPORT TO COUNSEL AT LEAST TEN DAYS PRIOR TO THE HEARING. THE INVESTIGATOR SHALL MAKE AVAILABLE TO COUNSEL THE NAMES AND ADDRESSES OF ALL PERSONS WHOM THE INVESTIGATOR HAS CONSULTED. ANY PARTY TO THE PROCEEDING MAY CALL FOR EXAMINATION THE INVESTIGATOR AND ANY PERSON WHOM HE HAS CONSULTED.

**25-336. Custody hearings; priority; costs; record**

A. CUSTODY PROCEEDINGS SHALL RECEIVE PRIORITY IN BEING SET FOR HEARING.

B. THE COURT MAY TAX AS COSTS THE PAYMENT OF NECESSARY TRAVEL AND OTHER EXPENSES INCURRED BY ANY PERSON WHOSE PRESENCE AT THE HEARING THE COURT DEEMS NECESSARY TO DETERMINE THE BEST INTEREST OF THE CHILD.

C. THE COURT, WITHOUT A JURY, SHALL DETERMINE QUESTIONS OF LAW AND FACT. IF IT FINDS THAT A PUBLIC HEARING MAY BE DETRIMENTAL TO THE CHILD'S BEST INTEREST, THE

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COURT MAY EXCLUDE THE PUBLIC FROM A CUSTODY HEARING, BUT MAY ADMIT ANY PERSON WHO HAS A DIRECT AND LEGITIMATE INTEREST IN THE PARTICULAR CASE OR A LEGITIMATE EDUCATIONAL OR RESEARCH INTEREST IN THE WORK OF THE COURT.

D. IF THE COURT FINDS THAT TO PROTECT THE CHILD'S WELFARE, THE RECORD OF ANY INTERVIEW, REPORT, INVESTIGATION, OR TESTIMONY IN A CUSTODY PROCEEDING SHOULD BE KEPT SECRET, THE COURT MAY THEN MAKE AN APPROPRIATE ORDER SEALING THE RECORD.

**25-337. Visitation rights; exception**

A. A PARENT NOT GRANTED CUSTODY OF THE CHILD IS ENTITLED TO REASONABLE VISITATION RIGHTS UNLESS THE COURT FINDS, AFTER A HEARING, THAT VISITATION WOULD ENDANGER SERIOUSLY THE CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH.

B. THE COURT MAY MODIFY AN ORDER GRANTING OR DENYING VISITATION RIGHTS WHENEVER MODIFICATION WOULD SERVE THE BEST INTEREST OF THE CHILD, BUT THE COURT SHALL NOT RESTRICT A PARENT'S VISITATION RIGHTS UNLESS IT FINDS THAT THE VISITATION WOULD ENDANGER SERIOUSLY THE CHILD'S PHYSICAL, MENTAL, MORAL OR EMOTIONAL HEALTH.

**25-338. Judicial supervision**

A. EXCEPT AS OTHERWISE AGREED BY THE PARTIES IN WRITING AT THE TIME OF THE CUSTODY DECREE, THE CUSTODIAN MAY DETERMINE THE CHILD'S UPBRINGING, INCLUDING HIS EDUCATION, HEALTH, CARE AND RELIGIOUS TRAINING, UNLESS, UPON MOTION BY THE NONCUSTODIAL PARENT, THE COURT, AFTER HEARING, FINDS THAT IN THE ABSENCE OF A SPECIFIC LIMITATION OF THE CUSTODIAN'S AUTHORITY, THE CHILD'S PHYSICAL HEALTH WOULD BE ENDANGERED OR HIS EMOTIONAL DEVELOPMENT SIGNIFICANTLY IMPAIRED.

B. IF BOTH PARENTS OR ALL CONTESTANTS AGREE TO THE ORDER, OR IF THE COURT FINDS THAT IN THE ABSENCE OF THE ORDER THE CHILD'S PHYSICAL HEALTH WOULD BE ENDANGERED OR HIS EMOTIONAL DEVELOPMENT SIGNIFICANTLY

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IMAIPIRED, THE COURT MAY ORDER A LOCAL SOCIAL SERVICE AGENCY TO EXERCISE CONTINUING SUPERVISION OVER THE CASE TO ASSURE THAT THE CUSTODIAL OR VISITATION TERMS OF THE DECREE ARE CARRIED OUT.

25-339. **Affidavit; contents**

A PARTY SEEKING A TEMPORARY CUSTODY ORDER OR MODIFICATION OF A CUSTODY DECREE SHALL SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE REQUESTED ORDER OR MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A COPY OF HIS AFFIDAVIT, OR VERIFIED PETITION TO OTHER PARTIES TO THE PROCEEDING, WHO MAY FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE MOTION UNLESS IT FINDS THAT ADEQUATE CAUSE FOR HEARING THE MOTION IS ESTABLISHED BY THE PLEADINGS, IN WHICH CASE IT SHALL SET A DATE FOR HEARING ON WHY THE REQUESTED ORDER OF MODIFICATION SHOULD NOT BE GRANTED.

Sec. 3. Section 25-381.08, Arizona Revised Statutes, is amended to read:

25-381.08. **Jurisdiction**

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the LEGAL SEPARATION, dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy, as further provided in this article.

Sec. 4. Section 25-381.09, Arizona Revised Statutes, is amended to read:

25-381.09. **Petition invoking jurisdiction or for transfer of action to conciliation court**

Prior to the filing of any action for ~~divorce, annulment, separate maintenance, or separation from bed and board,~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a conciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved. In any

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case where an action for ~~divorce, annulment, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION has been filed, either party thereto may by petition filed therein have the cause transferred to the conciliation court for proceedings in the same manner as though action had been instituted in the conciliation court in the first instance.

Sec. 5. Section 25-381.17, Arizona Revised Statutes, is amended to read:

**25-381.17. Orders; duration of effectiveness; reconciliation agreement**

A. The judge of the conciliation court shall have full power to make, alter, modify, and enforce all orders or temporary orders, orders for custody of children, restraining orders, PRELIMINARY INJUNCTIONS and orders affecting possession of property, as may appear just and equitable, but such orders shall not be effective for more than sixty days from the filing of the petition, unless the parties mutually consent to a continuation of such time.

B. Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

Sec. 6. Section 25-381.18, Arizona Revised Statutes, is amended to read:

**25-381.18. Dissolution of marriage or legal separation, annulment, maintenance; stay of right to file; jurisdiction as to pending actions**

A. During a period beginning upon the filing of a petition for conciliation and continuing until sixty days after the filing of the petition for conciliation, neither spouse shall file any action for ~~divorce, annulment, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION, and, upon the filing of a petition for conciliation, proceedings then pending in the superior court shall be stayed and the case transferred to the conciliation court for hearing and further disposition as provided in this article, but all restraining, support, MAINTENANCE, or custody orders theretofore issued by the superior court shall remain in full force and effect until vacated or modified by the conciliation court or until they expire by their own terms.

B. If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute

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proceedings for ~~divorce, annulment of marriage, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION by filing in the clerk's office additional pleadings complying with the requirements relating to ~~divorce, annulment of marriage, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION respectively, or either spouse may proceed with the action previously stayed, and the conciliation court shall have full jurisdiction to hear, try, and determine such action for ~~divorce, annulment of marriage, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION under the laws relating thereto, and to retain jurisdiction of the case for further hearings on decrees or orders to be made therein. The conciliation provisions of this article may be used in regard to ~~post-divorce, POST-DISSOLUTION~~ problems concerning MAINTENANCE support, visitation, contempt, or for modification based on changed conditions, in the discretion of the conciliation court.

C. Upon the filing of an action for ~~divorce, annulment, separate maintenance or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION and after the expiration of sixty days from the service or the acceptance of service of process upon or by the defendant, neither spouse without the consent of the other may file a petition invoking the jurisdiction of the court of conciliation, as long as such domestic relations case remains pending, unless it appears to the court that such filing will not delay the orderly processes of such pending action, in which event the court may accept the petition and the filing thereof shall have the same effect as the filing of any such petition within such sixty days after service or acceptance of process.

Sec. 7. Section 25-381.19, Arizona Revised Statutes, is amended to read:

**25-381.19. Transfer of certain actions where minor child involved**

Whenever any action for ~~divorce, annulment of marriage, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION is filed in the superior court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage, LEGAL SEPARATION or the disruption of the household, and there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with the provisions of this article.



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Sec. 8. Section 25-381.20, Arizona Revised Statutes, is amended to read:

**25-381.20. Procedure in actions where no child is involved; conciliation court may accept case**

Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for ~~divorce~~, annulment of marriage, ~~separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION, but there is no minor child whose welfare might be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this article in similar cases involving the welfare of children.

Sec. 9. Section 25-381.21, Arizona Revised Statutes, is amended to read:

**25-381.21. Construction of article**

Except as specifically and expressly so provided, nothing in this article is intended or shall be construed to repeal, modify, or change in any respect whatsoever the laws relating to ~~divorce~~, annulment of marriage, ~~separate maintenance or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION, and the court of conciliation shall, when application for such relief is made as provided in this article, apply such laws in the same manner as if action had been brought thereunder in the first instance in the superior court, but the conciliation procedures of the conciliation court shall be applied to arrive at an amicable settlement of all issues in controversy.

Sec. 10. Section 25-381.22, Arizona Revised Statutes, is amended to read:

**25-381.22. Subsequent petition filed within one year**

Once a petition by either or both of the spouses has been filed as permitted by section 25-381.09, the filing of any subsequent petition under such section within one year thereafter by either or both of the

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spouses shall not stay any action for ~~divorce, annulment, separate maintenance, or separation from bed and board~~ DISSOLUTION OF MARRIAGE, OR LEGAL SEPARATION then pending nor prohibit the filing of such an action by either party. The filing of a subsequent petition by either or both of the spouses more than one year after the filing of any previous petition with such effect shall have the same effect toward staying any domestic relations action then pending and toward prohibiting the filing of any such action as provided in section 25-381.18.

Approved by the Governor—May 14, 1973

Filed in the Office of the Secretary of State—May 14, 1973

## CHAPTER 140

## Senate Bill 1010

## AN ACT

RELATING TO PROPERTY; ELIMINATING MECHANIC'S AND MATERIALMEN'S LIENS IN CERTAIN SITUATIONS; PRESCRIBING PROCEDURES TO PERFECT LIEN AND FOR BOND FOR RELEASE OF MECHANIC'S OR MATERIALMEN'S LIEN RIGHTS; PROVIDING FOR DISCHARGE OF MECHANIC'S OR MATERIALMEN'S LIEN BY RECORDING BOND; PROVIDING FOR PAYMENTS MADE IN TRUST; AMENDING SECTIONS 33-981 AND 33-993, ARIZONA REVISED STATUTES, AND AMENDING TITLE 33, CHAPTER 7, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 33-1002 THROUGH 33-1005.

**Be it enacted by the Legislature of the State of Arizona:**

Section 1. Section 33-981, Arizona Revised Statutes, is amended to read:

**33-981. Lien for labor or materials used in construction, alteration or repair of structures; exception**

A. EXCEPT AS PROVIDED IN SECTIONS 33-1002 AND 33-1003, every person who labors or furnishes materials, machinery, fixtures or

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**ORDER OF ACTS**  
**THIRTY-FIRST LEGISLATURE**  
**FIRST REGULAR SESSION**

Bill No.	Chapter	Short Title	Page
SB 1005	138	degrees of murder; punishment Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	966
SB 1006	80	parolee supervision, out-of-state, hearings Approved April 27, 1973 Filed April 27, 1973 Effective August 8, 1973	550
SB 1007	139	marriage dissolution, child custody Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	973
SB 1010	140	mechanics' liens Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	995
SB 1012	136	workmen's compensation, agricultural workers Approved May 8, 1973 Filed May 8, 1973 Effective January 1, 1974	958
SB 1014	141	land use planning (Emergency) Approved May 14, 1973 Filed May 14, 1973 Effective May 14, 1973 Expiration, from and after June 30, 1975	1002
SB 1016	142	medical assistance for aged Approved May 14, 1973 Filed May 14, 1973 Effective August 8, 1973	1005

(2) If the loan is repayable on demand, the continuation of the loan beyond December 31, 1969, shall be considered a prohibited transaction.

SEC. 21. Section 19267 is added to the Revenue and Taxation Code, to read:

19267. (a) The trustee of a trust described in Section 17501 which is exempt from tax under Section 17631 to which contributions have been paid under a plan on behalf of any owner-employee (as defined in Section 17502.2(c)), and each insurance company or other person which is the issuer of a contract purchased by such a trust, or purchased under a plan described in Section 17511, contributions for which have been paid on behalf of any owner-employee, shall file such returns (in such form and at such times), keep such records, make such identification of contracts and funds (and accounts within such funds), and supply such information, as the Franchise Tax Board shall by forms or regulations prescribe.

(b) Every individual on whose behalf contributions have been paid as an owner-employee (as defined in Section 17502.2(c))—

(1) To a trust described in Section 17501 which is exempt from tax under Section 17631, or

(2) To an insurance company or other person under a plan described in Section 17511,

shall furnish the trustee, insurance company, or other person, as the case may be, such information at such times and in such form and manner as the Franchise Tax Board shall prescribe by forms or regulations.

(c) Every individual in whose name a bond described in Section 17526(b) is purchased by his employer under a qualified bond purchase plan described in Section 17526(a), or by a trust described in Section 17501 which is exempt from tax under Section 17631, shall furnish—

(1) To his employer or to such trust, and

(2) To the Franchise Tax Board (or to such person as the Franchise Tax Board may by regulations prescribe), such information as the Franchise Tax Board shall by forms or regulations prescribe.

SEC. 22. The provisions of this act shall apply to taxable years beginning after December 31, 1970.

#### CHAPTER 1608

*An act to amend Sections 25, 25.6, and 196a of, to add Section 195 to, and to add Part 5 (commencing with Section 4000) to Division 4 of, and to repeal Title 1 (commencing with Section 55) of Part 3 of Division 1 of, and to repeal Sections 199 and 214 of, the Civil Code, and to amend Sections 285.1, 395, 396b, 397, 426a, 426c, 1761, 1769, 1770, 1771, and 1772 of, and to repeal Sections 125, 426b and*

*1019 of, the Code of Civil Procedure, and to amend Section 26859 of the Government Code, and to amend Sections 10360, 10361, 10362, 10363, 10364, 10366, 10368, 10369, and 10371 of, and to repeal Sections 10365 and 10370 of, the Health and Safety Code, and to repeal Section 740.1 of the Welfare and Institutions Code, relating to domestic relations.*

[Approved by Governor September 4, 1969. Filed with Secretary of State September 6, 1969.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 25 of the Civil Code is amended to read:

25. Minors are all persons under 21 years of age; provided, that this section shall be subject to the provisions of the titles of this code on marriage and shall not be construed as repealing or limiting the provisions of Section 204; provided further, that any person who has reached the age of 18 years and thereafter contracts a lawful marriage, or who has contracted a lawful marriage and thereafter reaches the age of 18 years, shall in the first instance upon contracting such marriage, and in the second instance upon reaching the age of 18 years, be of the age of majority for all purposes of the Civil Code, the Probate Code, and the Code of Civil Procedure and for the purposes of all other codes be deemed an adult person for the purposes of entering into any engagement or transaction respecting property or his estate, or for the purpose of entering into any contract, the same as if he were 21 years of age. Subsequent judgment of dissolution or nullity of such marriage shall not deprive such person of his adult status once attained under the foregoing provision.

SEC. 2. Section 25.6 of the Civil Code is amended to read:

25.6. Notwithstanding any other provision of the law, any minor who has contracted a lawful marriage may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person shall not be necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of dissolution of marriage shall not deprive such person of his adult status once attained.

SEC. 3. Title 1 (commencing with Section 55) of Part 3 of Division 1 of the Civil Code is repealed.

SEC. 4. Section 195 is added to the Civil Code, to read:

195. The issue of a marriage which is void, invalid, adjudged a nullity, or dissolved by a judgment decreeing the dissolution of the marriage is legitimate.

SEC. 5. Section 196a of the Civil Code is amended to read:

196a. The father as well as the mother of an illegitimate child must give him support and education suitable to his circumstances. A civil suit to enforce such obligations may be

maintained in behalf of a minor illegitimate child by his mother or guardian, or by a guardian ad litem appointed upon the written application or with the consent of his mother; provided, that such application or consent shall not be necessary if the mother is dead or incompetent, and in such action the court shall have power to order and enforce performance thereof, the same as is the case with respect to legitimate children, in a suit for dissolution of marriage by a wife.

SEC. 6. Section 199 of the Civil Code is repealed.

SEC. 7. Section 214 of the Civil Code is repealed.

SEC. 8. Part 5 (commencing with Section 4000) is added to Division 4 of the Civil Code, to read:

## PART 5. THE FAMILY LAW ACT

### TITLE 1. MARRIAGE

#### CHAPTER 1. GENERAL

4000. This part shall be known and may be cited as "The Family Law Act."

4001. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the procedure and procedure in proceedings under this part.

#### CHAPTER 2. THE SOLEMNIZATION OF MARRIAGE

##### Article 1. Validity of Marriage

4100. Marriage is a personal relation arising out of a civil contract, to which the consent of the parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Section 4213.

4101. Any unmarried male of the age of 21 years or upwards, and any unmarried female of the age of 18 years or upwards, and not otherwise disqualified, is capable of consenting to and consummating marriage; provided, that any male under the age of 21 years and over the age of 18 years and any female under the age of 18 years and over the age of 16 years, with the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian, or order of the superior court as provided for in Section 4102, where such written consent or order is filed by the clerk issuing the marriage license, as provided in Section 4201, is capable of consenting to and consummating marriage; provided, further, that any male under the age of 18 years and any female under the age of 16 years, with the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian, where such written consent is filed with the clerk issuing the marriage license, as provided in Section 4201 and where, after such showing as the su-

superior court may require an order of said superior court is made, granting permission to said person to marry, is capable of consenting to and consummating marriage; provided, further, that any male under the age of 18 years and any female under the age of 16 years, by order of the superior court as provided for in Section 4102, when such court order is filed with the clerk issuing the marriage license, as provided in Section 4201, is capable of consenting to and consummating marriage.

4102. Whenever it appears to the satisfaction of the superior court by verified application of a minor that such person requires a written consent to marry and that such minor has no parent or has no parent capable of consenting, the superior court may make an order consenting to the issuance of a marriage license and granting permission to such minor to marry. Such order shall be filed with the county clerk at the time the license is issued.

4103. Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

4104. All marriages contracted without this state, which would be valid by the laws of the jurisdiction in which the same were contracted, are valid in this state.

## Article 2. Authentication of Marriage

4200. Marriage must be licensed, solemnized, authenticated, and the certificate of registry of marriage filed as provided in this article; but noncompliance with its provisions by others than a party to a marriage does not invalidate it.

4201. All persons about to be joined in marriage must first obtain a license therefor, from a county clerk, which license must show all of the following:

- (1) The identity of the parties.
- (2) Their real and full names, and places of residence.
- (3) Their ages.

No license shall be granted when either of the parties, applicants therefor, is an imbecile, or insane, or is at the time of making the application for the license, under the influence of any intoxicating liquor, or narcotic drug. If the male is under the age of 21 years, or the female is under the age of 18 years, and such person has not been previously married as provided in Section 25, no license may be issued by the county clerk unless both parties are capable of consenting to and consummating marriage as provided for in Section 4101 and such consent or consents or court orders, provided for in Section 4102, must be filed by the clerk. Each applicant may be required to present authentic identification as to name. For the purpose of ascertaining all the facts mentioned or required in this section, the clerk, at the time the license is applied for may, if he deems it necessary in order to satisfy

himself as to matters enumerated in this section, examine the applicants for a license on oath, which examination shall be reduced to writing by the clerk, and subscribed by them; or, if necessary, the clerk may request additional documentary proof as to the accuracy of the facts stated. Applicants for a license pursuant to this section shall not be required to state, for any purpose, their race or color.

The forms for the application for license to marry and the marriage license shall be prescribed by the State Department of Public Health, and shall be adapted to set forth the facts required in this section.

4202. All persons about to be joined in marriage must obtain from the county clerk of the county in which the license is issued, in addition to the license therefor provided for in Section 4201, a certificate of registry of marriage as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code containing the items therein listed which certificate of registry of marriage shall be filled out as provided, in the presence of the county clerk issuing the marriage license and shall then be presented to the person performing the ceremony who shall complete the certificate thereon and shall cause to be entered thereon the signature and address of one witness to the marriage ceremony. Such certificate of registry of marriage shall be filed by the person performing the ceremony with the county recorder of the county in which the license was issued within four days after the ceremony.

4203. Upon the loss or destruction of a certificate of registry of marriage subsequent to the marriage ceremony but before filing with the county recorder in order to comply with Section 4202, the person solemnizing the marriage shall obtain a duplicate certificate of registry of marriage by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued.

The fee for issuing such duplicate license and certificate is two dollars and fifty cents (\$2.50).

4204. A license issued pursuant to Section 4201 shall expire 90 days after its issuance and the calendar date of expiration shall be clearly noted on the face of each such license.

The county clerk shall number each license issued, and shall transmit at periodic intervals to the county recorder a list of the licenses issued. Not later than 60 days after the date of issuance the county recorder shall notify those parties whose certificates have not been filed of that fact and that the license will automatically expire on the date shown on the face of the license. The county recorder shall also notify the licenseholders of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within four days after the ceremony.

4205. Marriage may be solemnized by any judge of a court of record or justice court in this state or by any priest, minis-



ter or rabbi of any religious denomination, of the age of 21 years or over.

4206. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

4207. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license.

4208. The person solemnizing a marriage must make, sign and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Public Health showing all of the following:

(1) The fact, time and place of solemnization.

(2) The names and places of residence of one or more witnesses to the ceremony.

(3) A statement of the official position of the person solemnizing the marriage, or of the denomination of which such person is a priest, minister or clergyman. The person solemnizing the marriage shall also type or print his name and address.

The marriage license, thus endorsed, shall be returned to the county recorder of the county in which the license was issued within four days after the ceremony.

4209. The person solemnizing a marriage must, at the request of, and for either party, issue a marriage certificate showing the facts specified in Section 4208.

4210. If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing all of the following:

(1) The names, ages, and residences of the parties.

(2) The fact of marriage.

(3) That no record of such marriage is known to exist.

Such declaration shall be subscribed by the parties and attested by at least three witnesses.

4211. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

4212. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the superior court, to have the validity of the marriage determined and declared.

If the female party to any marriage, who has reached the age of 18 years, desires to have the validity of such marriage established in order to establish the fact or time, or both, of her attaining majority, she may proceed, by action in the superior court, brought against the husband, to have the va-

lidity of the marriage determined and declared and the fact or time, or both, of her attaining majority established and declared; and even though she be under the age of 21 years, such action may be commenced and prosecuted by her in her own name and right, and need not be brought or prosecuted in her behalf by general guardian or by a guardian ad litem; but if she has a general guardian of her estate he shall, unless he prosecutes the action on her behalf, be joined as a defendant together with the husband, in which latter event no judgment shall be made in such action until such general guardian of the estate has either appeared in the action, or defaulted after due service of summons on him; and provided further, that if the petitioner in such action has no general guardian of her estate the court may, in its discretion require the appointment of a guardian ad litem to prosecute the action on her behalf and to safeguard her interests in the action.

4213. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage shall be made by the clergyman, delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made.

4214. All marriages that have heretofore been, or that may hereafter be consummated under the provisions of Section 4213 are hereby declared to be valid.

4215. The provisions of this article, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in Section 4210, and be acknowledged and recorded, as provided in Section 4211. Where a marriage is declared as provided in Section 4210 the husband must file said declaration with the county recorder within 30 days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law.

### Article 3. Premarital Examination

4300. Before any person, who is or may hereafter be authorized by law to issue marriage licenses, shall issue any such license, each applicant therefor shall file with him a certificate from a duly licensed physician which certificate shall state that the applicant has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days prior to the date of issuance of such license, and that, in the opinion of such physician, the person either is not infected with syphi-

lis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

Any person who by law is validly able to obtain a marriage license in the State of California is validly able to give consent to any examinations and tests required by this article. In submitting the blood specimen to the laboratory the physician shall designate that this is a premarital test.

4301. The certificate shall be accompanied by a statement from the person in charge of the laboratory making the test, or from some other person authorized to make such reports, setting forth the name of the test, the date it was made, the name and address of the physician to whom the test was sent and the name and address of the person whose blood was tested.

4302. Except as hereinafter provided, the certificate of a physician and the statement from a person in charge of a laboratory or from a person authorized to make reports for the laboratory shall be on a form to be provided and distributed by the State Department of Public Health to laboratories in the state approved by the State Department of Public Health. This form is hereinafter referred to in this article as "the certificate form."

4303. Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received serological tests for syphilis outside of California provided such examinations and tests are performed not more than 30 days prior to the issuance of a marriage license. Certificates provided by the armed forces of the United States will be accepted for military personnel provided such certificates are signed by a medical officer commissioned in such armed forces and provided the certificates state the examinations and serological tests for syphilis were performed not more than 30 days prior to the issuance of the marriage license.

4304. For the purpose of this article a standard serological test shall be a test for syphilis approved by the State Department of Public Health and an approved laboratory shall be the laboratory of the State Department of Public Health or a laboratory approved by the State Department of Public Health or any other laboratory the director of which is licensed by the State Department of Public Health according to law. In case of question concerning accuracy of tests prescribed in this article, it shall be mandatory upon the State Department of Public Health to accept specimens for checking purposes from any district in the state.

4305. The laboratory shall submit such laboratory reports or records to the State Department of Public Health as are required by regulation of the State Board of Public Health. The health officer may destroy any copies of reports retained by him pursuant to this section for a period of two years.

4306. The judge of the superior court in the county in which the license is to be issued is hereby authorized and empowered, on joint application by both parties to a marriage, to waive the requirements as to medical examinations, laboratory tests, and certificates and to order the licensing authority to issue the license applied for, if all other requirements of the marriage laws have been complied with, and if the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for such action exists and that the public health and welfare will not be injuriously affected thereby.

In any case where such examinations and tests have been made and certificate or certificates have been refused because one or both of the applicants have been found to be infected with syphilis, the judge shall nevertheless be authorized and empowered, on application of both parties to such marriage to order the licensing authority to issue the license, if all other requirements of the marriage laws have been complied with and if the judge is satisfied by affidavit or other proof that an emergency or other sufficient cause for such order exists and that the public health and welfare will not be injuriously affected thereby. In every such case, however, the clerk of the court shall transmit to the State Department of Public Health a transcript of the record and the order thereon for such followup by the department as is required by law or deemed necessary by the department for the protection of the public health. The order of the court shall be filed by the licensing authority in lieu of the certificate form.

The superior court when it is deemed necessary may, to the extent authorized by law or rules of court, order all proceedings instituted under the provisions of this article to be confidential and private. There shall be no fee for these court proceedings.

4307. The certificate forms and the court orders shall be filed in the office of the county clerk. They shall be preserved for one year from the date of filing after which date they may be destroyed.

4308. Any applicant for a marriage license, physician, or representative of a laboratory who shall misrepresent his identity or any of the facts called for by the certificate form prescribed by this article; or any licensing officer who shall issue a marriage license without having received the certificate form or an order from the court, or who shall have reason to believe that any of the facts on the certificate form have been misrepresented, and shall nevertheless issue a marriage license; or any person who shall otherwise fail to comply with the provisions of this article shall be guilty of a misdemeanor.

4309. Certificates, laboratory statements or reports, applications and court orders, in this article referred to and the information therein contained, shall be confidential and shall not be divulged to or open to inspection by any person other

than state or local health officers or their duly authorized representatives.

Any person who shall divulge such information or open to inspection such certificates, statements, reports, applications or court orders, without authority, to any person not by law entitled to the same shall be guilty of a misdemeanor.

## TITLE 2. JUDICIAL DETERMINATION OF VOID OR VOIDABLE MARRIAGE

### CHAPTER 1. VOID MARRIAGE

4400. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

4401. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

(1) The former marriage has been dissolved or declared a nullity prior to the date of the subsequent marriage.

(2) The former husband or wife is absent, and not known to such person to be living for the space of five successive years immediately preceding the subsequent marriage, or is generally reputed or believed by such person to be dead at the time such subsequent marriage was contracted, in either of which cases the subsequent marriage is valid until its nullity is adjudged pursuant to subdivision (b) of Section 4425.

### CHAPTER 2. VOIDABLE MARRIAGE

4425. A marriage is voidable if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was without the capability of consenting thereto as provided in Section 4101, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband and wife.

(b) The husband or wife of either party was living and the marriage with such husband or wife was then in force, provided, however, that such husband or wife was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought, or was generally reputed or believed by such party to be dead at the time such subsequent marriage was contracted.

(c) Either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife.

(d) The consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

(e) The consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage state, and such incapacity continues, and appears to be incurable.

4426. A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 4425, must be commenced within the periods and by the parties, as follows:

(a) For causes mentioned in subdivision (a): by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

(b) For causes mentioned in subdivision (b): by either party during the life of the other, or by such former husband or wife.

(c) For causes mentioned in subdivision (c): by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

(d) For causes mentioned in subdivision (d): by the party injured, within four years after the discovery of the facts constituting the fraud.

(e) For causes mentioned in subdivision (e): by the injured party, within four years after the marriage.

(f) For causes mentioned in subdivision (f): by the injured party, within four years after the marriage.

### CHAPTER 3. SUPPLEMENTARY PROVISIONS

4450. A proceeding based on void or voidable marriage shall be commenced by filing in the superior court a petition entitled "In re the marriage of \_\_\_\_\_ and \_\_\_\_\_" which shall state that it is a petition for a judgment of nullity of the marriage. A copy of the petition together with a copy of a summons in a form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

4451. A judgment of nullity is conclusive only as to the parties to the proceeding and those claiming under them.

4452. Whenever a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse, and shall divide, in accordance with Section

4800, that property acquired during the union which would have been community property or quasi-community property if the union had not been void or voidable. Such property shall be termed "quasi-marital property". If the division of property is in issue and the court expressly reserves jurisdiction, it may make the property division at a time subsequent to the judgment.

4453. The issue of a void or voidable marriage is legitimate, and a judgment of nullity does not affect the legitimacy of children conceived or born before the issuance of such judgment. The court may, during the pendency of proceedings to have a marriage adjudged a nullity, or at any time thereafter, make such orders for the care, maintenance and support of such children in the same manner as if the marriage had not been void or voidable.

4454. Custody of the children of a marriage adjudged a nullity shall be determined according to Section 4600.

4455. The court may, during the pendency of a proceeding to have a marriage adjudged a nullity, or upon judgment, order the other party to pay for the support of such party in the same manner as if the marriage had not been void or voidable, provided that the parties are found to be putative spouses and the party for whose benefit the order is made is found to be innocent of fraud or wrongdoing in inducing or entering into the marriage, and free from knowledge of the then existence of any prior marriage or other impediment to the contracting of the marriage sought to be annulled.

4456. The court may grant attorney's fees and costs in accordance with Section 4525 in proceedings to have the marriage adjudged void and in those proceedings based upon voidable marriage in which the party applying for attorney's fees and costs is found to be innocent of fraud or wrongdoing in inducing or entering into the marriage, and free from knowledge of the then existence of any prior marriage or other impediment to the contracting of the marriage for which a judgment of nullity is sought.

4457. In any proceeding under this title, the court may restore the maiden name or former name of the wife regardless of whether or not a request was made therefor in the petition.

### TITLE 3. DISSOLUTION OF MARRIAGE

#### CHAPTER 1. GENERAL PROVISIONS

4500. Marriage is dissolved only by (1) the death of one of the parties or (2) the judgment of a court of competent jurisdiction decreeing a dissolution of the marriage.

4501. The effect of a judgment decreeing a dissolution of the marriage is to restore the parties to the state of unmarried persons.

4502. In proceedings under this chapter, the superior court has jurisdiction to inquire into and render such judgments and make such orders as are appropriate concerning the status of the marriage, the custody and support of minor children of the marriage, the support of either party, the settlement of the property rights of the parties, and the award of attorneys' fees and costs.

4503. A proceeding for dissolution of the marriage or for legal separation shall be commenced by filing in the superior court a petition entitled "In re the marriage of \_\_\_\_\_ and \_\_\_\_\_" which shall state whether it is a petition for the dissolution of the marriage or a legal separation. A copy of the petition together with a copy of a summons in a form and content approved by the Judicial Council shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

4504. A responsive pleading, if any, shall be filed and served upon the other party within 30 days of the date of the service upon the respondent of a copy of the petition and summons.

4505. (a) In those counties which have established a conciliation court, the petitioner shall complete and file a questionnaire approved by the Judicial Council, concurrently with the filing of the petition.

(b) A blank copy of the questionnaire shall be served upon the respondent together with copies of the summons and petition. The respondent shall complete and file the questionnaire with his responsive pleading.

(c) The questionnaire shall be confidential and may be used only by the court, counsel for the parties, or persons authorized by the court.

4506. A court may decree a dissolution of the marriage or legal separation on either of the following grounds, which shall be pleaded generally:

(1) Irreconcilable differences, which have caused the irremediable breakdown of the marriage.

(2) Incurable insanity.

4507. Irreconcilable differences are 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.

4508. (a) If from the evidence at the hearing and contained in the confidential questionnaire, the court finds that there are irreconcilable differences, which have caused the irremediable breakdown of the marriage, it shall order the dissolution of the marriage or a legal separation. If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for a period not to exceed 30 days. During the period of the continuance, the court may make any order for the support and maintenance of the parties, the custody, support, maintenance, and education of the



minor children of the marriage, attorney fees, and for the preservation of the property of the parties. At any time after the termination of such 30-day period, either party may move for the dissolution of the marriage or a legal separation, and the court may enter its judgment decreeing such dissolution or separation.

(b) The court may not render a judgment decreeing the legal separation of the parties without the consent of both parties unless one party has not made a general appearance and the petition is one for legal separation. A judgment decreeing the legal separation of the parties shall not bar a subsequent judgment decreeing the dissolution of the marriage rendered pursuant to a petition for dissolution filed by either party.

4509. In any pleadings or proceedings for legal separation or dissolution of marriage under this part, including depositions and discovery proceedings, evidence of specific acts of misconduct shall be improper and inadmissible, except where child custody is in issue and such evidence is relevant to establish that parental custody would be detrimental to the child, or at the hearing where it is determined by the court to be necessary to establish the existence of irreconcilable differences.

4510. A marriage may be dissolved on the grounds of incurable insanity only upon proof, including competent medical or psychiatric testimony, that the insane spouse was at the time the petition was filed, and remains, incurably insane.

No decree granted on this ground shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support of the spouse who is incurably insane, and the court may make such order for support, or require a bond therefor, as the circumstances require.

If the insane spouse has a general guardian or guardian of his person, other than the spouse bringing the action, the petition and summons shall be served upon the insane spouse and such guardian and he shall defend and protect the interests of the insane spouse. If the insane spouse has no general guardian or no guardian of his person, or if the spouse bringing the action is the general guardian or guardian of his person, the court shall appoint a guardian ad litem, who may be the district attorney or the county counsel, if any, to defend and protect the interests of the insane spouse. If a district attorney or county counsel is appointed guardian ad litem pursuant to this paragraph, his successor in the office of district attorney or county counsel, as the case may be, succeeds him as guardian ad litem, without further action by the court or parties.

4511. No decree of dissolution can be granted upon the default of one of the parties or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the grounds alleged, and such proof, if not taken before the

court, shall be by affidavit or declaration under penalty of perjury.

4512. In actions for dissolution of the marriage, the court must file its decision and conclusions of law as in other cases, and if it determines that no dissolution shall be granted, final judgment must therefore only be entered accordingly. If it determines that a dissolution ought to be granted, an interlocutory judgment must be entered declaring that the parties are entitled to have their marriage dissolved. After the entry of the interlocutory judgment, neither party shall have the right to dismiss the action without the consent of the other.

4513. In cases in which the court has determined that a decree of dissolution ought to be granted, but by mistake, negligence or inadvertence, the interlocutory judgment has not been signed, filed and entered, the court may cause the interlocutory judgment to be signed, dated, filed and entered therein as of the date when the same could have been signed, dated, filed and entered originally; provided, however, that it shall appear to the satisfaction of the court that no appeal is to be taken in the action or motion made for a new trial, to annul or set aside the judgment or for relief under Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure. Such action may be taken by the court on its own motion or upon the motion of either party thereto. In contested cases, the motion of a party shall be with notice to the other party. The court may cause such interlocutory judgment to be entered nunc pro tunc as aforesaid, even though an interlocutory judgment or final judgment or both judgments may have been previously entered, where by mistake, negligence or inadvertence the interlocutory judgment was not entered as soon as it could have been entered under the law if applied for. Upon the entry of such interlocutory judgment, the parties shall have the same rights to a final judgment that they would have had, had the interlocutory judgment been entered upon the date when it could have been entered originally.

4514. When an interlocutory judgment has been entered pursuant to Section 4512, and six months have expired from the date of service of a copy of summons and complaint, or the date of appearance of the respondent, the court on motion of either party, or upon its own motion, may enter the final judgment dissolving the marriage, and such final judgment shall restore them to the status of single persons, and permit either to marry after the entry thereof; and such other and further relief as may be necessary to complete disposition of the action, but if any appeal is taken from the interlocutory judgment or motion for a new trial made, final judgment shall not be entered until such motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed. The death of either party after the entry of the interlocutory judgment does not impair the power of the court

to enter final judgment as hereinbefore provided; but such entry shall not validate any marriage contracted by either party before the entry of such final judgment, nor constitute any defense of any criminal prosecution made against either.

4515. Whenever either of the parties in a proceeding for dissolution of the marriage is, under the law, entitled to a final judgment, but by mistake, negligence or inadvertence the same has not been signed, filed and entered, if no appeal has been taken from the interlocutory judgment or motion made for a new trial to annul or set aside the judgment or for relief under Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed and entered therein granting the divorce as of the date when the same could have been given or made by the court if applied for. The court may cause such final judgment to be signed, dated, filed and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered where by mistake, negligence or inadvertence the same has not been signed, filed or entered as soon as it could have been entered under the law if applied for. Upon the filing of such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage of either of such parties subsequent to six months after the date of service of a copy of the summons and petition upon, or appearance by, the respondent spouse, as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, such shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof.

4516. During the pendency of any proceeding under Title 3 (commencing with Section 4500) or Title 4 (commencing with Section 4600) of this part, the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the children, as the case may be. An order made pursuant to this section shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. Any such order may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

4517. In any proceeding under Chapter 1 (commencing with Section 4400) or Chapter 2 (commencing with Section 4425) of Title 2 of this part or under this chapter, upon a determination that payment of an obligation of a party would benefit either party or a minor child, the court may order one of the parties to pay the obligation, or any portion thereof, directly to the creditor. The creditor shall have no right to

enforce the order nor shall his rights be affected by such determination.

4518. During the pendency of any proceeding under Chapter 1 (commencing with Section 4400) or Chapter 2 (commencing with Section 4425) of Title 2 of this part, or under this chapter, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if such order is directed against a party, requiring him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures; (2) enjoining any party from molesting or disturbing the peace of the other party; (3) excluding either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result, as provided in Section 5102; and (4) determining the temporary custody of any minor children of the marriage.

4519. The court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in proceedings under this title to be private, and may exclude all persons except the officers of the court, the parties, their witnesses and counsel.

4520. Any evidence collected by eavesdropping in violation of Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code is inadmissible in any proceeding for dissolution of the marriage or legal separation or for a declaration of void or voidable marriage. If it appears that such a violation exists, the court may refer the matter to the proper authority for investigation and prosecution.

4521. In any proceeding under this part, except an action for legal separation, the court may restore the maiden or former name of the wife regardless of whether or not a request therefor was included in the petition.

#### CHAPTER 2. PROVISIONS FOR ATTORNEYS' FEES AND COSTS

4525. (a) During the pendency of any proceeding under this part, the court may order the husband or wife, or father or mother, as the case may be, to pay such amount as may be reasonably necessary for the cost of maintaining or defending the proceeding and for attorneys' fees; and from time to time and before entry of judgment, the court may augment or modify the original award for costs and attorneys' fees as may be reasonably necessary for the prosecution or defense of the proceeding or any proceeding relating thereto. In respect to services rendered or costs incurred after the entry of judgment, the court may award such costs and attorneys' fees as

may be reasonably necessary to maintain or defend any subsequent proceeding therein, and may thereafter augment or modify any award so made. Attorneys' fees and costs within the provisions of this subdivision may be awarded for legal services rendered or costs incurred prior, as well as subsequent, to the commencement of the proceeding.

(b) During the pendency of any proceeding under this part, an application for a temporary order making, augmenting, or modifying an award of attorneys' fees or costs or both shall be made by motion on notice or by an order to show cause, except that it may be made without notice by an oral motion in open court:

- (1) At the time of the hearing of the cause on the merits; or
- (2) At any time prior to entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure.

4526. When the court orders one of the parties to pay costs and attorneys' fees, such costs and fees may, in the discretion of the court, be made payable in whole or in part to the attorney entitled thereto. An order of the court providing for payment of such costs and fees may be enforced directly by such attorney in his own name or by the party in whose behalf such order was made, provided that if such attorney has ceased to be such, it shall be a condition of such enforcement, and must appear of record, that such attorney shall have given to his former client or successor counsel 10 days' written notice of his application for such enforcement, and during such period the client may file in such proceeding a motion directed to such former attorney for partial or total reallocation of fees and costs to cover the services and cost of successor counsel, in which event such proceeding shall be stayed until the court has resolved such motion.

### CHAPTER 3. RESIDENCE REQUIREMENTS

4530. (a) A judgment decreeing the dissolution of a marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.

(b) In any proceeding for legal separation in which neither party, at the time such proceeding was commenced, has complied with the residence requirements of subdivision (a), either party may, upon complying with such residence requirements, amend his petition or responsive pleading in such proceeding to request that a judgment decreeing the dissolution of the marriage be entered and the date of the filing of such amended petition or pleading shall be deemed to be the date of commencement of the proceeding for the dissolution of the marriage for the purposes only of the residence requirements

of subdivision (a). Notice of such amendment shall be given to the other party in the manner provided by rules adopted by the Judicial Council.

4531. In proceedings for a dissolution of marriage neither the domicile nor residence of the husband shall be deemed to be the domicile or residence of the wife. For the purpose of such proceeding each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions.

#### CHAPTER 4. ENFORCEMENT OF JUDGMENTS, ORDERS, AND DECREES

4540. Any judgment, order, or decree of the court made or entered pursuant to this part may be enforced by the court by execution, attachment, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

#### TITLE 4. CUSTODY OF CHILDREN

4600. In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding, or at any time thereafter, make such order for the custody of such child during his minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof. Custody should be awarded in the following order of preference:

(a) To either parent according to the best interests of the child, but, other things being equal, custody shall be given to the mother if the child is of tender years.

(b) To the person or persons in whose home the child has been living in a wholesome and stable environment.

(c) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it must make a finding that an award of custody to a parent would be detrimental to the child, and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

4601. Reasonable visitation rights shall be awarded to a parent unless it is shown that such visitation would be detrimental to the best interests of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

4602. In any proceeding under this part, when so directed by the court, the probation officer or domestic relations investigator shall conduct a custody investigation and file a written report thereon, which report may be considered by the court and shall be made available to all interested parties or their attorneys at least 10 days before any hearing regarding the custody of a child. Such report may be received in evidence upon stipulation of all interested parties.

4603. Without filing a petition pursuant to Section 4503, husband or wife may bring an action for the exclusive custody of the children of the marriage. The court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children. Such order or decree may be modified or revoked at any time thereafter as the natural rights of the parties and the best interests of the children may require.

#### TITLE 5. SUPPORT OF CHILDREN

4700. (a) In any proceeding where there is at issue the support of a minor child, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. Upon a showing of good cause, the court may order the parent or parents required to make such payment of support to give reasonable security therefor. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. The order of modification or revocation shall be made retroactive to the date of filing of the notice of motion or order to show cause to modify or revoke.

(b) When a court orders a person to make specified payments for support of a child during the child's minority, or until such child is married or otherwise emancipated, the liability of such person terminates upon the happening of such contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make such payments, or the attorney of record of such person, of the happening of such contingency, and continues to accept support payments, such person must refund any and all moneys received which accrued after the happening of such contingency, except that such overpayments must first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make such payments, or his attorney of record, of the happening of such contingency.

(c) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance and education of such child, as the court may deem just.

4701. In any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to the county clerk, probation officer, or other officer of the court or county officer designated by the court to receive such payment, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance and education of the minor child. Such order shall constitute the assignment and be binding upon an employer upon the service of a copy of such order upon such employer and until further order of the court. The employer may deduct the sum of one dollar (\$1) for each payment made pursuant to such order. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

4702. (a) In any proceeding where a court makes or has made an order requiring payment of child support to a parent receiving welfare moneys for the maintenance of minor children, the court shall direct that payments of support be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose, and shall direct the district attorney to appear on behalf of such welfare recipient in any proceeding to enforce such order.

(b) In any proceeding where a court makes or has made an order requiring payment of child support to a former spouse having custody of any minor children of the marriage, the court may direct that payments thereof be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose, and may direct the district attorney to appear on behalf of such minor children in any action to enforce such order. The court shall include in its order any service charge imposed under the authority of Section 580.5 of the Welfare and Institutions Code.

(c) Expenses of the county clerk, probation officer, or other officer of the court or county officer designated by the court, and expenses of the district attorney incurred in the enforcement of any order of the type described in subdivision (a) or (b), shall be a charge upon the county where the proceedings are pending. Any fees for service of process in the enforcement of any such order shall be a charge upon the county where the process is served.

4703. When a parent has the duty to provide for the support, maintenance, or education of his child and willfully fails to so provide, either parent, or the child by his guardian



ad litem, may bring an action in the superior court against the errant parent for the support, maintenance, or education of the child.

#### TITLE 6. PROPERTY RIGHTS OF THE PARTIES

4800. The court shall, either (a) in its interlocutory judgment decreeing the dissolution of the marriage or in its judgment decreeing the legal separation of the parties, or (b) at a later time, if the division of property is in issue and it expressly reserves jurisdiction to make such a property division, divide the community property and the quasi-community property of the parties equally. The equal division provisions of this section shall not prevent the court:

(1) Where economic circumstances warrant, from awarding any asset to one party on such conditions as the court deems proper to effect a substantially equal division of the property;

(2) By way of an additional award or offset against existing property from awarding from a party's share any sum the court determines to have been deliberately misappropriated by such party to the exclusion of the community property or quasi-community property interest of the other party.

Community property personal injury damages shall be assigned to the party who suffered the injuries unless the court, after taking into account the economic condition and needs of each party, the time that has elapsed since the recovery of the damages, and all other facts of the case, determines that the interests of justice require another disposition, in which case the community property personal injury damages shall be assigned to the respective parties in such proportions as the court determines to be just under the facts of the case. As used in this section, "community property personal injury damages" means all money or other property received by a married person as community property in satisfaction of a judgment for damages for his or her personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages, unless such money or other property has been commingled with other community property.

4801. (a) In any judgment decreeing the dissolution of a marriage or a legal separation of the parties, the court may order a party to pay for the support of the other party any amount, and for such period of time, as the court may deem just and reasonable having regard for the circumstances of the respective parties, including the duration of the marriage, and the ability of the supported spouse to engage in gainful employment without interfering with the interests of the children of the parties in the custody of such spouse. The court may order the party required to make such payment of support to give reasonable security therefor. Any order for support of the other party may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or

order to show cause to modify or revoke. The order of modification or revocation may be made retroactive to the date of filing of the notice of motion or order to show cause to modify or revoke.

(b) Except as otherwise agreed by the parties in writing, the obligation of any party under any order or judgment for the support and maintenance of the other party shall terminate upon the death of the obligor or upon the remarriage of the other party.

(c) Except as otherwise agreed by the parties in writing, the court may, upon petition of either party, modify or revoke any decree or judgment granting any allowance to the other party upon proof that the wife is living with another man and holding herself out as his wife, although not married to such man, or that the husband is living with another woman and holding himself out as her husband, although not married to such woman, except as to any amount that may have accrued prior to the filing of the petition.

(d) When a court orders a person to make specified payments for support of the other party for a contingent period of time, the liability of such person terminates upon the happening of such contingency. If the party to whom payments are to be made fails to notify the person ordered to make such payments, or the attorney of record of such person, of the happening of such contingency and continues to accept support payments, such party shall refund any and all moneys received which accrued after the happening of such contingency, except that such overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the party to whom payments are to be made to notify the person ordered to make such payments, or his attorney of record, of the happening of such contingency.

(e) An order for payment of an allowance for the support of one of the parties shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order retains jurisdiction.

4802. Except as provided in Section 4811 or subdivision (b) of Section 4801, a husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation or upon the dissolution of their marriage. The mutual consent of the parties is a sufficient consideration for such an agreement.

4803. As used in this part, "quasi-community property" means all personal property wherever situated and all real property situated in this state heretofore or hereafter acquired as follows:

(a) By either spouse while domiciled elsewhere which would have been community property had the spouse acquir-

ing the property been domiciled in this state at the time of its acquisition.

(b) In exchange for real or personal property, wherever situated, acquired other than by gift, devise, bequest or descent by either spouse during the marriage while domiciled elsewhere.

For the purposes of this section, personal property does not include and real property does include leasehold interests in real property.

4804. As used in this title and Section 5132, "separate property" does not include quasi-community property.

4805. In the enforcement of any decree, judgment or order rendered pursuant to the provisions of this part, the court must resort:

- (a) To the community property; then,
- (b) To the quasi-community property; then,
- (c) To the separate property of the party required to make such payments.

4806. When either party in a proceeding under this part has either a separate estate, or is earning his or her own livelihood, or there is community property or quasi-community property sufficient to give him or her proper support, or if the custody of the children has been awarded to the other party, who is supporting them, the court may withhold any allowance to him out of the separate property of the other party. Where there are no children, and either party has a separate estate sufficient for his or her proper support, no allowance shall be made from the separate estate of the other party.

4807. The community property, the quasi-community property and the separate property may be subjected to the support, maintenance, and education of the children in such proportions as the court deems just.

4808. In any judgment decreeing the dissolution of the marriage or the legal separation of the parties, the court shall assign the homestead as follows:

(a) If a homestead has been selected from the community property or the quasi-community property, it may be assigned either absolutely or for a limited period to either party, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

(b) If the homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it to the other party for a limited period not to exceed the life of such party.

(c) This section shall not limit the power of the court to make temporary assignment of the homestead at any stage of the proceedings.

(d) Whenever necessary to carry out the purpose of this section, the court may order a partition or sale of the property and a division or other disposition of the proceeds.

4809. After the entry of a final judgment decreeing the dissolution of the marriage or the legal separation of the parties, or after a declaration of void or voidable marriage, or after a permanent order in any other proceeding in which there was at issue the custody, support, maintenance, or education of a minor child, no modification of such judgment, order, or decree, and no subsequent order in such proceedings shall be valid unless any prior notice otherwise required to be given to a party to the proceeding be served, in such manner as such notice is otherwise permitted by law to be served, upon the party himself. For such purpose, service upon the attorney of record shall not be sufficient.

4810. The disposition of the community property, of the quasi-community property and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

4811. (a) The provisions of any agreement between the parties for child support shall be deemed to be separate and severable from all other provisions of such agreement relating to property and support of the wife or husband. All orders for child support shall be law-imposed and shall be made under the power of the court to make such orders. All such orders for child support, even when there has been an agreement between the parties on the subject of child support may be modified or revoked at any time at the discretion of the court, except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

(b) The provisions of any agreement for the support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. All orders for the support of either party based on such agreement shall be deemed law-imposed and shall be deemed made under the power of the court to make such orders. The provisions of any agreement or order for the support of either party shall be subject to subsequent modification or revocation by court order except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke, and except to the extent that any written agreement, or if there is no written agreement any oral agreement entered into in open court between the parties, specifically provides to the contrary.

(c) This section shall be effective only with respect to property settlement agreements entered into after the effective date of this section, and shall not be deemed to affect agreements entered into prior thereto, as to which the provisions of Chapter 1308 of the Statutes of 1967 shall apply.

4812. In the event obligations for support of a spouse are discharged in bankruptcy, the court may make all proper orders for the support of such spouse, as the court may deem just, having regard for the circumstances of the respective parties.

#### TITLE 7. UNIFORM DIVORCE RECOGNITION ACT

5000. This title may be cited as the Uniform Divorce Recognition Act.

5001. A divorce obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

5002. Proof that a person hereafter obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state, when the divorce proceeding was commenced.

5003. This title shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

5004. The application of this title is limited by the requirement of the Constitution of the United States that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.

#### TITLE 8. HUSBAND AND WIFE

5100. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

5101. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

5102. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling except as provided in Section 4518 or, in proceedings under Chapter 1 (commencing with Section 4400) or Chapter 2 (commencing with Section 4425) of Title 2 of this part, or under Chapter 1 (commencing with Section 4500) of Title 3 of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the court may order the temporary exclusion of either party from the family dwelling or from the dwelling of the other upon a showing that harm would otherwise result, until the final determination of the proceeding.

5103. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by Title 8 (commencing with Section 2215) of Part 4 of Division 3.

5104. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

5105. The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in Sections 5125 and 5127. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

5106. Notwithstanding the provisions of Sections 5105 and 5125, whenever payment or refund is made to an employee, former employee or his beneficiary or estate pursuant to a written retirement, death or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof or where a trustee or insurance company is making the payment, such notice has been delivered by the employer to the home office of such trustee or such insurance company or has otherwise been received thereby. Nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer and the trustee or insurance company making such payment or refund.

5107. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

5108. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property. The husband may, without the consent of his wife, convey his separate property.

5109. All money or other property paid by or on behalf of a married person to his spouse in satisfaction of a judgment for damages for personal injuries to the spouse or pursuant to an agreement for the settlement or compromise of a claim

for such damages is the separate property of the injured spouse.

5110. All other real property situated in this state and all other personal property wherever situated acquired during the marriage by a married person while domiciled in this state is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if acquired by such married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of such property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife and that when a single family residence of a husband and wife is acquired by them during marriage as joint tenants, for the purpose of the division of such property upon dissolution of marriage or legal separation only, the presumption is that such single family residence is the community property of said husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of said property.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of such married woman, shall be barred from commencing or maintaining any action to show that the real property was community property, or to recover the real property from and after one year from the filing for record in the recorder's office of such conveyances, respectively.

As used in this section, personal property does not include and real property does include leasehold interests in real property.

5111. The presumption that property acquired during marriage is community property does not apply to any property to which legal or equitable title is held by a person at the time of his death if the marriage during which the property was acquired was terminated by dissolution of marriage more than four years prior to such death.

5112. If a married person is injured by the negligent or wrongful act or omission of a person other than his spouse, the fact that the negligent or wrongful act or omission of the spouse of the injured person was a concurring cause of the injury is not a defense in any action brought by the injured person to recover damages for such injury except in

cases where such concurring negligent or wrongful act or omission would be a defense if the marriage did not exist.

5113. (a) Where an injury to a married person is caused in whole or in part by the negligent or wrongful act or omission of his spouse, the community property may not be used to discharge the liability of the tortfeasor spouse to the injured spouse or his liability to make contribution to any joint tortfeasor until the separate property of the tortfeasor spouse, not exempt from execution, is exhausted.

(b) This section does not prevent the use of community property to discharge a liability referred to in subdivision (a) if the injured spouse gives written consent thereto after the occurrence of the injury.

(c) This section does not affect the right to indemnity provided by any insurance or other contract to discharge the tortfeasor spouse's liability, whether or not the consideration given for such contract consisted of community property.

5114. A full and complete inventory of the separate personal property of either spouse may be made out and signed by such spouse, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the recorder of the county in which the parties reside.

5115. The filing of the inventory in the recorder's office is notice and prima facie evidence of the title of the party filing such inventory.

5116. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by pledge or mortgage thereof executed by the husband. Except as otherwise provided by law, the earnings of the wife are liable for her contracts heretofore or hereafter made before or after marriage.

5117. The earnings and community property personal injury damages of the wife are not liable for the debts of the husband; but, except as otherwise provided by law, such earnings and damages shall be liable for the payment of debts, heretofore or hereafter contracted by the husband or wife for the necessities of life furnished to them or either of them while they are living together. As used in this section, "community property personal injury damages" has the meaning given that term by subdivision (b) of Section 4800.

5118. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

5119. (a) After the rendition of a judgment decreeing legal separation of the parties, the earnings or accumulations of each party are the separate property of the party acquiring such earnings or accumulations.

(b) After the rendition of an interlocutory judgment of dissolution of a marriage and while the parties are living



separate and apart, the earnings and accumulations of the husband are the separate property of the husband.

5120. Neither the separate property of the husband nor his earnings after marriage is liable for the debts of the wife contracted before the marriage.

5121. The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that the separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessaries of life furnished to them or either of them while they are living together; provided, that the provisions of the foregoing proviso shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise, succession, or gift, other than by gift from the husband, after marriage.

5122. (a) A married person is not liable for any injury or damage caused by the other spouse except in cases where he would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property may be satisfied only from the separate property of such married person and the community property of which he has the management and control.

5123. The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed of trust or other hypothecation of the community property, unless the wife expressly assents in writing to the liability of her separate property for such debt or obligation.

5124. Notwithstanding the provisions of Sections 5105 and 5125, the wife has the management and control of the community personal property earned by her, and the community personal property received by her in satisfaction of a judgment for damages for personal injuries suffered by her or pursuant to an agreement for the settlement or compromise of a claim for such damages, until it is commingled with community property subject to the management and control of the husband, except that the husband may use such community property received as damages or in settlement or compromise of a claim for such damages to pay for expenses incurred by reason of the wife's personal injuries and to reimburse his separate property or the community property subject to his management and control for expenses paid by reason of the wife's personal injuries.

The wife may not make a gift of the community property under her management and control, or dispose of the same without a valuable consideration, without the written consent of the husband. The wife may not make a testamentary disposition of such community property except as otherwise permitted by law.

This section shall not be construed as making such earnings or damages or property received in settlement or compromise

of such damages the separate property of the wife, nor as changing the respective interests of the husband and wife in such community property, as defined in Section 5105.

5125. Except as provided in Section 5128, the husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate; provided, however, that he cannot make a gift of such community personal property, or dispose of the same without a valuable consideration, or sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community, without the written consent of the wife.

5126. (a) All money or other property received by a married person in satisfaction of a judgment for damages for his personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured person if such money or other property is received as follows:

(1) After the rendition of a decree of legal separation or interlocutory judgment of dissolution of a marriage.

(2) While the wife, if she is the injured person, is living separate from her husband.

(3) After the rendition of an interlocutory decree of judgment of dissolution of a marriage and while the injured person and his spouse are living separate and apart.

(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of his spouse's personal injuries from his separate property or from the community property subject to his management and control, he is entitled to reimbursement of his separate property or the community property subject to his management and control for such expenses from the separate property received by his spouse under subdivision (a).

5127. Except as provided in Section 5128, the husband has the management and control of the community real property, but the wife, either personally or by duly authorized agent, must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation shall be presumed to be valid. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, executed by the husband alone, shall be commenced after

the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.

5128. Where one or both of the spouses are incompetent, the procedure for dealing with and disposing of community property is that prescribed in Chapter 2a (commencing with Section 1435.1) of Division 4 of the Probate Code.

5129. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

5130. If the husband neglects to make adequate provision for the support of his wife, except in the case mentioned in Section 5131, any other person may in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

5131. A husband is not liable for his wife's support when she is living separate from him by agreement unless such support is stipulated in the agreement.

5132. The wife must support the husband while they are living together out of her separate property when he has no separate property, and there is no community property or quasi-community property and he is unable, from infirmity, to support himself.

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.

5133. The property rights of husband and wife are governed by this title, unless there is a marriage settlement containing stipulations contrary thereto.

5134. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

5135. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

5136. The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

5137. A minor capable of contracting marriage may make a valid marriage settlement.

5138. For the purpose of application of the laws of succession set forth in the Probate Code to a decedent who died prior to September 11, 1958, an alliance, which by custom of

the Indian tribe, band, or group of which the parties to the alliance, or either of them, are members is commonly recognized in such tribe, band, or group as marriage, is deemed a valid marriage under the laws of this state. In the case of such marriages and for such purpose a separation, which by custom of the Indian tribe, band, or group of which the separating parties, or either of them, are members is commonly recognized in such tribe, band, or group as a dissolution of marriage, is deemed a valid dissolution of marriage under the laws of this state.

This section shall be effective and shall apply only to the extent that such marriages or separations would affect succession to property subject to the laws of this state.

SEC. 9. Section 125 of the Code of Civil Procedure is repealed.

SEC. 10. Section 285.1 of the Code of Civil Procedure is amended to read:

285.1. An attorney of record for any party in any civil action or proceeding for dissolution of marriage, legal separation, or for a declaration of void or voidable marriage, or for the support, maintenance or custody of minor children may withdraw at any time subsequent to the time when any judgment in such action or proceeding, other than an interlocutory judgment, becomes final, and prior to service upon him of pleadings or motion papers in any proceeding then pending in said cause, by filing a notice of withdrawal. Such notice shall state (a) date of entry of final decree or judgment, (b) the last known address of such party, (c) that such attorney withdraws as attorney for such party. A copy of such notice shall be mailed to such party at his last known address and shall be served upon the adverse party.

SEC. 11. Section 395 of the Code of Civil Procedure is amended to read:

395. (1) In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. In a proceeding for dissolution of marriage, the county in which the plaintiff has been a resident for three months next preceding the commencement of the proceeding is the proper county for the trial of the proceeding. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which

the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the state, or, if residing in the state, and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the state, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, or judicial district where he resides, his residence must not be considered in determining the proper place for the trial of the action.

(2) The proper court for the trial of any such action in the county hereinabove designated as the proper county, shall be determined as follows:

If there is a municipal or justice court, having jurisdiction of the subject matter of the action, established in the city and county or judicial district, in which the defendant, or any defendant, so resides, or in which the injury to person or to personal property, or the injury causing death, occurs, or, in the cases hereinabove mentioned, in which the obligation was contracted to be performed, such court is a proper court for the trial of such action; otherwise any court in such county, having jurisdiction of the subject matter of the action, is a proper court for the trial thereof.

Sec. 12. Section 396b of the Code of Civil Procedure is amended to read:

396b. Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under the provisions of this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he answers or demurs, files with the clerk, or with the judge if there be no clerk, an affidavit of merits and notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of such papers. Upon the hearing of such motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the same transferred to the proper court; provided, however, that the court in a proceeding for dissolution of marriage or legal separation, may, prior to the determination of such motion, consider and determine motions for allowance of temporary alimony, support of children, counsel fees and costs, and make

all necessary and proper orders in connection therewith; provided further, that in any case, if an answer be filed, the court may consider opposition to the motions, if any, and may retain the proceeding in the county where commenced if it appears that the convenience of the witnesses or the ends of justice will thereby be promoted.

SEC. 13. Section 397 of the Code of Civil Procedure is amended to read:

397. The court may, on motion, change the place of trial in the following cases:

1. When the court designated in the complaint is not the proper court.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

4. When from any cause there is no judge of the court qualified to act.

5. When a proceeding for dissolution of marriage has been filed in the county in which the petitioner has been a resident for three months next preceding the commencement of the proceeding, and the respondent at the time of the commencement of the proceeding is a resident of another county in this state, to the county of the respondent's residence when the ends of justice would be promoted by the change. If a motion to change the place of trial is made pursuant to this paragraph, the court may, prior to the determination of such motion, consider and determine motions for allowance of temporary support of the other party and of any children of the marriage, temporary restraining orders, attorneys' fees, and costs, and make all necessary and proper orders in connection therewith.

SEC. 14. Section 426a of the Code of Civil Procedure is amended to read:

426a. In a proceeding for dissolution of marriage, legal separation, or for a declaration of void or voidable marriage, there shall be furnished to the county clerk by the petitioner at the time of filing of the petition, or within 10 days thereafter and before the date of the first hearing, that information, required to be collected by the State Registrar of Vital Statistics, in the manner specified under Chapter 6.5 (commencing with Section 10360) of Division 9 of the Health and Safety Code. The clerk shall accept the petition for filing, whether or not said information is then furnished. At any time after the filing of the petition, the respondent may also furnish such information, whether or not it has been first furnished by the petitioner. The clerk shall take all ministerial steps required of him in the proceeding, whether or not such information has been furnished; but the clerk shall advise the court, at the time set for any hearing, if at such time no

party has furnished such information. In such cases, the court may decline to hear any matter encompassed within the proceeding if good cause for such failure to furnish information has not been shown.

The court's inquiry in such cases shall be confined solely to the question of the existence of good cause for not furnishing the information; and such report and the contents thereof shall not be admissible in evidence and shall not be furnished to the court.

SEC. 15. Section 426b of the Code of Civil Procedure is repealed.

SEC. 16. Section 426c of the Code of Civil Procedure is amended to read:

426c. In a proceeding for dissolution of marriage the petition must set forth among other matters as near as can be ascertained the following facts:

- (1) The state or country in which the parties were married.
- (2) The date of marriage.
- (3) The date of separation.
- (4) The number of years from marriage to separation.
- (5) The number of children of the marriage, if any, and if none a statement of that fact.
- (6) The age and birth date of each minor child of the marriage.
- (7) The social security numbers of the husband and wife, if available, and if not available, a statement to such effect.

SEC. 18. Section 1019 of the Code of Civil Procedure is repealed.

SEC. 19. Section 1761 of the Code of Civil Procedure is amended to read:

1761. Prior to the filing of any proceeding for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

SEC. 20. Section 1769 of the Code of Civil Procedure is amended to read:

1769. (a) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(b) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(c) During the pendency of any proceeding under this chapter, the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the children, as the case may be. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. Any such order may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

SEC. 21. Section 1770 of the Code of Civil Procedure is amended to read:

1770. During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any petition for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution of marriage, legal separation, or judgment of a nullity of a voidable marriage. The pendency of a proceeding for dissolution of marriage, legal separation, or declaration of nullity shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

SEC. 22. Section 1771 of the Code of Civil Procedure is amended to read:

1771. Whenever any petition for dissolution of marriage, legal separation, or declaration of nullity of a voidable marriage is filed in the superior court, and it appears to the court at any time during the pendency of the proceeding that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

SEC. 23. Section 1772 of the Code of Civil Procedure is amended to read:

1772. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested proceeding for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that



the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

SEC. 24. Section 26859 of the Government Code is amended to read:

26859. The fee for the filing of the vital statistics information required to be collected under Chapter 6.5 (commencing with Section 10360) of Division 9 of the Health and Safety Code is two dollars (\$2), and shall be paid at the time of filing of each petition for a dissolution of marriage, judgment of nullity, or legal separation. In any action for divorce, annulment or separate maintenance, in which the complaint was filed before January 1, 1966, and which has not resulted in final judgment before such date, the filing fee of two dollars (\$2) shall be paid before final judgment is entered.

The county clerk by the 10th day of each month shall pay to the State Registrar of Vital Statistics one-half of all such fees collected during the immediately preceding month. The State Registrar of Vital Statistics shall transmit such sums to the State Treasurer for deposit in the General Fund.

SEC. 25. Section 10360 of the Health and Safety Code is amended to read:

10360. The following reports shall be filed with the State Registrar upon forms prescribed and furnished by the State Registrar and in the manner prescribed under this division.

(1) A preliminary report when filing a petition in a proceeding for dissolution of marriage, declaration of void or voidable marriage, or legal separation.

(2) Certificate of registry of judgments decreeing the dissolution of marriage or legal separation, decrees of declaration of void or voidable marriage, or a dismissal.

SEC. 26. Section 10361 of the Health and Safety Code is amended to read:

10361. (a) The information required to be filed under this chapter in proceedings for dissolution of marriage, judgment of nullity, or legal separation shall not be open to public inspection in the offices of the State Registrar or the county clerk. Nothing in this section shall be construed to preclude qualified persons with a valid educational or scientific research interest from having access to the records and the information included thereon, upon approval of the office of the State Registrar of Vital Statistics and without substantial cost to the state or local offices concerned.

(b) All information and reports required to be filed and prepared under the authority of this division shall be made available to any duly constituted legislative committee of the State Legislature upon the request of such committee.

(c) No person who obtains access to any information required to be furnished by this chapter shall disclose any such information in any manner which would permit identification of any party in any greater detail than authorized for public distribution by the State Registrar under Section 10362.

SEC. 27. Section 10362 of the Health and Safety Code is amended to read:

10362. In addition to the general requirements of this division, the State Registrar shall conduct and cooperate in conducting such research and study and prepare and publish such reports and information as are necessary to appropriately report the facts which are required to be furnished under authority of this chapter relative to the subject of proceedings for dissolution of marriage, judgment of nullity, or legal separation.

SEC. 28. Section 10363 of the Health and Safety Code is amended to read:

10363. It shall be the duty of the petitioner in any such proceeding to furnish the required information in the prescribed manner to the county clerk at the time of filing his petition, or within 10 days thereafter and before the date of the first hearing.

SEC. 29. Section 10364 of the Health and Safety Code is amended to read:

10364. The preliminary report shall contain insofar as can be determined and ascertained the following information:

(a) Type of petition, county in which the proceeding is filed, case number and date filed.

(b) For husband and wife—full name (maiden name of wife), date of birth, present address, length of stay in California, birthplace, occupation, highest school grade completed, color or race, religious denomination, number of previous marriages and how dissolved.

(c) Place and date of marriage.

(d) Names, birthplaces and dates of birth of living children (born or adopted) of this marriage.

(e) Place and date of separation.

(f) Certification of above facts by petitioner.

(g) Name and address of attorney for petitioner.

(h) Certification of the county clerk.

SEC. 30. Section 10365 of the Health and Safety Code is repealed.

SEC. 31. Section 10366 of the Health and Safety Code is amended to read:

10366. The record of the clerk of the court and the certificate of registry of the judgment decreeing the dissolution of the marriage or legal separation of the parties, or the decree of declaration of nullity, or dismissal shall include, in addition to information specified in Section 10364, the type of judgment or decree, the date it was entered, and the date of entry of the interlocutory decree, if any.

SEC. 32. Section 10368 of the Health and Safety Code is amended to read:

10368. The county clerk shall transmit to the State Registrar on or before the fifth day of each month the preliminary reports of petitions for dissolution of marriage or legal separation, and petitions for declaration of void or voidable marriage, accepted for filing by him during the previous month.

SEC. 33. Section 10369 of the Health and Safety Code is amended to read:

10369. The county clerk shall transmit to the State Registrar on or before the fifth day of each month the certificates of registry of judgments decreeing dissolution of marriage or legal separation, judgments of nullity, and judgments of dismissal in all such proceedings entered by him the previous month.

SEC. 34. Section 10370 of the Health and Safety Code is repealed.

SEC. 35. Section 10371 of the Health and Safety Code is amended to read:

10371. Where a final decree of dissolution of marriage or a judgment of nullity is vacated, the county clerk shall complete a report to this effect to the State Registrar, who shall file such report with the final decree dissolving the marriage or the decree of nullity or void marriage.

SEC. 36. Section 740.1 of the Welfare and Institutions Code is repealed.

SEC. 37. This act shall become operative on January 1, 1970, and shall apply to all actions and proceedings filed prior thereto with respect to issues on which an interlocutory judgment has not been entered or denied in the action, or, if the action is not one in which an interlocutory judgment may be entered, with respect to issues on which a judgment has not been entered, to all proceedings for modification of a judgment or order, and to all actions and proceedings filed on or after January 1, 1970. In any action or proceeding in which an interlocutory judgment or any other judgment has been entered or a new trial has been granted prior to the operative date of this act, the law in effect at the time of entry of such judgment or order granting a new trial shall govern any subsequent trial or appeal. Pending actions for dissolution of marriage or legal separation based on grounds other than incurable insanity shall be deemed to be on the ground of irreconcilable differences and the evidence adduced after the operative date of this act shall be in compliance with this act.

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#### CHAPTER 1609

*An act to amend Sections 172, 172a, and 182 of, to amend Sections 4425, 4450, 4454, 4500, 4502, 4503, 4505, 4509, 4511, 4514, 4517, 4519, 4526, 4602, 4701, 5102, 5125, 5127, and*

## CHAPTER 130

**DIVORCE — SEPARATE MAINTENANCE — ANNULMENTS**UNIFORM DISSOLUTION OF  
MARRIAGE ACT

House Bill No. 1299. By Representatives Dittmore, Strahle, Bain, Carroll, Cole, Davidson, DeMoulin, Fentress, Friedman, Gustafson, Miller, Moore, Pepper, Rose, Safran, Schmidt, Byerly, Edmonds, Hamilton, Johnson, Kirscht, Kopel, Lamm, and Lindley; also Senators Shoemaker, Birmingham, H. Fowler, Plock, Stockton, Vollack, and Williams.

**A N A C T**CONCERNING DOMESTIC RELATIONS, AND ENACTING THE  
“UNIFORM DISSOLUTION OF MARRIAGE ACT”.

*Be it enacted by the General Assembly of the State of Colorado:*

Section 1. Article 1 of chapter 46, Colorado Revised Statutes 1963, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

## ARTICLE 1

## UNIFORM DISSOLUTION OF MARRIAGE ACT

**46-1-1. Short title.** This article shall be known and may be cited as the “Uniform Dissolution of Marriage Act”.

**46-1-2. Purposes — rules of construction.** (1) This article shall be liberally construed and applied to promote its underlying purposes.

(2) (a) Its underlying purposes are:

(b) To promote the amicable settlement of disputes that have arisen between parties to a marriage;

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; and

(d) To make the law of legal dissolution of marriage more effective for dealing with the realities of matrimonial experience by making irrevocable breakdown of the marriage relationship the sole basis for its dissolution.

**46-1-3. Uniformity of application and construction.** (1) This article shall be so applied and construed as to effectuate its general purpose

to make uniform the law with respect to the subject of this article among those states which enact it.

(2) The term "irretrievable breakdown" shall be construed as being similar to other terms having a like import in the law of other jurisdictions adopting this or a similar law.

**46-1-4. Definition.** As used in this article, unless the context indicates otherwise, the term "decree" includes the term "judgment".

**46-1-5. Application of rules of civil procedure.** (1) The Colorado rules of civil procedure apply to all proceedings under this article, except as otherwise specifically provided in this article.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of ..... and ....." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of ....."

(3) The initial pleading in all proceedings under this article shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings and all pleadings in other matters under this article shall be denominated as provided in the Colorado rules of civil procedure.

**46-1-6. Dissolution of marriage — legal separation.** (1) (a) The district court shall enter a decree of dissolution of marriage when:

(b) The court finds that one of the parties has been a resident of this state, or is a member of the armed services who has been stationed in this state, for ninety days next preceding the commencement of the proceeding but in no event shall a decree enter prior to ninety days after service of process;

(c) The court finds that the marriage is irretrievably broken; and

(d) To the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child of the marriage who is entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

**46-1-7. Commencement — pleadings — abolition of existing defenses.**

(1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure.

(2) (a) The petition in a proceeding for dissolution of marriage or legal separation shall allege the marriage is irretrievably broken and shall set forth:

(b) The residence of each party and the length of residence in this state;

(c) The date and place of the marriage;

(d) The date on which the parties separated;

(e) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;

(f) Any arrangements as to the custody and support of the children and the maintenance of a spouse; and

(g) The relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Colorado rules of civil procedure and may file a response in accordance with the Colorado rules of civil procedure. Upon verified motion by the petitioner that after diligent search the address of the other party remains unknown, the court shall order service upon the other party by one publication of the relief sought in the petition in a newspaper of general circulation in the county in which the petition has been filed.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are hereby abolished.

(5) All issues raised by these proceedings shall be resolved by the court sitting without a jury.

**46-1-8. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage, legal separation, or a proceeding for disposition of property, maintenance, or support following dissolution of the marriage, either party may move for temporary maintenance or for temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) (a) As a part of a motion for temporary maintenance or support, or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction:

(b) Restraining any party from transferring, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

(c) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(d) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury would result to the moving party if no order were issued until the time for responding had elapsed.

(4) A response may be filed within twenty days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 46-1-14 and 46-1-15, the court may issue a temporary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

(6) (a) A temporary order or temporary injunction:

(b) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(c) May be revoked or modified prior to final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 46-1-22; and

(d) Terminates when the final decree is entered, unless continued by the court for good cause to a date certain, or when the petition for dissolution or legal separation is voluntarily dismissed.

**46-1-9. Enforcement of restraining orders.** Whenever there is exhibited to any duly authorized sheriff or police officer a certified copy of a restraining order issued by any district court as provided for in section 46-1-8 restraining and enjoining any person from threatening, beating, striking, assaulting any other person, or requiring the person to remove himself from certain premises and to refrain from loitering, entering, or remaining near the premises thereafter, or requiring the doing or refraining from doing of any other act stated therein, and the copy of the restraining order shows under signature of the person so serving that a copy of the order has been properly served upon the person named in the order and the person named commits an obvious violation of its terms, it shall be the duty of the sheriff or police officer to remove the violator from the premises or to arrest said violator and take him immediately before the court issuing the restraining order or if that court is not in session then to the nearest jail until the convening of its next session, to await further action for the violation.

**46-1-10. Irretrievably broken.** (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, there is a presumption of such fact, and unless controverted by evidence, the court shall, after hearing, make a finding that the marriage is irretrievably broken.

(2) (a) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall:

(b) Make a finding whether the marriage is irretrievably broken; or

(c) Continue the matter for further hearing not less than thirty nor more than sixty days later, or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.

**46-1-11. Declaration of invalidity.** (1) (a) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(b) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity, or because of the influence of alcohol, drugs, or other incapacitating substances;

(c) A party lacks the physical capacity to consummate the marriage by sexual intercourse and the other party did not at the time the marriage was solemnized know of the incapacity;

(d) A party was under the age as provided by law and did not have the consent of his parents or guardian or judicial approval as provided by law;

(e) One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage;

(f) One or both parties entered into the marriage under duress exercised by the other party, or a third party, whether or not such other party knew of such exercise of duress;

(g) One or both parties entered into the marriage as a jest or dare;

(h) (i) The marriage is prohibited by law, including the following:

(ii) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(iii) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or whole blood, or by adoption;

(iv) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

(v) A marriage which was void by the law of the place where such marriage was contracted.

(2) (a) A declaration of invalidity under subsection (1) of this section may be sought by any of the following persons, and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage, except as provided in subsection (3) of this section:

(b) For the reasons set forth in either subsections (1) (b), (e), (f), or (g) of this section, by either party to the marriage who was aggrieved by the condition or conditions, or by the legal representative of the party who lacked capacity to consent, no later than ninety days after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in subsection (1) (c) of this section, by either party no later than one year after the petitioner obtained knowledge of the described condition;

(d) For the reason set forth in subsection (1) (d) of this section, by the underaged party, his parent, or guardian, provided such decree shall be entered within twenty-four months of the date the marriage was entered into.

(3) A declaration of invalidity for the reason set forth in subsection (1) (h) of this section may be sought by either party, by the legal spouse in case of bigamous, polygamous, or incestuous marriages, by the appropriate state official, or by a child of either party at any time prior to the death of either party or prior to the final settlement





gard to marital misconduct, in such proportions as the court deems just after considering all relevant factors including:

(b) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(c) The value of the property set apart to each spouse; and

(d) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) (a) For purposes of this article only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(b) Property acquired by gift, bequest, devise, or descent;

(c) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(d) Property acquired by a spouse after a decree of legal separation;

(e) Property excluded by valid agreement of the parties; and

(f) The increase in value of property acquired prior to the marriage.

(3) All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

**46-1-14. Maintenance.** (1) (a) In a proceeding for dissolution of marriage, legal separation, or a proceeding for maintenance following dissolution of the marriage by a court, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(b) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(c) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) (a) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(b) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(c) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(d) The standard of living established during the marriage;

(e) The duration of the marriage;

(f) The age and the physical and emotional condition of the spouse seeking maintenance; and

(g) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

**46-1-15. Child support.** (1) (a) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(b) The financial resources of the child;

(c) The financial resources of the custodial parent;

(d) The standard of living the child would have enjoyed had the marriage not been dissolved;

(e) The physical and emotional condition of the child, and his educational needs; and

(f) The financial resources and needs of the noncustodial parent.

**46-1-16. Representation of child.** The court may upon the motion of either party or upon its own motion appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state.

**46-1-17. Payment of maintenance or support to court.** (1) Upon its own motion or upon motion of either party, the court may at any time order that maintenance or support payments be made to the clerk of the court, as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the court shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order.

(4) If a party fails to make required payment, and qualifies under section 43-1-12, C.R.S. 1963, or section 46-1-16, the clerk of the court shall send by registered or certified mail notice of the arrearage to the obligor. If payment of the sum due is not made to the clerk of the court within ten days after sending notice, the clerk may initiate contempt proceedings against the obligor or refer the matter to the attor-

ney representing the party or the attorney appointed under section 46-1-16 for further proceedings.

(5) The district attorney shall assist the court on behalf of a person entitled to receive maintenance or support in all proceedings initiated under this section to enforce compliance with the order.

(6) If the person obligated to pay support has left or is beyond the jurisdiction of the court, the district attorney may institute any other proceeding available under the laws of this state for the enforcement of duties of support and maintenance.

**46-1-18. Assignments.** The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section. This section shall not apply to trusts commonly referred to as "spendthrift trusts".

**46-1-19. Attorney's fees.** The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

**46-1-20. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

(2) No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage.

(3) (a) The clerk of the court shall give notice of the entry of a decree of dissolution:

(b) If the marriage is registered in this state, to the county clerk of the county where the marriage is registered and the county clerk shall enter the fact of dissolution in his records; or

(c) If the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) No decree that may enter shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support or maintenance of a spouse adjudicated to be mentally incompetent prior

to the decree, unless such spouse has sufficient property or means of support.

**46-1-21. Independence of provisions of decree or temporary order.** If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

**46-1-22. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in section 46-1-12 (6), the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

**46-1-23. Commencement of proceeding — jurisdiction.** (1) (a) A child custody proceeding is commenced in the district court, or as otherwise provided by law:

- (b) (i) By a parent;
- (ii) By filing a petition for dissolution or legal separation; or
- (iii) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or
- (c) By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of his parents.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

**46-1-24. Best interests of child.** (1) (a) The court shall determine custody in accordance with the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including:

- (b) The wishes of the child's parent or parents as to his custody;
- (c) The wishes of the child as to his custodian;
- (d) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

- (e) The child's adjustment to his home, school, and community; and
- (f) The mental and physical health of all individuals involved.

(2) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

**46-1-25. Temporary orders.** (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit, as provided in section 46-1-32. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

**46-1-26. Interviews.** (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and it shall be made part of the record in the case.

(2) The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel of record, parties, and other expert witnesses upon request, but shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by consent of the court. Counsel may call for cross-examination any professional personnel consulted by the court.

**46-1-27. Investigations and reports.** (1) In all custody proceedings, the court shall, upon motion of either party or upon the court's own motion, order the court probation department or any county or district welfare department to investigate and file a written report or reports concerning custodial arrangements for the child. Except as otherwise provided herein, such reports shall be considered confidential and shall not be available for public inspection unless by order of court. The cost of each investigation up to a maximum of fifty dollars may be assessed as part of the costs of the action or proceeding and upon receipt of such sum by the clerk of court it shall be transmitted to the department or agency performing the investigation.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen, unless the court finds that he lacks mental capacity to

consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. No party may waive his right of cross-examination prior to the hearing.

**46-1-28. Hearings.** (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court shall make an appropriate order sealing the record.

**46-1-29. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation by the parent would endanger the child's physical health or significantly impair his emotional development.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or significantly impair his emotional development.

**46-1-30. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county or district welfare department or the court's probation department to exercise continuing supervision

over the case to assure that the custodial or visitation terms of the decree are carried out.

**46-1-31. Modification.** (1) If a motion for modification has been filed, whether or not it was granted, no subsequent motion may be filed within two years after disposition of the prior motion, unless the court decides on the basis of affidavits, that there is reason to believe that the child's present environment may endanger his physical health or significantly impair his emotional development.

(2) (a) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior decree unless:

(b) The custodian agrees to the modification;

(c) The child has been integrated into the family of the petitioner with the consent of the custodian; or

(d) The child's present environment endangers his physical health or significantly impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

**46-1-32. Affidavit practice.** A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

**Section 2. Repeal.** Articles 2 and 3 of chapter 46, Colorado Revised Statutes 1963, as amended, are repealed.

**Section 3. Effective date — applicability.** This act shall take effect January 1, 1972, and shall apply only to actions affected by the act which are commenced on or after such date; all such actions commenced prior to said date shall be governed by the laws then in effect.

**Section 4. Saving clause.** Nothing in this act shall be construed to affect any right, duty, or liability arising under statutes in effect immediately prior to the effective date of this act, but the same shall be continued and concluded under such prior statutes. Nothing in this act shall revive or reinstate any right or liability previously barred by statute.

**Section 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 1971



## Substitute House Bill No. 8235

## PUBLIC ACT NO. 73-373

## AN ACT CONCERNING THE DISSOLUTION OF MARRIAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (a) A marriage shall be dissolved only by (1) the death of one of the parties thereto or (2) a decree of a court of competent jurisdiction annulling or decreeing a dissolution of the marriage.

(b) An annulment shall be granted whenever, from any cause, the marriage is void or voidable under the laws of this state or of the state in which such marriage was performed.

(c) A decree of dissolution of a marriage shall be granted upon a finding that the marriage has broken down irretrievably or that the parties have lived apart for a continuous period of at least the eighteen months immediately prior to the service of the complaint by reason of incompatibility and that there is no reasonable prospect that they will be reconciled or for any of the following causes: Adultery; fraudulent contract; wilful desertion for one year with total neglect of duty; seven years' absence, during all of which period the absent party has not been heard from; habitual intemperance; intolerable cruelty; sentence to imprisonment for life or the commission of any infamous crime involving a violation of conjugal duty and punishable by imprisonment for a period in excess of one year; legal confinement in a hospital or hospitals or other similar institution or institutions, because of mental illness, for at least an accumulated period totaling five years within the period of six years next preceding the date of the complaint in such action. In the case of an action claiming dissolution of a marriage on the ground of habitual intemperance, it shall be sufficient if the cause of action is proved to have existed until the time of the separation of the parties. In the case of an action claiming dissolution on the grounds of wilful desertion for one year, with total neglect of duty, the furnishing of financial support shall not, in the absence of other evidence, disprove total neglect of duty.

Sec. 2. (NEW) The superior court shall have exclusive jurisdiction of all complaints seeking a decree of annulment, dissolution of a marriage or legal separation.

Sec. 3. (NEW) No decree dissolving a marriage or granting a legal separation shall be entered unless at least one of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree or unless one of the parties was domiciled in this state at the time of the marriage and before filing the complaint returned to this state with the intention of permanently remaining, or unless the cause for the dissolution of the marriage arose subsequently to the removal of the plaintiff into this state; provided nothing herein shall be construed to prevent the filing of a complaint at any time after the plaintiff has established residence in this state or the granting of temporary relief pursuant to such complaint in accordance with sections 13 and 22 of this act. For the purposes of this section, any person who has served or is serving with the armed forces, as defined by section 27-103 of the 1969 supplement to the general statutes, or the merchant marine, and who was a resident of this state at the time of his entry shall be deemed to have continuously resided in this state during the time he has served or is serving with said armed forces or merchant marine.

Sec. 4. (NEW) A proceeding for annulment or dissolution of a marriage or for legal separation shall be commenced by the making of a complaint to the superior court for the county or judicial district wherein one of the parties resides, provided, in the case of a proceeding for annulment of a void marriage, such complaint may also be made by the attorney general. Such complaint shall be served on the other party. If any party is an inmate of a mental institution in this state, a copy of the complaint shall be served on the commissioner of finance and control personally or by registered or certified mail, and, if any such party is confined in an institution in any other state, a like copy shall be so served on the superintendent of the institution in which such party is confined.

Sec. 5. (NEW) Either or both of the following procedures are available to secure the financial interests of either spouse in connection with any complaint for the dissolution or annulment of a marriage or for legal separation: (1) At the time of the filing of any such complaint or at any time during its pendency

either spouse may apply in writing to the court having jurisdiction of such complaint, or, when said court is not sitting, to any judge thereof, for an order for the attachment of the estate of the other party; and the court or judge may, at its or his discretion, after notice to the other party and hearing, issue such an order, directed to a proper officer, stating the amount to be attached and the time of return, which shall not be later than during the next term or session of said court; which order shall be served and returned in the same manner as an original writ of attachment in a civil action and, when returned, shall become a part of the files and record concerning the complaint. The estate attached under such order shall be held to respond to the final decree in the same manner as an attachment in a civil action; (2) at the time of the filing of such a complaint either spouse may cause a notice of the pendency of the complaint to be recorded in the office of the town clerk of each town in which is located real property in which the other spouse has an interest. The notice shall contain the names of the spouses, the nature of the complaint, the court having jurisdiction thereof, the date of the complaint and a description of the real property. Such notice shall, from the time of the recording only, be notice to any person thereafter acquiring any interest in such property of the pendency of the complaint; and each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter obtained by descent, or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the recording of such notice, to the same extent as if he were made a party to the complaint.

Sec. 6. (NEW) After the filing of a complaint seeking the dissolution of a marriage or a legal separation and prior to the expiration of the ninety-day period specified in section 7 of this act, either spouse or the counsel for any minor children of the marriage may submit a request for conciliation to the clerk of the court who shall forthwith enter an order that the parties meet with a conciliator mutually acceptable to them or, if the parties cannot agree as to a conciliator, with a conciliator named by the court. Such conciliator shall, in any case,

be a clergyman, a physician or a person experienced in marriage counseling. Within such ninety-day period or within thirty days of such request, whichever is later, there shall be two mandatory consultations with the conciliator to explore the possibility of reconciliation or of resolving the emotional problems which might lead to continuing conflicts following the dissolution of the marriage. Failure of the plaintiff or defendant to attend such consultations except for good cause shall preclude further action on the complaint until the expiration of six months from the date the complaint was filed. Further consultations may be held with the consent of both parties. All communications during such consultations shall be absolutely privileged, except that the conciliator shall report to the court whether or not the parties had attended the consultations. The reasonable fees of the conciliator shall be paid by one or both of the parties as the court shall direct.

Sec. 7. (NEW) (a) Following the expiration of ninety days after the day on which a complaint for dissolution or legal separation is made returnable or after the expiration of six months where proceedings have been stayed under section 6 of this act, the court may proceed on the complaint or whenever dissolution is claimed under cross complaint, amended complaint or amended cross complaint, such case may be heard and a decree granted thereon after the expiration of such ninety days and twenty days after such cross complaint, amended complaint or amended cross complaint has been filed with said court, provided the requirement of such twenty-day delay shall not apply (1) whenever opposing counsel, having appeared, consents to such cross complaint, amended complaint or amended cross complaint or (2) where the defendant has not appeared and the amendment does not set forth either a cause of action or a claim for relief not in the original complaint. Nothing herein shall prevent any interlocutory proceedings within such ninety-day period. (b) A decree of annulment or dissolution shall give the parties the status of unmarried persons and they may marry again. A decree of legal separation shall have the effect of a decree dissolving the marriage except that neither party shall be free to marry a third person. Neither the ninety-day period specified in this section nor the six-month period referred to in section 6

of this act shall apply in actions for annulment and the court may proceed on any cause of action for annulment in the manner generally applicable in civil actions.

Sec. 8. (NEW) (a) In any action for dissolution of marriage or legal separation where the parties stipulate that their marriage has broken down irretrievably and have submitted a written agreement concerning the custody, care, education, visitation, maintenance or support of their children, if any, and concerning alimony and the disposition of property, the testimony of either party in support of that conclusion, uncorroborated by other evidence, shall be sufficient to permit the court to make a finding that such marriage breakdown has occurred. (b) In any case in which the court finds, after hearing, that the marriage has broken down irretrievably or that the parties have lived apart for a continuous period of at least the eighteen months immediately prior to the service of the complaint by reason of incompatibility and that there is no reasonable prospect that they will be reconciled or that a cause enumerated in section 1(c) of this act exists, the court shall enter a decree dissolving the marriage, and the court, in entering such decree, may either set forth the cause of action on which such decree is based or dissolve the marriage on the basis of irretrievable breakdown. In no case shall the decree be granted to either party. (c) The defenses of recrimination and condonation to any action for dissolution of marriage or legal separation are abolished.

Sec. 9. Section 46-17 of the general statutes is repealed and the following is substituted in lieu thereof: On a complaint for [divorce] DISSOLUTION OR ANNULMENT OF A MARRIAGE OR FOR LEGAL SEPARATION, when the adverse party resides out of or is absent from the state or the whereabouts of the adverse party is unknown to the plaintiff, any judge or clerk of the supreme court or of the superior court may make such order of notice as he deems reasonable. Such notice having been given and proved to the court, such court may hear such complaint if it finds that the defendant has actually received notice that the complaint is pending, and, if it does not appear that the defendant has had such notice, the court may hear such case, or, if it sees cause, order such further notice to be given as it deems reasonable

and continue the complaint until the order is complied with.

Sec. 10. Section 46-18 to the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: When any married person has been convicted in any court of an offense against chastity, which offense would be ground for [a divorce or for an] DISSOLUTION OR annulment of the marriage, any person aggrieved may petition the superior court within four months of such conviction, and upon notice to the person so convicted, the court may grant a [divorce] DISSOLUTION OR annulment of the marriage or such other relief as said court may determine. No provision of this section shall be construed so as to affect the right of any aggrieved person to apply to the civil side of said court for similar relief.

Sec. 11. Section 46-19 of the general statutes is repealed and the following is substituted in lieu thereof: A copy of the writ and complaint in an action for [divorce] DISSOLUTION OF A MARRIAGE on the ground of mental illness shall be served on the defendant and on the conservator, if any, of such defendant, and a like copy shall also be served on the welfare commissioner at Hartford, provided service on such conservator, if resident outside the state, and on said commissioner may be made by registered or certified mail, and, if the defendant is confined in any other state, a like copy shall be served upon the superintendent of the institution in which the defendant is confined; and, if such conservator does not appear in court, or if the defendant has no conservator, the court shall appoint a guardian ad litem for such defendant. The court shall, on motion of either party, appoint two or more psychiatrists who are diplomates of the American Board of Psychiatry and Neurology and who are not on the staff of any state hospital for mental illness, who shall investigate the mental status of such person. Such psychiatrists, within a reasonable time thereafter, shall report to the court the facts found by them, with their opinion as to the probability of further indefinite prolonged hospitalization for the mental illness. The testimony of no psychiatrists other than those appointed by the court shall be received upon the trial of such action. The fees and expenses of

such psychiatrists and of such guardian ad litem shall be fixed by the court and shall be paid by the plaintiff.

Sec. 12. (NEW) (a) The parties to a decree of legal separation may at any time resume marital relations upon filing with the clerk of the superior court for the county or judicial district in which the separation was decreed their written declaration of such resumption, signed, acknowledged and witnessed. Such declaration shall be entered upon the docket, under the entries relating to the complaint, and shall vacate such decree and the complaint shall be deemed dismissed. (b) At any time after entry of a decree of legal separation, if no declaration has been filed under subsection (a) of this section, either party may petition the superior court for the county or judicial district wherein such decree was entered for a decree dissolving the marriage and the court shall enter such decree in the presence of the party seeking the dissolution.

Sec. 13. (NEW) The court, when it considers it necessary in the interests of justice and the persons involved, shall, upon the motion of either party or of counsel for any minor children, direct the hearing of any matter under this act to be private and may exclude all persons except the officers of the court, a court reporter and the parties, their witnesses and their counsel.

Sec. 14. (NEW) At the time of entering a decree dissolving a marriage, the court, in its discretion, may restore the maiden name of the wife or the name under which she was married.

Sec. 15. (NEW) On the filing of any complaint under section 4 of this act and in any controversy before the superior court between a husband and wife or former husband and wife as to the custody or care of their minor children, the court may at any time make or modify any proper order relative to custody, care, education, visitation and support of such children and may assign the custody of any of such children to either parent, or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. In making or modifying any order with respect to custody or visitation, the court shall be guided by the best interests of the child, taking into consideration the causes for dissolution of the marriage or separation and

giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference. In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide such support, the court shall take into consideration all the factors enumerated in section 26 of this act. When said court is not sitting, any judge thereof may, prior to any action in the premises by the court, make any such order in the cause, including orders of injunction.

Sec. 16. (NEW) At any time after the filing of a complaint under section 4 of this act, if there is a minor child or minor children of the parties, or either of them, the court may, on its own motion, or at the request of either of the parties or of the legal guardian of any such child or at the request of any such child who is of sufficient age and capable of making an intelligent request, appoint counsel for such child or children and shall appoint such counsel in any case where an agreement has been submitted with respect to such child or children as provided in subsection (a) of section 8 of this act or section 18 of this act. Such counsel may also be appointed on the motion of the court or on the request of any such person in any case before said court when the court finds that the custody, care, education, visitation or support of a minor child or children is in actual controversy, provided the court shall not be precluded from making any order relative to a matter in controversy prior to the appointment of counsel where it finds immediate action necessary in the best interests of any such child. Any such counsel shall be heard upon all matters pertaining to the custody, care, support, education and visitation of the child or children so long as the court deems such representation to be in the best interests of the child or children.

Sec. 17. (NEW) On any complaint under this act if there is a minor child or minor children of the parties, or either of them, and in any controversy before the superior court between parents as to the custody of their minor children, the court may allow any interested third party or parties to intervene upon motion and may award full or partial custody, care, education and visitation rights of any of such children to any such third party upon such conditions and limitations as it deems equitable. Before



allowing any such intervention, the court shall appoint counsel for the child or children pursuant to the provisions of section 16 of this act. In making any order hereunder the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference.

Sec. 18. Section 1 of number 164 of the public acts of 1972 is repealed and the following is substituted in lieu thereof: In any case under chapter 810 of the general statutes, AS AMENDED BY THIS ACT, where the parties have submitted to the court a written agreement concerning the custody, care, education, visitation, maintenance or support of any of their children or concerning alimony or the disposition of property, said court shall inquire into the financial resources and actual needs of the spouses and their respective fitness to have physical custody of or rights of visitation with any minor child in order to determine whether such agreement of the spouses is fair and equitable under all the circumstances. If the court finds such agreement fair and equitable, it shall become part of the court file and shall be incorporated by reference in the order or decree of the court. If the court finds such agreement is not fair and equitable, it shall make such orders as to finances and custody as the circumstances require. [Any final order, whether or not founded upon a written agreement, concerning custody, visitation, education or periodic payments of alimony or child support, may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a material change in the circumstances of either party or of their children.]

Sec. 19. (NEW) In any case in which any husband and wife having minor children live separately, the superior court for the county or judicial district where the parties or one of them resides may, on the complaint of either party and after notice given to the other, make any order as to the custody, care, education, visitation and support of any minor child of the parties, subject to the provisions of sections 15 to 18, inclusive, of this act.

Sec. 20. (NEW) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 4 of this act, the superior court may

assign to either the husband or wife all or any part of the estate of the other. In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 8 of this act, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.

Sec. 21. (NEW) The superior court, in addition to or in lieu of an award pursuant to section 20 of this act, may, at the time of entering the decree, order either of the parties to pay alimony to the other, which order may direct that security be given therefor on such terms as the court may deem desirable. In determining whether alimony shall be awarded, and the duration and amount of the award, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 8 of this act, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 20 of this act and, in the case of a parent to whom the custody of minor children has been awarded, the desirability of such parent securing employment.

Sec. 22. (NEW) At any time after the filing of a complaint under section 4 of this act and after hearing, alimony and support pendente lite may be awarded to either of the parties from the date of the filing of an application therefor with the superior court and full credit shall be given for all sums paid to one party by the other from the date of the filing of such an application to the date of rendition of such order. In making an order for alimony or support pendente lite the court shall consider all factors enumerated in section 21 of this act except the grounds for the

complaint or cross complaint, to be considered with respect to a permanent award of alimony or support. The court may also award exclusive use of the family home pendente lite to either of the parties without regard to the respective interests of the parties in the premises.

Sec. 23. (NEW) Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support or alimony or support pendente lite may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a substantial change in the circumstances of either party. This section shall not apply to assignments under section 20 of this act or to any assignment of the estate or a portion thereof of one party to the other party under prior law.

Sec. 24. (NEW) In connection with any petition for annulment under this act, the superior court may make such order in relation to any child of the marriage and concerning alimony as it might make in an action for dissolution of marriage and the issue of any void or voidable marriage shall be deemed legitimate.

Sec. 25. (NEW) When any person is found in contempt of an order of the superior court entered under section 19, 20, 21, 22, 23, 24 or 27 of this act, said court may award to the petitioner the fees of the officer serving the contempt citation, such sum to be paid by the person so found in contempt. The costs of commitment of any person imprisoned for contempt of court by reason of failure to comply with such an order shall be paid by the state as in criminal cases.

Sec. 26. (NEW) Upon the annulment or dissolution of any marriage or the entry of a decree of legal separation, the parents of a minor child of the marriage, which child is in need of maintenance, shall maintain such child according to their respective abilities. In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child. Upon complaint or motion with order

and summons made to the superior court in any such case by either parent or by the commissioner of finance and control subsequent to the granting of a decree annulling or dissolving the marriage or ordering a legal separation, the court shall inquire into the child's need of maintenance and the respective abilities of the parents to supply such maintenance and make and enforce such decree for the maintenance of such child as it considers just, and may direct security to be given therefor.

Sec. 27. (NEW) In any proceeding seeking relief under the provisions of this act, the court may order either spouse to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 21 of this act. If, in any proceeding under this act, the court appoints an attorney for a minor child, the court may order the father or mother, or both, of such child to pay the reasonable fees of such attorney or may order the payment of such attorney's fees in whole or in part from the estate of such child, provided, if any such child is receiving or has received state aid or care, the reasonable fees of such attorney, as determined by the court, not exceeding one hundred dollars, and any costs incurred which have been approved by said court may be paid out of the appropriation of the judicial department.

Sec. 28. (NEW) (a) The clerks of the superior court shall, on or before the fifteenth day of each month, file a report with the state department of health of each dissolution of marriage granted and each marriage annulled in the month preceding in their respective courts. Such reports shall be on forms supplied by said department and shall state the names of the parties to the marriage, the date of granting of the dissolution or annulment and such additional information as said department may require. The state department of health shall give due consideration to national uniformity in vital statistics in prescribing the form and content of such report. (b) Before a final decree of dissolution or annulment of marriage is entered, the parties concerned or their attorneys shall supply such clerk with such information as is necessary to complete such report.

Sec. 29. Section 46-5h of the 1969 supplement to the general statutes is repealed and

the following is substituted in lieu thereof: If either applicant has been previously married and the last previous marriage of such applicant was terminated by divorce OR DISSOLUTION, no marriage license shall be issued unless such applicant presents to such registrar a certified copy of the decree of such divorce OR DISSOLUTION or a certificate, signed by the clerk of the court that issued the decree, that a divorce OR DISSOLUTION has been granted; except that, if such applicant has been divorced OR HIS MARRIAGE HAS BEEN DISSOLVED in any foreign country and HE certifies in writing before such registrar that a copy of the decree of such divorce OR DISSOLUTION cannot reasonably be obtained, such registrar may, in his discretion, waive the provisions of this section. The presentation of any such certified copy of such decree or the filing of any such certification shall be sufficient to satisfy the requirements of this section, and the registrar shall not be required to determine the validity or effect of such decree.

Sec. 30. Section 46-20 of the general statutes is repealed and the following is substituted in lieu thereof: The court may, [when a divorce is granted on the ground of mental illness,] at the time of granting [such divorce] DISSOLUTION OF A MARRIAGE ONE PARTY TO WHICH IS MENTALLY ILL or at any time thereafter, on application of either party or of the guardian or conservator of the mentally ill spouse, or of any person, town or other municipality charged with the support of the mentally ill spouse, or the [welfare] commissioner OF FINANCE AND CONTROL if the state is so charged, make such order requiring support of the [defendant] MENTALLY ILL SPOUSE, or security for such support, as may be proper, [but no order shall be made providing for continued support of a sane wife from the estate of a mentally ill husband, after the remarriage of such wife,] and any SUCH order [relating to the support of such defendant], at any time thereafter, on application of either party or of the guardian of the mentally ill spouse, or of any person, town or other municipality charged with such support, or the [welfare] commissioner OF FINANCE AND CONTROL if the state is so charged, may be set aside or altered by said court. Any order providing for the support of the mentally ill party shall be enforceable in the same manner as orders relating to alimony.

Sec. 31. Section 46-26a of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: The authority of the superior court to make and enforce orders and decrees as to the custody, maintenance and education of minor children in any controversy before said court between husband and wife brought under the provisions of [this chapter] SECTIONS 1 TO 30, INCLUSIVE, OF THIS ACT is extended to children adopted by both parties and any natural child of one of the parties who has been adopted by the other.

Sec. 32. Section 47-14g of said supplement is repealed and the following is substituted in lieu thereof: Whenever a husband and wife are joint tenants in the same real estate, either together or in conjunction with others, a divorce OR DISSOLUTION OF THE MARRIAGE of such husband and wife shall, unless the divorce decree OR DECREE OF DISSOLUTION otherwise provides, be a severance of their interests and convert them into a tenancy in common as to each other but not as to any remaining joint tenant or joint tenants. Such severance shall not become effective as to any other persons until a certified copy of the decree or abstract thereof, indicating the effective date of such divorce OR DISSOLUTION, has been recorded in the land records of the town where such real estate is located.

Sec. 33. Section 17-323a of the general statutes is repealed and the following is substituted in lieu thereof: Any court having jurisdiction to make an order for support of any person by a legally liable relative or putative father shall have authority to direct payment in accordance with such order to the commissioner of finance and control or to the welfare department of any political subdivision of the state for such period as such person shall receive welfare assistance from the state or such subdivision; and such court, upon its findings of any arrearage due under any support order, shall have authority to determine that portion of such arrearage the failure to pay which resulted in grants of welfare assistance, and to order payment of such portion to the commissioner of finance and control or the local welfare department which granted such assistance in reimbursement therefor, as the case may be. The provisions of this section shall apply to orders made under the provisions of

sections 20 TO 26, INCLUSIVE, AND 30 OF THIS ACT [46-20, 46-21, 46-26] and [53-308] ~~53-304~~.

Sec. 34. Section 17-323b of the general statutes, as amended by section 21 of number 294 of the public acts of 1972, is repealed and the following is substituted in lieu thereof: Any order payable to the commissioner of finance and control for support of any beneficiary of public assistance issued under the provisions of section 26 OF THIS ACT [46-21, 46-26] or 53-304 or chapter 911 shall, on filing by the state welfare commissioner with the court making such order of a certificate of discontinuance of such assistance and on notice to the payor by registered or certified mail, a copy of which notice shall be sent to the commissioner of finance and control, be payable directly to such beneficiary, beginning with the effective date of discontinuance.

Sec. 35. Section 17-351 of the general statutes is repealed and the following is substituted in lieu thereof: Any order of support issued by a court of this state when acting as a responding state shall not supersede any previous order of support issued in a divorce, DISSOLUTION OF MARRIAGE or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

Sec. 36. Section 51-182c of the general statutes is repealed and the following is substituted in lieu thereof: Said family relations sessions shall hear and determine all matters within the jurisdiction of the superior court affecting or involving: (1) [Divorce] DISSOLUTION OF MARRIAGE, contested and uncontested, except [divorce] DISSOLUTION upon conviction of crime as provided in section [46-18] 11 OF THIS ACT; (2) legal separation; (3) annulment of marriage; (4) matters of alimony, support, custody and change of name incident to [divorce] DISSOLUTION OF MARRIAGE, legal separation and annulment; (5) complaints for change of name; (6) civil actions for support; (7) habeas corpus to determine the custody of children; (8) habeas corpus brought by or in behalf of any mentally ill person except a person charged with a criminal offense; (9) appointment of a commission to inquire whether a person is wrongfully confined as provided by section 17-200; (10) appeals from probate concerning: (a)

Adoption; (b) appointment and removal of guardians; (c) custody of a minor child; (d) appointment and removal of conservators; (e) orders for custody of any blind child; and (f) commitment of dipsomaniacs, inebriates, epileptics, mentally retarded persons, mentally ill persons, narcotic addicts and tuberculous persons; (11) all appeals from any judgment or order of the juvenile court; and (12) such other matters within the jurisdiction of the superior court concerning children or family relations as may be determined by the judges of said court.

Sec. 37. Section 51-182j of the general statutes is repealed and the following is substituted in lieu thereof: In any matter pending in a family relations session the court or any judge may cause an investigation to be made with respect to any circumstance of the matter which may be helpful or material or relevant to a proper disposition of the case. Such investigation may include an examination of the parentage and surroundings of any child, his age, habits and history, inquiry into the home conditions, habits and character of his parents or guardians and evaluation of his mental or physical condition. In any action for [divorce] DISSOLUTION OF MARRIAGE, legal separation or annulment of marriage such investigation may include an examination into the age, habits and history of the parties, the causes of marital discord and the financial ability of the parties to furnish support to either spouse or any dependent child.

Sec. 38. Section 52-362 of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Whenever an order of the superior court or of any other court of competent jurisdiction is in effect calling for the weekly support of a wife OR HUSBAND or a minor child or children, or [both] ANY OF THEM, and the person against whom such order was issued fails to obey such order, the person to whom such weekly support is payable may apply to the court issuing such order or to any judge thereof for relief, and such court or judge shall issue, after notice to the person against whom such order of support was issued, an order directing that execution issue against such amount of any debt accruing by reason of personal services due and owing to such person as exceeds twenty-five dollars per week, or against such



lesser amount of such excess as said court deems equitable, for payment of accrued and unpaid amounts due under such order and all amounts which thereafter become due under such order. On presentation of such execution by the officer to whom delivered for collection to the person or persons or corporation from whom such debt accruing by reason of personal services is due and owing, or thereafter becomes due and owing, to the person against whom such support order was issued, such execution shall become a lien and a continuing levy upon such debt to the amount specified therein, until such execution and expenses are fully satisfied and paid, or until such order of support is modified. Any execution issued in favor of the commissioner of finance and control, whether in [divorce] DISSOLUTION OF MARRIAGE, paternity or any support proceeding, shall be served by a proper officer, but the amounts accumulated thereunder by the debtor shall be paid by such debtor directly to said commissioner at intervals of three months. Such execution shall take precedence over any execution under the provisions of section 52-361. Two or more executions may be levied concurrently under the provisions of this section, provided the total levy shall not exceed the maximum permitted hereunder. The provisions of this section shall be in addition to and not in lieu of any other remedy available at law to enforce or punish for failure to obey such support order.

Sec. 39. Section 54-27 of the general statutes is repealed and the following is substituted in lieu thereof: Notwithstanding the issuance of an order for support of a minor child or children by the superior court under the provisions of section [46-26] 26 OF THIS ACT, the circuit court shall have criminal jurisdiction of any prosecution for nonsupport of a minor child or children as specified in section 53-304, and shall proceed on proper complaint from the payee of such order, a family relations officer or an authorized representative of the commissioner of finance and control; provided, in any case where such order has been issued, such order shall be the measure of failure to support.

Sec. 40. Section 3 of number 164 of the public acts of 1972 is repealed and the following is substituted in lieu thereof: In any action under chapter 810 of the general statutes, AS AMENDED BY THIS ACT, where the [divorce] COMPLAINT

FOR DISSOLUTION or separation is uncontested, the judge in his sole discretion shall decide the number of witnesses required, if any, in addition to the plaintiff or defendant on a cross complaint.

Sec. 41. Section 46-15a of the 1971 noncumulative supplement to the general statutes is repealed and the following is substituted in lieu thereof: Any married minor may, in his own name, prosecute or defend to final judgment an action for [divorce or] ANNULMENT OR DISSOLUTION OF A MARRIAGE OR FOR legal separation AND PARTICIPATE IN ALL JUDICIAL PROCEEDINGS WITH RESPECT THERETO.

Sec. 42. Section 46-26b of said supplement is repealed and the following is substituted in lieu thereof: (a) The attorney general shall be and remain a party to any action for [divorce] DISSOLUTION OF MARRIAGE, legal separation or annulment, and to any proceedings after judgment in such action, if any party thereto, or any child of any such party, is receiving or has received aid or care from the state.

(b) [If at any time during the pendency of any action for divorce, legal separation or annulment, it appears that the rights of any child born since the date of the marriage are not being adequately protected by either the plaintiff or defendant, the court may appoint an attorney to represent the interest of such child and may make such order with respect to the payment of the reasonable fees of such attorney by either or both parties thereto, or from the estate of such child, as it deems equitable, provided, if any such child is receiving or has received state aid or care, the reasonable fees of such attorney, as determined by the court, not exceeding one hundred dollars, and any costs incurred which have been approved by said court may be paid out of the appropriation of the judicial department.

(c) If such child is determined not to be issue of the marriage which is the subject of the action, such attorney may be authorized to take further appeal, or institute further action to establish the paternity of such child.

(d) ] If any child born to a woman during marriage is found not to be issue of such marriage terminated by a divorce decree OR DECREE OF DISSOLUTION OF MARRIAGE, such child or his representative may bring an action in the circuit court to establish the paternity of such child

within one year after the date of the judgment of divorce OR DECREE OF DISSOLUTION OF THE MARRIAGE of his natural mother, notwithstanding the provisions of section 52-435a.

Sec. 43. (NEW) Sections 46-14, 46-21, 46-24, 46-25, 46-27, 46-29 and 46-30 of the general statutes, sections 46-15, 46-16, 46-26, 46-28 and 46-31 of the 1969 supplement thereto, sections 46-13, 46-22a and 46-23 of the 1971 noncumulative supplement thereto and section 2 of number 164 of the public acts of 1972, are repealed.

Sec. 44. Section 3 of number 164 of the public acts of 1972 is repealed and the following is substituted in lieu thereof: In any action under chapter 810 of the general statutes, AS AMENDED BY THIS ACT, where the [divorce] DISSOLUTION OF MARRIAGE or separation is uncontested, the judge in his sole discretion shall, EXCEPT AS PROVIDED IN SUBSECTION (a) OF SECTION 8 OF THIS ACT, decide the number of witnesses required, if any, in addition to the plaintiff or defendant on a cross complaint.

Sec. 45. Section 45-162 of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: If, after the making of a will, the testator marries or is divorced OR HIS MARRIAGE IS DISSOLVED or a child is born to the testator or a minor child is legally adopted by him, and no provision has been made in such will for such contingency, such marriage, divorce, DISSOLUTION, birth or adoption of a minor child shall operate as a revocation of such will. No will or codicil shall be revoked in any other manner except by burning, canceling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later will or codicil. The revocation of such will by divorce OR DISSOLUTION OF MARRIAGE shall be effective only as to wills executed on and after October 1, 1967.

Sec. 46. (NEW) This act shall apply to all actions for dissolution of marriage, annulment and legal separation filed after the effective date hereof, to all actions for divorce, annulment and legal separation commenced prior to said date in which no decree of the superior court has been rendered and to appeals from, and motions for modification of, any alimony, support or custody order entered pursuant to a decree of divorce, legal separation or annulment rendered prior to said date. Sections 46-13 to 46-30, inclusive, of

the general statutes, as amended prior to the effective date of this act, shall continue to apply to any action for divorce, annulment or legal separation in which a decree of the superior court has been rendered and in which an appeal is pending or in which the time for taking an appeal has not expired, on the effective date of this act except any appeal from any order of alimony, support or custody.

Approved May 29, 1973

**PUBLIC AND SPECIAL ACTS**

OF THE

**STATE OF CONNECTICUT**



**PART 1 - PUBLIC ACTS**

**PART 2 - SPECIAL ACTS**

(VOLUME XXXVII)

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**SEPTEMBER SPECIAL SESSION, 1972**

**JANUARY SESSION, 1973**

**VOLUME I**

**P.A. 73-1 — P.A. 73-370**

## PREFACE

Part 1 of this publication contains the Public Acts of the September, 1972, special session and the January, 1973, regular session of the General Assembly, in the form of engrossed bills. It also contains the text of a resolution ratifying a proposed amendment to the Constitution of the United States relating to equal rights for men and women, and the text of three proposed amendments to the Connecticut Constitution. The proposed amendment concerning "Elimination of the Straight Ticket Device from Voting Machines" is continued to the next session of the General Assembly elected at the general election to be held on November 5, 1974, while the two amendments concerning the "Elimination of the Requirement that Justices of the Peace be Elected" and the "Forfeiture of the Right to be made an Elector" will be presented to the electors at said general election, pursuant to Article Twelfth of the Constitution.

Whenever an act amends a statute, the matter to be omitted or repealed has been enclosed in brackets and new matter indicated by capital letters or underscoring. (1971,P.A.175)

Except where another date is specified, Public Acts take effect on the first day of October in the year of their passage. (General Statutes, Sec. 2-32). An act specified to be effective from passage is effective on the date the act is approved by the Governor. Such approval dates are appended to each act.

Sections 1 and 2 of Public Act No. 1 (See note appended to this act) and Public Act No. 3 of the September, 1972, special session were vetoed by the Governor. Of the Public Acts enacted during the 1973 regular session the following were vetoed by the Governor: Public Acts 73-383, 73-402, 73-424, 73-653, 73-664 and 73-682. Public Act 73-402 was repassed by the General Assembly on July 16, 1973.

Although "Public Act" 73-499 is printed in this publication it is void and of no effect since it was never approved by the Senate. (See Senate Journal for May 15, 1973, page 1813). This fact was only realized after substitute Senate Bill No. 2173 had been given a public act number and signed by the Governor.

It will be observed that a new numbering system for both Public and Special Acts has been adopted whereby the year of enactment is included as a prefix to the act number. Acts should therefore be cited using this prefix, thus: "P.A. 73-1".

Users of this publication will see from the Table of Contents, which indicates the layout of Part 1 and Part 2, that the reference tables now appear before the Public Acts rather than at the end, as was the practice in prior years.

Part 2 of this publication includes a Special Act from the September, 1972, special session and the Special Acts from the January, 1973, regular session of the General Assembly, together with appendices containing Appropriations and grants from the treasury and executive appointments. Part 2 also contains its own index.

District of Columbia Official Code  
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\*\*\* Current through laws in effect as of February 25, 2015 and through D.C. Act 20-422. \*\*\*

Division II. Judiciary and Judicial Procedure.  
Title 16. Particular Actions, Proceedings and Matters.  
Chapter 9. Divorce, Annulment, Separation, Support, Etc.

D.C. Code § 16-904 (2015)

§ 16-904. Grounds for divorce, legal separation, and annulment.

(a) A divorce from the bonds of marriage may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation for a period of six months next preceding the commencement of the action;

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(b) A legal separation from bed and board may be granted if:

(1) both parties to the marriage have mutually and voluntarily lived separate and apart without cohabitation; or

(2) both parties to the marriage have lived separate and apart without cohabitation for a period of one year next preceding the commencement of the action.

(3) Repealed.

(4) Repealed.

(c) For purposes of subsections (1) and (2) of paragraphs (a) and (b) of this section, parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though:

(1) they reside under the same roof; or

(2) the separation is pursuant to an order of a court.

(d) Marriage contracts may be annulled in the following cases:

(1) where such marriage was contracted while either of the parties thereto had a former spouse living, unless the former marriage had been lawfully dissolved;

(2) where such marriage was contracted during the insanity of either party (unless there has been voluntary cohabitation after the discovery of the insanity);

(3) where such marriage was procured by fraud or coercion;



(4) where either party was matrimonially incapacitated at the time of marriage without the knowledge of the other and has continued to be so incapacitated; or

(5) where either of the parties had not attained the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after attaining the age of legal consent), but in such cases only at the suit of the party who had not attained such age.

**HISTORY:** (Dec. 23, 1963, [77 Stat. 560](#), Pub. L. 88-241, § 1; Sept. 29, 1965, [79 Stat. 889](#), Pub. L. 89-217, § 2; Apr. 7, 1977, D.C. Law 1-107, title I, § 102, 23 DCR 8737; Mar. 24, 1998, D.C. Law 12-81, § 10(f), 45 DCR 745; Oct. 19, 2002, D.C. Law 14-207, § 2(b), 49 DCR 7827; Sept. 12, 2008, D.C. Law 17-231, § 20(a), 55 DCR 6758.)

#### NOTES:

Prior Codifications. --

1981 Ed., § 16-904.

1973 Ed., § 16-904.

Effect of amendments. --

D.C. Law 14-207, in subsec. (b), made nonsubstantive changes in pars. (1) and (2), and repealed pars. (3) and (4).

D.C. Law 17-231, in subsec. (d)(1), substituted "spouse" for "wife or husband".

Legislative history of Law 1-107. --

For legislative history of D.C. Law 1-107, see Historical and Statutory Notes following § 16-902.

Legislative history of Law 12-81. --

Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 14-207. --

Law 14-207, the "Domestic Relations Laws Clarifications Act of 2002", was introduced in Council and assigned Bill No. 14-635, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-441 and transmitted to both Houses of Congress for its review. D.C. Law 14-207 became effective on October 19, 2002.

Legislative history of Law 17-231. --

Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CHAPTER 296

AN ACT TO AMEND TITLE 13, DELAWARE CODE, ENTITLED "DOMESTIC RELATIONS" IN REGARD TO DIVORCE, REDUCING THE SEPARATION TIME FOR DESERTION AND VOLUNTARY SEPARATION, AND ADDING INCOMPATIBILITY AS A GROUND.

*Be it enacted by the General Assembly of the State of Delaware:*

Section 1. Section 1522, Title 13, paragraph (5), Delaware Code, is amended by striking "two years" and inserting in lieu thereof "one year."

Section 2. Section 1522, Title 13, paragraph (11), Delaware Code, is further amended by striking "three consecutive years" from the second line and inserting in lieu thereof "eighteen consecutive months".

Section 3. Section 1522, Title 13, Delaware Code, is further amended by adding the following new paragraph at the end thereof:

(12) When husband and wife are incompatible in that their marriage is characterized by rift or discord produced by reciprocal conflict of personalities existing for two consecutive years prior to the filing of the divorce action, and which has destroyed their relationship as husband wife and the reasonable possibility of reconciliation.

Approved June 11, 1968.

H., Wife, Defendant Below, Appellant,  
v.  
H., Husband, Plaintiff Below, Appellee.

Supreme Court of Delaware.

April 30, 1969.

George C. Hering, III, of Morris, James, Hitchens & Williams, Wilmington, for defendant below, appellant.

Victor F. Battaglia, of Biggs & Battaglia, and A. James Gallo, Wilmington, for plaintiff below, appellee.

CAREY and HERRMANN, Justices, and MESSICK, Judge, sitting.

CAREY, Justice:

The appellant, Wife, has appealed from a decree entered in Superior Court granting a divorce to her husband. The ground for the decree was incompatibility, T. 13 § 1522(12), which became part of Delaware law on June 11, 1968.

There appears to be little disagreement between the parties concerning the law applicable to the case. As Judge Wright pointed out in [Doran v. Doran, Del.Super., 245 A.2d 434 \(1968\)](#), our Act differs from those of other States which accept incompatibility as a proper ground for divorce and whose statutes specify "incompatibility" or "incompatibility of temperament" without further definition, leaving it up to the Courts to define what amounts to incompatibility. See annotation in 58 A.L.R.2d 1218. Obviously, the Act is a recognition by the Legislature that there are instances where the man and wife cannot get along together and their dissensions are sufficiently great to justify relief from the obligations of marriage; at the same time, the restrictions imposed upon the \*501 ground of action manifest a legislative intent that this ground is not to be lightly regarded and is to be relied upon only where the differences are deep-rooted, of substantial significance, and have continued over a sufficient period of time to justify the belief that there is no likelihood of reconciliation.

Under § 1522(12), there must be (1) rift or discord (2) produced by reciprocal conflict of personalities (3) existing for two consecutive years prior to the filing of the action (4) which has destroyed their relationship as husband and wife to the extent that there is no reasonable possibility of reconciliation. (Emphasis added). The incompatibility must be the result of such deep and intense conflicts of personalities and disposition so as to be irremediable.

The trial judge found that the plaintiff had fully met his required burden of proof by the preponderance of the evidence. In making this finding, the Judge found in favor of the plaintiff as to those matters of fact which were in dispute. The issue before us, accordingly, is whether or not the facts so found justify the ultimate finding of incompatibility as defined in the statute. We have examined the entire record and find

sufficient evidence to support the trial Court's findings and conclusion.

The parties were married in 1937 and separated in February, 1965. They have four children aged twenty-six, twenty-two, seventeen and thirteen. According to the husband, disagreements resulting in tensions commenced about ten years before the separation, gradually increased in frequency and severity, and at least two or three years before the separation, reached a stage where arguments went on almost constantly. They consulted the family physician, who referred them to a psychiatrist in 1959. They continued to see the psychiatrist until about 1962, when they discontinued their visits to him because his advice proved ineffectual; the tension became worse instead of better. Later, they consulted their minister, who tried to assist them for a period of a year or more. His assistance likewise was ineffective and, while he did not say that they ought to separate, he made a remark which indicated a belief that the children would be better off if the parents were separated.

According to the husband, during the last two or three years of their cohabitation, there was constant tension in the family. The couple argued and quarreled over such matters as supervision of the children, politics, churches, finances, and housekeeping. During arguments at mealtime, food would be thrown. If, in order to escape from a quarrel, one of them would go into a room and lock the door, the other would break the door. Sexual relations deteriorated and ceased entirely about six months before the separation. The husband did not attempt to put all the blame upon the wife, but agreed that both were at fault. He stated that there was a lack of trust and constant tension which was having a bad effect upon the younger children and that, largely because of his desire to relieve the pressure upon the children, he left the home. There has been no resumption of cohabitation since that time.

The husband's testimony found considerable support in that of the seventeen-year-old son, who was the only child to testify. It was also supported by the testimony of the psychiatrist, who stated that during the period he attended them, there was continual fighting, each blaming the other; that they were aggressive and hostile each toward the other; that she complained that the husband was autocratic and dictatorial; and that, in his opinion, their differences were serious and deep-rooted. The minister agreed that their differences were not trivial and that he had been unable to effect any improvement in the situation. A Family Court worker testified that the wife said to him sometime after the separation that there had been incessant fighting in the home prior to the separation.

The wife admitted that a great number of arguments took place at the dinner table.\*502 She felt that their differences could be reconciled, and stated that she still loves her husband. She considered their biggest problem to be a failure to communicate. Her testimony tended to minimize some of the individual episodes which the husband considered serious, and she contends that the quarreling did not extend beyond the degree which exists in the average household. Two of her friends testified that they did not know that there was any serious trouble between the couple until the husband left. Appellant's sister, who lives in Richmond, Virginia, indicated her belief that the difficulties were caused principally by the husband, but did not believe that the differences were irreconcilable.

From this brief summary of the testimony, it will be seen that there was ample evidence, if believed, to satisfy all the requirements of the statute. Practically all of the testimony was oral, and the trial Judge had

the benefit of observing the witnesses as they testified. We accept his finding of fact, and agree with his conclusion that a decree was justified.

The judgment below will be affirmed.

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purchase arrangements shall be subject to approval by the board of county commissioners, and no such lease or lease-purchase contract shall be entered into without said approval.

Section 2. This act shall take effect July 1, 1971.

Approved by the Governor June 22, 1971.

Filed in Office Secretary of State June 23, 1971.

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**CHAPTER 71-241**

**House Bill No. 17-C**

**AN ACT** relating to dissolution of marriage; providing a state policy concerning dissolution of marriages; changing the word divorce to dissolution of marriage; creating section 61.043, Florida Statutes, to provide procedures for dissolution of marriage; creating section 61.044, Florida Statutes, to abolish certain defenses; creating section 61.052, Florida Statutes, to establish a basis for dissolution of marriage; providing that children of a dissolved marriage are legitimate; providing for alimony for either spouse and a proceeding in case of nonsupport; providing for child support by either parent and for child custody; providing for attorney's fees and costs to be paid by either party; repealing sections 61.041, 61.042, 61.051 and 61.15, Florida Statutes; providing an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Purpose of act.—

(1) This act shall be liberally construed and applied to promote its purposes.

(2) Its purposes are:

(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;

(b) To promote the amicable settlement of disputes that have arisen between parties to a marriage;

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

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Section 2. Section 61.011, Florida Statutes, is amended to read:

61.011 ~~Diverces Dissolution~~ in chancery.—~~Actions Proceedings for divorce and alimony or support for minor children under this act~~ are in chancery.

Section 3. Section 61.021, Florida Statutes, is amended to read:

61.021 Residence required.—To obtain a ~~divorce dissolution of marriage~~ ~~plaintiff the party filing the proceeding~~ must reside six months in the state before filing the ~~complaint petition~~, but this does not affect any suit filed before October 1, 1957.

Section 4. Section 61.031, Florida Statutes, is amended to read:

61.031 ~~All divorces dissolution of marriage~~ to be a vinculo.—No ~~divorce dissolution of marriage~~ is from bed and board, but is from bonds of matrimony.

Section 5. Chapter 61, Florida Statutes, is amended by adding section 61.043 to read:

61.043 Commencement of a proceeding for dissolution of marriage.—A proceeding for dissolution of marriage or a proceeding under section 61.09, Florida Statutes, shall be commenced by filing in the circuit court a petition entitled "In re the marriage of \_\_\_\_\_, husband, and \_\_\_\_\_, wife." A copy of the petition together with a copy of a summons shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

Section 6. Chapter 61, Florida Statutes, is amended by adding section 61.044 to read:

61.044 Certain existing defenses abolished.—The defenses to divorce and legal separation, of condonation, collusion, recrimination, and laches are abolished.

Section 7. Chapter 61, Florida Statutes, is amended by adding section 61.052 to read:

61.052    Dissolution of marriage.—

(1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears, which shall be pleaded generally:

(a) The marriage is irretrievably broken:

(b) Mental incompetence of one of the parties, provided, however, that no dissolution shall be allowed unless the party alleged to be incompetent shall have been adjudged incompetent according to the provisions of section 394.22, Florida Statutes, for a preceding period of at least three (3) years. Notice of the proceeding for dissolution shall be served upon one (1) of the nearest blood relatives or guardian of such incompetent person, and such relative or guardian shall be entitled to appear and to be heard upon the issues. If the incompetent party has a general guardian or a guardian of his person other than the party bringing the proceeding, the petition and summons shall be served upon the incompetent party and such guardian, and the guardian shall defend and protect the interests of the incompetent party. If the incompetent party has no general guardian or guardian of his person, the court shall appoint a guardian ad litem to defend and protect the interests of the incompetent party; provided, however, in all dissolution of marriages granted on the basis of incompetency the court may require the petitioner to pay alimony pursuant to the provisions of section 61.08, Florida Statutes.

(2) Based on the evidence at the hearing, which evidence need not be corroborated except to establish that the residence requirements of section 61.021, Florida Statutes are met, the court shall dispose of the petition for dissolution of marriage as follows when the petition is based on the allegation that the marriage is irretrievably broken:

(a) If there are no minor children of the marriage and if the respondent does not, by answer to the petition for dissolution deny that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken.

(b) Where there are minor children of the marriage or



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where the respondent denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may:

1. Order either or both parties to consult with a marriage counselor, a psychologist or psychiatrist, a minister, priest, or rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation; or

2. Continue the proceedings for a reasonable length of time not to exceed three (3) months, to enable the parties themselves to effect a reconciliation; or

3. Take such other action as may be in the best interest of the parties and the minor children of the marriage.

If, at any time, the court finds that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage. If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage.

(3) During any period of continuance the court may make appropriate orders, for the support and alimony of the parties, the custody, support, maintenance and education of the minor children of the marriage, attorney's fees, and for the preservation of the property of the parties.

(4) A judgment of dissolution of marriage shall result in each spouse having the status of being single and unmarried. No judgment of dissolution of marriage renders the children of such marriage illegitimate.

Section 8. Section 61.061, Florida Statutes, is amended to read:

61.061 Proceedings against nonresident defendants.—~~Actions~~ *Proceedings* may be brought against ~~defendants~~ *persons* residing out of the state.

Section 9. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite.—In every ~~action proceeding~~ *action proceeding* by a wife for ~~divorce~~ *dissolution of the marriage*, she a party

may claim alimony and suit money in the ~~complaint~~ *petition* or by motion, and if the ~~complaint~~ *petition* is well founded, the court shall allow a reasonable sum therefor. If a ~~defendant-wife~~ *party* in any ~~action~~ *proceeding* for ~~divorce~~ *dissolution of marriage* claims alimony or suit money in ~~her~~ his answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor.

Section 10. Section 61.08, Florida Statutes, is amended to read:

*(Substantial rewording of section. See section 61.08 for present text.)*

61.08 Alimony.—

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded to such spouse.

(2) In determining a proper award of alimony, the court may consider any factor necessary to do equity and justice between the parties.

Section 11. Section 61.09, Florida Statutes, is amended to read:

*(Substantial rewording of section. See section 61.09 for present text.)*

61.09 Nonsupport.—If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor children fails to do so, the spouse who is not receiving support or who has custody of the children may petition the court for alimony and for support for minor children without petitioning for dissolution of marriage and the court shall enter such order as it deems just and proper.

Section 12. Section 61.10, Florida Statutes, is amended to read:

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61.10 Rights of ~~husbands parties~~ unconnected with ~~causes of divorce dissolution~~.—Except when relief is afforded by some other pending civil action or *proceeding* a ~~husband spouse~~ residing in this state apart from his ~~wife spouse~~ and minor children, whether or not such separation is through his fault, may obtain an adjudication of his obligation to maintain his ~~wife spouse~~ and minor children, if any. The court shall adjudicate his financial obligations to such ~~wife spouse~~ or children, or both and fix the custody and visitation rights of the parties and enforce them. Such an action does not preclude either party from maintaining any other ~~cause of action proceeding~~ under this chapter for other or additional relief at any time.

Section 13. Section 61.11, Florida Statutes, is amended to read:

61.11 Effect of judgment of alimony.—A judgment of alimony granted under section 61.08 or section 61.09, releases the ~~wife party receiving the alimony~~ from the control of ~~her husband the other party~~ and ~~she the party receiving the alimony~~ may use ~~her his~~ alimony, and acquire, use and dispose of other property uncontrolled by ~~her husband the other party~~. When ~~the husband either party~~ is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him or his property, and make such orders as will secure ~~the wife's~~ alimony *to the party who should receive it*.

Section 14. Section 61.12, Florida Statutes, is amended to read:

61.12 Attachment or garnishment of amounts due for alimony.—So much as the courts orders of the money or other things due to any person or public officer, state or county, whether the head of a family residing in this state or not, when the money or other thing is due for the personal labor or service of the person or otherwise, is subject to attachment or garnishment to enforce the orders of the court of this state for alimony, suit money or *child support*, or other orders in ~~actions proceedings~~ for ~~divorce dissolution~~, or alimony or *child support*; when the money or other thing sought to be attached or garnished is the salary of a public officer, state or county, the writ of attachment or garnishment shall be served on the public officer whose duty it is to pay

the salary, who shall obey the writ as provided by law in other cases. It is the duty of the officer to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached immediately upon service of the writ. A warrant for as much of the salary as is ordered held under said writ shall not issue except pursuant to court order unless the writ is dissolved. No more of the salary shall be retained by virtue of the writ than is provided for in the order.

Section 15. Section 61.13, Florida Statutes, is amended to read:

*(Substantial rewording of section. See section 61.13 for present text.)*

61.13 Custody and support of children, etc., power of court in making orders.—

(1) In a proceeding for dissolution of marriage, the court may at any time order either or both parents owing a duty of support to a child of the marriage to pay such support as from the circumstances of the parties and the nature of the case is equitable. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of such initial order to modify the amount of the child support payments, or the terms thereof, where such is found to be necessary by the court for the best interests of the child or children, or where such is found to be necessary by the court because there has been a substantial change in the circumstances of the parties. The court initially entering a child support order shall also have continuing jurisdiction after the entry of such order to require the person or persons awarded custody of the child or children to make a report to the court on terms prescribed by the court as to the expenditure or other disposition of said child support payments.

(2) The court shall award custody and visitation rights of minor children of the parties as a part of proceeding for dissolution of marriage in accordance with the best interests of the child. Upon considering all relevant factors, the father of the child shall be given the same consideration as the mother in determining custody.

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(3) In any proceeding under this act, the court at any stage of the proceeding and after final judgment may make such orders about what security is to be given for the care, custody, and support of the minor children of the marriage, as from the circumstances of the parties and the nature of the case is equitable.

Section 16. Section 61.14, Florida Statutes, is amended to read:

61.14 Modification of alimony judgment; agreements, etc.—

(1) When a husband and wife *the parties* have entered into or hereafter enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with ~~an action a proceeding~~ for ~~divorce dissolution~~ or separate maintenance or with any voluntary property settlement or when a ~~husband party~~ is required by court order to make any payments ~~to his wife~~, and the circumstances ~~of the parties~~ or the financial ability of ~~the husband either party~~ has changed since the execution of such agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for a judgment decreasing or increasing the amount of support, maintenance or alimony and the court has jurisdiction to make orders as equity requires with due regard to the changed circumstances and the financial ability of the ~~husband parties~~ decreasing or increasing or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order.

(2) When an order is modified pursuant to subsection (1), the ~~husband party having an obligation to pay~~ shall pay only the amount of support, maintenance or alimony directed in the new order, and the agreement or earlier order is modified accordingly. No person shall commence, or cause to be commenced as party or attorney, or agent, or otherwise, in behalf of either party in any court an action or proceeding otherwise than as herein provided, nor shall any court have jurisdiction to enter-

tain any action or proceeding otherwise than as herein provided to enforce the recovery of separate support, maintenance, or alimony otherwise than pursuant to the order.

(3) This section is declaratory of existing public policy and of laws of this state which are hereby confirmed in accordance with the provisions hereof. It is the duty of the circuit court to construe liberally the provisions hereof to effect the purposes hereof.

(4) *If a party applies for a reduction of alimony or child support and the circumstances justify the reduction, the court may make the reduction of alimony or child support regardless of whether or not the party applying for it has fully paid the accrued obligations to the other party at the time of the application or at the time of the order of modification.*

Section 17. Section 61.16, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 61.16 for present text.)

61.16 Attorney's fees, suit money and costs.—The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money and the cost to the other party of maintaining or defending any proceeding under this act, including enforcement and modification proceedings. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 18. Section 61.17, Florida Statutes, is amended to read:

61.17 Alimony and child support and maintenance money for children; additional method for enforcing orders and judgments; costs, expenses.—

(1) An order or judgment for the payment of alimony or child support money for children or either, entered by any court of this state may be enforced by another chancery court in this state in the following manner:

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(a) The person to whom such alimony or *child* support ~~money~~ is payable or for whose benefit it is payable may procure a certified copy of the order or judgment and file it with a complaint for enforcement in the circuit court for the county in which the person resides or in the county where the person charged with the payment of the alimony or *child* support ~~money~~ resides or is found.

(b) If the pleadings seek a change in the amount of the alimony or *child* support money, the court has jurisdiction to adjudicate the application and change the order or judgment. In such event the clerk of the circuit court in which the order is entered changing the original order or judgment shall transmit a certified copy thereof to the court of original jurisdiction and the new order shall be recorded and filed in the original action and become a part thereof. If the pleadings ask for a modification of the order or judgment the court may determine that the action should be tried by the court entering the original order or judgment and shall then transfer the action to that court for determination as a part of the original action.

(2) The court where such an action is brought has jurisdiction to award costs and expenses as are equitable, including the cost of certifying and recording the judgment entered in the action in the court of original jurisdiction and reasonable attorney's fees.

Section 19. Section 61.18, Florida Statutes, is amended to read:

61.18 Alimony and *child* support ~~and maintenance money for children~~; default in undertaking of bond posted to insure payment.—

(1) When there is a breach of the condition of any bond posted to insure the payment of alimony or *child* support ~~money~~, either temporary or permanent, for ~~the wife a party~~ or minor children of the parties, the court in which the order was issued may order payment to the party entitled thereto of the principal of the bond or the part thereof necessary to cure the then existing default without further notice from time to time where the amount is liquidated.

(2) The sureties on the bond or the sheriff or clerk holding a cash bond shall be ordered to pay into the registry of court or to any party the court may direct, the sum necessary to cure the default.

(3) If the principal or sureties or sheriff or clerk fails to pay within the time and as required by the order, the court may enforce the payment by contempt against the principal or sureties on the bond or sheriff or clerk without further notice, or may issue an execution against the principal, sureties, sheriff, or clerk for the amount unpaid under any prior order or orders, but no sureties on the bond are liable for more than the penalty of the bond.

Section 20. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of ~~divorce~~ judgment of *dissolution of marriage*, delay period.—No final judgment of ~~divorce dissolution of marriage~~ may be entered until at least twenty days have elapsed from the date of filing the original ~~complaint petition for divorce dissolution of marriage~~; but the court on a showing that injustice would result from this delay may enter a final judgment of ~~divorce dissolution of marriage~~ at an earlier date.

Section 21. Application.—

(1) This act applies to all proceedings commenced on or after its effective date; provided, however, that pending actions for divorce are deemed to have been commenced on the bases provided in section 7 of this act, and evidence as to such bases for dissolution of marriage after the effective date of this act shall be in compliance with this act.

(2) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(3) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.



**CHAPTER 71-242 LAWS OF FLORIDA**

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Section 22. Sections 61.041, 61.042, 61.051, and 61.15, Florida Statutes, are repealed.

Section 23. This act shall be supplemental to any existing provisions of law not specifically repealed herein.

Section 24. This act shall take effect July 1, 1971.

Approved by the Governor June 22, 1971.

Filed in Office Secretary of State June 23, 1971.

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**CHAPTER 71-242**

**House Committee Substitute for Senate Bill No. 108**

**AN ACT** relating to motor vehicles inspection; amending chapter 825.19, Florida Statutes, by adding subsection (4); providing that odometer readings shall be recorded on forms so provided; repealing subsections (3), (4) and (5), chapter 319.35, Florida Statutes, providing an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Chapter 825.19, Florida Statutes, is amended by adding subsection (5) to read:

(5) The number of miles indicated on the odometer at the time of the inspection shall be recorded on forms so provided for this purpose by the director.

Section 2. Chapter 319.35, subsections (3), (4) and (5), Florida Statutes are hereby repealed, renumbering subsequent section.

Section 3. This act shall effect on January 1, 1972.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 23, 1971.

**Section 2.** All laws and parts of laws in conflict with this Act are hereby repealed.

Approved April 13, 1973.

**DIVORCE—NEW GROUND PROVIDED.**

Code § 30-102 Amended.

No. 276 (House Bill No. 456).

An Act to amend section 30-102, relating to the grounds that are sufficient to authorize the granting of a total divorce, as amended, so as to provide for an additional ground; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

**Section 1.** Code section 30-102, relating to the grounds that are sufficient to authorize the granting of a total divorce, as amended, is hereby amended by adding at the end thereof a new subsection, to be designated subsection 13, to read as follows:

“13. The marriage is irretrievably broken.”,

so that when so amended, Code section 30-102 shall read as follows:

**“30-102. Grounds for total divorce.** The following grounds shall be sufficient to authorize the granting of a total divorce;

Code § 30-102  
amended.

1. Intermarriage by persons within the prohibited degrees of consanguinity and affinity.
2. Mental incapacity at the time of the marriage.
3. Impotency at the time of the marriage.

4. Force, menaces, duress, or fraud in obtaining the marriage.

5. Pregnancy of the wife, at the time of the marriage unknown to the husband.

6. Adultery in either of the parties after marriage.

7. Wilful and continued desertion by either of the parties for the term of one year.

8. The conviction of either party for an offense involving moral turpitude, and under which he or she is sentenced to imprisonment in the penitentiary for the term of two years or longer.

9. Habitual intoxication.

10. Cruel treatment, which shall consist of the wilful infliction of pain, bodily or mental, upon the complaining party, such as reasonably justifies apprehension of danger to life, limb or health.

11. Incurable mental illness, but no divorce shall be granted upon this ground unless the mentally ill party shall have been adjudged mentally ill by a court of competent jurisdiction, or certified to be mentally ill by two physicians who have personally examined the party, confined in an institution and/or under continuous treatment for the mentally ill for a period of at least two (2) years immediately preceding the commencement of the action, and until the superintendent or other chief executive officer of the institution and one competent physician appointed by the court shall, after a thorough examination, make a certified statement under oath that it is their opinion that the party evidences such a want of reason, memory and intelligence as to prevent the party from comprehending the nature, duties and consequences of the marriage relationship, and that in the light of present day medical knowledge, recovery of the party's mental health cannot be expected at any time during his life. Notice of said action shall and must be served upon the guardian of the person of such mentally ill person and

the superintendent or other chief executive officer of the institution in which such person is confined, or in the event there is no guardian of the person, then notice of such action shall be served upon a guardian ad litem appointed by the court in which such divorce action is filed and the superintendent or the chief executive officer of the institution in which such person is confined and such guardian and superintendent shall be entitled to appear and be heard upon the issues. The status of the parties as to the support and maintenance of the mentally ill person shall not be altered in any way by the granting of the divorce.

12. Habitual drug addiction, which shall consist of addiction to any narcotic, as defined by the Uniform Narcotic Drug Act, Chapter 79A-8 of the Georgia Code, or addiction to any depressant or stimulant drug, as defined by the Georgia Drug Abuse Control Act, Chapter 79A-9 of the Georgia Code.

13. The marriage is irretrievably broken."

**Section 2.** All laws and parts of laws in conflict with this Act are hereby repealed.

Approved April 13, 1973.

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MOTOR VEHICLES—RECIPROCAL AGREEMENTS—  
GOVERNOR AUTHORIZED TO ENTER INTO  
CERTAIN AGREEMENTS

Code § 68-1001 Amended.

No. 277 (House Bill No. 478).

An Act to amend Code section 68-1001, relating to the negotiation of reciprocal agreements between states concerning motor vehicles, as amended, particularly by an Act approved February 4, 1959 (Ga. L. 1959, p. 25), so as to authorize the Governor of the State of Georgia or his designees to enter into agreements or arrangements

further authorized and empowered to execute and deliver such deeds or other written instruments as may be necessary or desirable to carry out the provisions of this resolution and to vest the record title to said tracts of land herein described in the Regents of the University System of Georgia.

Approved January 24, 1969.

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EFFECTIVE DATES OF ACTS AND RESOLUTIONS OF  
GENERAL ASSEMBLY.

No. 1 (House Bill No. 3).

An Act to amend an Act providing the dates on which laws shall become effective, approved April 10, 1968 (Ga. L. 1968, p. 1364), so as to provide that said Act shall not apply to local legislation nor to resolutions intended to have the effect of law; to provide an effective date; to repeal conflicting laws; and for other purposes. Be it enacted by the General Assembly of Georgia:

Section 1. An Act providing the dates on which laws shall become effective, approved April 10, 1968 (Ga. L. 1968, p. 1364), is hereby amended by adding at the end of section 1 the following:

“The provisions of this section shall not apply to local legislation nor to resolutions intended to have the effect of law”,

so that when so amended section 1 shall read as follows:

“Section 1. Unless a different effective date is specified in an Act, any Act approved by the Governor or becoming law without his approval on or after the first day of January and prior to the first day of July of a calendar year, shall become effective on said first day of July, and any Act approved by the Governor or becoming law with-

out his approval on or after the first day of July and prior to the first day of January of the immediately succeeding calendar year, shall become effective on said first day of January. The provisions of this section shall not apply to local legislation nor to resolutions intended to have the effect of law."

Section 2. This Act shall become effective upon its approval by the Governor or its becoming law without his approval.

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved January 24, 1969.

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#### LOOKOUT MOUNTAIN JUDICIAL CIRCUIT—TERMS.

##### No. 2 (Senate Bill No. 2).

An Act to amend an Act creating the Lookout Judicial Circuit (now Lookout Mountain Judicial Circuit), approved January 26, 1950 (Ga. L. 1950, p. 23), as amended, so as to change the terms of court and grand juries for the courts of the Lookout Mountain Judicial Circuit; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act creating the Lookout Judicial Circuit (now Lookout Mountain Judicial Circuit), approved January 26, 1950 (Ga. L. 1950, p. 23), as amended, is hereby amended by striking section 2 in its entirety and inserting in lieu thereof a new section to read as follows:

"Section 2. The terms of court for said counties shall be held as follows:

**Chattooga County:** First Mondays in February and August.

O.C.G.A. § 1-3-4

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\*\*\* Current Through the 2014 Regular Session \*\*\*

TITLE 1. GENERAL PROVISIONS  
CHAPTER 3. LAWS AND STATUTES

O.C.G.A. § 1-3-4 (2014)

§ 1-3-4. Effective date of legislative Acts

(a) Unless a different effective date is specified in an Act:

(1) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of January and prior to the first day of July of a calendar year shall become effective on the first day of July; and

(2) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of July and prior to the first day of January of the immediately succeeding calendar year shall become effective on the first day of January.

(b) Subsection (a) of this Code section shall not apply to local legislation or to resolutions intended to have the effect of law. Such local legislation and resolutions intended to have the effect of law become effective immediately upon approval by the Governor or upon their becoming law without his approval, unless a different effective date is specified in the Act or resolution.

**HISTORY:** Ga. L. 1968, p. 1364, § 1; Ga. L. 1969, p. 7, § 1; Ga. L. 1985, p. 984, § 1; Ga. L. 2002, p. 985, § 2.

ACT 11

(e) This Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Section 3. **Continuation of Rules.** Any order or rule promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Section 4. **Uniformity of Interpretation.** This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

Section 5. **Short Title.** This Act may be cited as the Uniform Controlled Substances Act.

Section 6. **Severability.** If any provision of the chapter adopted by this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Section 7. Chapter 329 and Part V of Chapter 328 are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this Act and except for the following sections which are to be appropriately renumbered by the revisor of statutes:

- (1) Section 329-14.
- (2) Section 329-22.

Section 8. This Act shall take effect on January 1, 1973 only if H. B. 20 in any form passed by the Legislature, Regular Session 1972, becomes an Act. In that event, provisions of H. B. 20 referring to chapter 329 shall be deemed to refer to this Act, except that references in chapter 13 of H. B. 20 relating to HRS chapter 329 and part V of chapter 328 shall be superseded by this Act.

(Approved April 11, 1972.)

ACT 11

S. B. NO. 1014

A Bill for an Act Relating to Divorce.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 580-41, Hawaii Revised Statutes, as amended is hereby further amended to read as follows:

**\*Section 580-41. Divorce.** The family court shall decree a divorce from the bond of matrimony upon the application of either party when the court finds:

- (1) the marriage is irretrievably broken;
- (2) the parties have lived separate and apart under a decree of separation from bed and board entered by any court of competent jurisdiction,



## ACT 11

the term of separation has expired, and no reconciliation has been effected;

- (3) the parties have lived separate and apart for a period of two years or more under a decree of separate maintenance entered by any court of competent jurisdiction, and no reconciliation has been effected; or
- (4) the parties have lived separate and apart for a continuous period of two years or more immediately preceding the application, there is no reasonable likelihood that cohabitation will be resumed, and the court is satisfied that, in the particular circumstances of the case, it would not be harsh and oppressive to the defendant or contrary to the public interest to a divorce on this ground on the complaint of the plaintiff.

SECTION 2. Section 580-42, Hawaii Revised Statutes, is repealed.

SECTION 3. A new section is added to the Hawaii Revised Statutes to read as follows:

**“Section 580-42. Irretrievable breakdown.** (a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(b) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall

- (1) Make a finding whether the marriage is irretrievably broken, or
- (2) Continue the matter for further hearing not less than thirty or more than sixty days later, or as soon thereafter as the matter may be reached on the court’s calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.”

SECTION 4. Section 580-45, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 580-45 Decree.** If after a full hearing, the court or judge is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by the court or judge in the decree. In case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of the decree.

SECTION 5. Section 580-43, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 580-48, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 580-49, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 580-49. Support of insane spouse after divorce.** In every suit for divorce where a decree is granted to the plaintiff and the defendant is insane at the time of the decree, the court may, at any time after entering the decree, re-

ACT 12

visé and alter the same so far as the support and maintenance of the insane person is concerned, and may provide for such maintenance by the plaintiff out of any property or earnings acquired by the plaintiff subsequently, as well as previously, to the decree of divorce. The court making the order for maintenance, may, in its discretion, require the plaintiff to give security to the satisfaction of the court for the faithful execution of the same.”

SECTION 8. Section 580-50, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 580-53, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 580-54, Hawaii Revised Statutes, is repealed.

SECTION 11. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.\*

SECTION 12. This Act shall take effect on July 1, 1972.

(Approved April 11, 1972.)

ACT 12

H. B. NO. 1748-72

A Bill for an Act Relating to Destroyed, Defaced, Lost or Stolen Bonds; Lost Coupons.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 39-31, Hawaii Revised Statutes, is amended to read:

“**Sec. 39-31 Duplicates.** Whenever it appears to the director of finance of the State by clear proof satisfactory to him that any interest bearing bond of the State has, without bad faith upon the part of the owner, been lost, stolen, destroyed, wholly or in part, or so defaced as to impair its value to the owner; the bond is identified by number and description, and the request for issuance of a new bond was made before the director had notice that the bond had been acquired by a bona-fide purchaser, the director shall, under such conditions and upon such security as prescribed in section 39-33 cause to be issued a duplicate thereof, with remaining unpaid coupons attached and so marked as to show the original number of the bond lost, stolen, destroyed or defaced and the date thereof.

“All duplicate bonds issued in place of bonds lost, stolen, destroyed or defaced shall be lithographed or steel engraved, and shall be signed by the director of finance of the State, and by the comptroller of the State, and be sealed with the seal of the department of budget and finance. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the director of finance of the State.

\*Edited accordingly.

## CHAPTER 1266

## DIVORCE AND MARRIAGE ANNULMENT

H. F. 1156

AN ACT relating to a revision of Iowa law governing divorce and marriage annulment and relating to support payments to welfare recipients under decree for dissolution of marriage.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Chapter five hundred ninety-eight (598), Code 1966,  
2 is hereby repealed and sections two (2) through thirty-three (33)\* of  
3 this Act enacted in lieu thereof.

1 SEC. 2. **Definitions.** As used in this Act:

2 1. "Dissolution of marriage" means a termination of the marriage  
3 relationship and shall be synonymous with the term "divorce".

4 2. "Support" or "support payments" means any amount which the  
5 court may require either of the parties to pay under a temporary  
6 order or a final judgment or decree, and may include alimony, child  
7 support, maintenance, and any other term used to describe such  
8 obligations.

9 3. "Minor child" means any person under legal age.

1 SEC. 3. **Jurisdiction.** The district court in the county where either  
2 party resides has jurisdiction of the subject matter of this Act.

1 SEC. 4. **Kind of action—joinder.** An action for dissolution of mar-  
2 riage shall be by equitable proceedings, and no cause of action, save  
3 for alimony, shall be joined therewith.

1 SEC. 5. **Caption of petition for dissolution.** The petition for dissolu-  
2 tion of marriage shall be captioned substantially as follows:

3	In the District Court of the State of Iowa	
4	In and For .....	County
5	In Re the Marriage of .....	and .....
6	Upon the Petition of .....	* Petition for Dissolution
7	.....	* of Marriage
8	(Petitioner)	* Equity No. ....
9	and Concerning	*
10	.....	*
11	(Respondent)	*

1 SEC. 6. **Contents of petition.** The petition for dissolution of mar-  
2 riage shall:

3 1. State the name and address of the petitioner and his attorney.

4 2. State the place and date of marriage of the parties.

5 3. State the name and address, if known, of the respondent.

6 4. State the name and age of each minor child by date of birth  
7 whose welfare may be affected by the controversy.

8 5. State whether or not a separate action for dissolution of marriage  
9 has been commenced by the respondent and whether such action is  
10 pending in any court in this state or elsewhere.

\*See ch. 1267.

11 6. Allege that the petition has been filed in good faith and for the  
12 purposes set forth therein.

13 7. Allege that there has been a breakdown of the marriage rela-  
14 tionship to the extent that the legitimate objects of matrimony have  
15 been destroyed and there remains no reasonable likelihood that the  
16 marriage can be preserved.

17 8. Set forth any application for temporary support of the petitioner  
18 and any children without enumerating the amounts thereof.

19 9. Set forth any application for permanent alimony or support, child  
20 custody, or disposition of property, as well as attorneys' fees and  
21 suit money, without enumerating the amounts thereof.

1 SEC. 7. **Additional contents.** Except where the respondent is a  
2 resident of this state and is served by personal service, the petition  
3 for dissolution of marriage, in addition to setting forth the informa-  
4 tion required by section six (6) of this Act, must state that the peti-  
5 tioner has been for the last year a resident of the state, specifying  
6 the county in which the petitioner has resided, and the length of such  
7 residence therein after deducting all absences from the state; and  
8 that the maintenance of the residence has been in good faith and  
9 not for the purpose of obtaining a marriage dissolution only.

1 SEC. 8. **Verification—evidence.** The petition must be verified by  
2 the petitioner, and its allegations established by competent evidence.

1 SEC. 9. **Hearings.\*** Hearings for dissolution of marriage shall be  
2 heard in open court or a commissioner appointed by the court upon  
3 the oral testimony of witnesses, or depositions taken as in other equita-  
4 ble actions. However, the court may in its discretion close the hear-  
5 ing. Hearings held for the purpose of determining child custody may  
6 be limited in attendance by the court.

1 SEC. 10. **Residence—failure of proof.** If the averments as to resi-  
2 dence are not fully proved, the hearing shall proceed no further, and  
3 the action be dismissed by the court.

1 SEC. 11. **Corroboration of petitioner.** No dissolution of marriage  
2 shall be decreed on the testimony of the petitioner alone.

1 SEC. 12. **Temporary orders.** The court may order either party to  
2 pay the clerk a sum of money for the separate support and mainte-  
3 nance of the other party and the children and to enable such party to  
4 prosecute or defend the action.

5 The court may make such an order when a claim for temporary sup-  
6 port is made by the petitioner in the petition, or upon application of  
7 either party, after service of the original notice and when no applica-  
8 tion is made in the petition; however, no such order shall be entered  
9 until at least five days' notice of hearing, and opportunity to be heard,  
10 is given the other party. Appearance by an attorney or the respondent  
11 for such hearing shall be deemed a special appearance for the purpose  
12 of such hearing only and not a general appearance.

1 SEC. 13. **Attorney for minor child.** The court may appoint an at-  
2 torney to represent the interests of the minor child or children of the

\*See ch. 1267.

3 parties. Such attorney shall be empowered to make independent in-  
4 vestigations and to cause witnesses to appear and testify before the  
5 court on matters pertinent to the interests of the children. The court  
6 shall enter an order in favor of such attorney for fees and disburse-  
7 ments, which amount shall be charged against the party responsible  
8 for court costs unless the court determines that the party responsible  
9 for costs is indigent in which event the fees shall be borne by the  
10 county.

1 **SEC. 14. Financial statements filed.** All applications for temporary  
2 or permanent support of a party or minor children shall be accom-  
3 panied by the financial statement of the applicant. The respondent  
4 shall file a financial statement whenever the respondent desires to  
5 resist any application for support by the petitioner, or when the court  
6 so orders.

7 Financial statements shall be set forth by affidavit and shall be  
8 contained in two divisions. Division one shall contain the affiant's  
9 income from salary, wages or other source, personal expenses, and  
10 necessary payments on debts, and also the best estimates of such in-  
11 come, personal expenses, and necessary payments on debts of the  
12 other party, as well as all family living expenses. Such financial in-  
13 formation shall be calculated on either a weekly or monthly basis, and  
14 shall not contain debts to be paid subsequent to the anticipated pend-  
15 ency of the action. Division two shall contain all other joint or  
16 separate assets and liabilities of the parties, including ownership of  
17 realty and tangible or intangible personalty and all debts to be paid  
18 subsequent to the anticipated pendency of the action.

1 **SEC. 15. How temporary order made—changes.** In making tem-  
2 porary orders, the court shall take into consideration the age and sex  
3 of the applicant, the physical and pecuniary condition of the parties,  
4 and such other matters as are pertinent, which may be shown by  
5 affidavits, as the court may direct; however, the hearing on the applica-  
6 tion shall be limited to matters set forth in such application, the  
7 affidavits of the parties, and the required statements of income. The  
8 court shall not hear any other matter relating to the petition, respon-  
9 dent's answer, or any pleadings connected therewith.

10 After notice and hearing subsequent changes in temporary orders  
11 may be made by the court on application of either party demonstrating  
12 a substantial change in the circumstances occurring subsequent to the  
13 issuance of such order. If the order is not so modified it shall con-  
14 tinue in force and effect until the action is dismissed or a decree is  
15 entered dissolving the marriage.

1 **SEC. 16. Attachment.** The petition may be presented to the court  
2 for the allowance of an order of attachment, which, by endorsement  
3 thereon, may direct such attachment and fix the amount for which  
4 it may issue, and the amount of the bond, if any, that shall be given.  
5 Any property taken by virtue thereof shall be held to satisfy the  
6 judgment or decree of the court, but may be discharged or released  
7 as in other cases.

1 **SEC. 17. Conciliation.** A majority of the judges in any judicial  
2 district, with the cooperation of any county board of social welfare

3 in such district, may establish a domestic relations division of the  
4 district court of the county where such board is located. Said division  
5 shall offer counseling and related services to persons before such  
6 court.

7 The court shall require such parties to undergo conciliation for a  
8 period of at least ninety days from the issuance of an order setting  
9 forth the conciliation procedure and the conciliator. Such concilia-  
10 tion procedures may include, but shall not be limited to, referrals to  
11 the domestic relations division of the court, if established, public or  
12 private marriage counselors, family service agencies, community  
13 mental health centers, physicians and clergymen. Conciliation may be  
14 waived by the court upon a showing of good cause; provided, however,  
15 that it shall not be waived if either party or the attorney appointed  
16 pursuant to section thirteen (13) of this Act objects.

17 The costs of any such conciliation procedures shall be paid by the  
18 parties; however, if the court determines that such parties will be  
19 unable to pay the costs without prejudicing their financial ability to  
20 provide themselves and any minor children with economic necessities,  
21 such costs may be paid from the court expense fund.

1 **SEC. 18. Dissolution of marriage—evidence.** A decree dissolving  
2 the marriage may be entered when the court is satisfied from the evi-  
3 dence presented that there has been a breakdown of the marriage  
4 relationship to the extent that the legitimate objects of matrimony  
5 have been destroyed and there remains no reasonable likelihood that  
6 the marriage can be preserved.

7 The court shall, based upon competent and relevant evidence, in such  
8 decree provide for the division of the assets of the parties and reason-  
9 able support or maintenance of any dependent children or either  
10 spouse.

11 No marriage dissolution granted due to the mental illness of one  
12 of the spouses shall relieve the other spouse of any obligation imposed  
13 by law as a result of the marriage for the support of the mentally ill  
14 spouse, and the court may make an order for such support.

1 **SEC. 19. Recrimination not a bar to dissolution of marriage.** If,  
2 upon the trial of an action for dissolution of marriage, both of the  
3 parties are found to have committed an act or acts which would  
4 support or justify a decree of dissolution of marriage, such dissolution  
5 may be decreed, and the acts of one party shall not negate the acts  
6 of the other, nor serve to bar the dissolution decree in any way.

1 **SEC. 20. Waiting period before decree.** No decree dissolving a  
2 marriage shall be granted in any proceeding before ninety days shall  
3 have elapsed from the day the original notice is served, or from the  
4 last day of publication of notice, or from the date that waiver or  
5 acceptance of original notice is filed or until after conciliation is com-  
6 pleted, whichever period shall be longer. However, the court may  
7 in its discretion, on written motion supported by affidavit setting  
8 forth grounds of emergency or necessity and facts which satisfy the  
9 court that immediate action is warranted or required to protect the  
10 substantive rights or interests of any party or person who might be  
11 affected by the decree, hold a hearing and grant a decree dissolving  
12 the marriage prior to the expiration of the applicable period, pro-

13 vided that requirements of notice have been complied with. In such  
 14 case the grounds of emergency or necessity and the facts with respect  
 15 thereto shall be recited in the decree unless otherwise ordered by the  
 16 court.

1 **SEC. 21. Forfeiture of marital rights.** When a dissolution of mar-  
 2 riage is decreed the parties shall forfeit all rights acquired by mar-  
 3 riage which are not specifically preserved in the decree. This provision  
 4 shall not obviate any of the provisions of section twenty-two (22)  
 5 of this Act.

1 **SEC. 22. Alimony—custody of children—changes.** When a disso-  
 2 lution of marriage is decreed, the court may make such order in rela-  
 3 tion to the children, property, parties, and the maintenance of the  
 4 parties as shall be justified.

5 Subsequent changes may be made by the court in these respects  
 6 when circumstances render them expedient.

1 **SEC. 23. Support payments—clerk of court—defaults.\*** All orders  
 2 or judgments providing for temporary or permanent support payments  
 3 shall direct the payment of such sums to the clerk of the court for  
 4 the use of the person for whom the same have been awarded. An  
 5 order or judgment entered by the court for temporary or permanent  
 6 support shall be filed with the court clerk. Such orders shall have the  
 7 same force and effect as judgments when entered. The clerk shall  
 8 disburse the payments received pursuant to such orders or judgments.  
 9 All moneys received or disbursed under this section shall be entered  
 10 in a record book kept by the clerk, which shall be open to inspection  
 11 by the parties to the action and their attorneys.

12 If the sums ordered to be paid are not paid to the clerk at the time  
 13 provided in said order or judgment, the clerk shall certify a default  
 14 to the court which may, on its own motion, proceed as provided in  
 15 section twenty-four (24) of this Act.

16 Prompt payment of sums required to be paid under sections twelve  
 17 (12) and twenty-two (22) of this Act shall be the essence of such  
 18 orders or judgments and the court may act pursuant to section twenty-  
 19 four (24) of this Act regardless of whether the amounts in default  
 20 are paid prior to the contempt hearing.

1 **SEC. 24. Contempt proceedings—alternative to jail sentence.** If any  
 2 party against whom any temporary order or final decree has been  
 3 entered shall willfully disobey the same, or secrete his property, he  
 4 may be cited and punished by the court for contempt and be com-  
 5 mitted to the county jail for a period of time not to exceed thirty  
 6 days for each offense.

7 The court may, as an alternative to punishment for contempt, make  
 8 an order directing the defaulting party to assign a sufficient amount  
 9 in salary or wages due, or to become due in the future, from an em-  
 10 ployer or successor employers, to the clerk of the court where the  
 11 order or judgment was granted for the purpose of paying the sums  
 12 in default as well as those to be made in the future. The assignment  
 13 order shall not be binding upon the employer, but the court shall  
 14 send a copy of the order, signed by the employee, to the employer

\*See ch. 1267.

15 and request his cooperation in deducting support payments. For each  
 16 payment deducted in compliance with such request, the employer shall  
 17 receive one dollar to cover the expense created by the deduction, which  
 18 amount shall be deducted from the money due the employee. Compli-  
 19 ance by an employer with the court's request shall operate as a dis-  
 20 charge of his liability to the employee as to the affected portion of the  
 21 employee's wages.

22 Any employer who dismisses an employee due to the entry of an  
 23 assignment order commits a public offense and upon conviction shall  
 24 be fined not more than one hundred dollars.

1 **SEC. 25. Contempt proceedings initiated by interested party—**  
 2 **costs taxable to party in default.** Nothing in this Act shall prohibit  
 3 the party entitled to support payments, or an interested party from  
 4 initiating contempt proceedings on his own motion. If the defaulting  
 5 party is found to be in contempt, the costs of such proceedings, in-  
 6 cluding attorney's fees for the party initiating the proceedings in an  
 7 amount deemed reasonable by the court, shall be taxed against such  
 8 party.

1 **SEC. 26. Termination of jurisdiction of court granting marriage**  
 2 **dissolution decree.** Whenever a proceeding is initiated in a court for  
 3 adoption involving the children of parents or guardians whose mar-  
 4 riage has been dissolved, or for modification of a judgment of alimony,  
 5 child support, or custody granted in an action for dissolution of  
 6 marriage, the following requirements must be met if such proceedings  
 7 are initiated in a court other than the court which granted the dissolu-  
 8 tion decree.

9 1. The party initiating such proceedings must present to the court  
 10 the names and addresses of the parties to the dissolution decree if  
 11 known, as well as the name and place of the court which granted the  
 12 dissolution decree.

13 2. The court in which the proceedings are initiated shall, if possible,  
 14 cause notice of such proceedings to be served upon the parties to the  
 15 original action.

16 Such court, or either of the parties to the dissolution decree, may  
 17 request that a copy of the transcript of the proceedings of the court  
 18 which granted the dissolution decree be made available for considera-  
 19 tion in the new proceedings.

1 **SEC. 27. Record—impounding.\*** The record and evidence in all cases  
 2 where a marriage dissolution is sought shall be closed to all but the  
 3 court and its officers, and access thereto shall be refused until a decree  
 4 of dissolution has been entered. The clerk shall maintain a separate  
 5 docket for dissolution of marriage actions. No officer or other person  
 6 shall permit a copy of any of the testimony, or pleading, or the  
 7 substance thereof, to be made available to any person other than a  
 8 party or attorney to the action. Violation of the provisions of this  
 9 section shall be a public offense, punishable by a fine of not more than  
 10 one hundred dollars, or imprisonment in the county jail not more than  
 11 thirty days, or by both such fine and imprisonment.

\*See ch. 1267.



1     **SEC. 28. Remarriage.** In every case in which a marriage dissolution is decreed, neither party shall marry again within a year from  
 2 the date of the filing of said decree unless permission to do so is  
 3 granted by the court. Nothing herein contained shall prevent the persons whose marriage has been dissolved from remarrying each other.  
 4 Any person marrying contrary to the provisions of this section shall  
 5 be deemed guilty of a misdemeanor and upon conviction shall be  
 6 punished accordingly.

1     **SEC. 29.** A petition shall be filed in separate maintenance and annulment actions as in actions for dissolution of marriage, and all applicable provisions of this Act in relation thereto shall apply to separate  
 2 maintenance and annulment actions.

1     **SEC. 30. Annuling illegal marriage—causes.** Marriage may be  
 2 annulled for the following causes:  
 3     1. Where the marriage between the parties is prohibited by law.  
 4     2. Where either party was impotent at the time of marriage.  
 5     3. Where either party had a husband or wife living at the time  
 6 of the marriage, provided they have not, with a knowledge of such  
 7 fact, lived and cohabited together after the death or marriage dissolution of the former spouse of such party.  
 8     4. Where either party was mentally ill or a mental retardate at the  
 9 time of the marriage.  
 10

1     **SEC. 31. Validity determined.** When the validity of a marriage is  
 2 doubted, either party may file a petition, and the court shall decree  
 3 it annulled or affirmed according to the proof.

1     **SEC. 32. Children—legitimacy.\*** Children born to the parties, or  
 2 to the wife, in a marriage relationship which may be terminated or  
 3 annulled pursuant to the provisions of this Act shall be legitimate.

1     **SEC. 33. Alimony.** In case either party entered into the contract of  
 2 marriage in good faith, supposing the other to be capable of contracting,  
 3 and the marriage is declared a nullity, such fact shall be entered  
 4 in the decree, and the court may decree such innocent party compensation as in case of dissolution of marriage.  
 5

1     **SEC. 34.** Any cause of action pending upon the effective date of  
 2 this Act, which may be affected by this Act, may be decided pursuant  
 3 to the provisions of this Act if both parties to the action so agree.

1     **SEC. 35.** The county board of social welfare in any county is authorized to enter into the following agreement with the court, which  
 2 may ratify such agreement by a majority vote of the district judges  
 3 assigned to the judicial district where such board is located:  
 4 Any person entitled to periodic support payments pursuant to an  
 5 order or judgment entered in an action for dissolution of marriage,  
 6 who is also a welfare recipient, shall assign his rights to such payments to the county board of social welfare granting such assistance.  
 7 The clerk of court shall forward support payments received pursuant  
 8 to section twenty-three (23) of this Act to such board. Such sums  
 9 may serve to reduce the amount of the welfare payments granted such  
 10  
 11

\*See ch. 1267.

12 recipient. The board of social welfare shall have the right to secure  
 13 support payments in default through proceedings provided for in  
 14 chapter two hundred fifty-two A (252A) of the Code or section  
 15 twenty-five (25) of this Act.

16 The clerk shall furnish such welfare agency with copies of all  
 17 orders or decrees awarding support to parties having custody of minor  
 18 children when such parties are receiving welfare assistance.

Approved March 20, 1970.

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CHAPTER 1267

DISSOLUTION OF MARRIAGE

S. F. 1315

AN ACT relating to dissolution of marriage, separate maintenance, and annulment.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. House File one thousand one hundred fifty-six (1156),\*  
 2 Acts of the Sixty-third General Assembly, Second Session, is amended  
 3 as follows:

4 1. Section twenty-three (23) is amended by adding at the end of  
 5 the third sentence after the word "entered" the words "in the judg-  
 6 ment docket and lien index and shall be a record open to the public".

7 2. Section twenty-seven (27) is amended by inserting after the first  
 8 sentence a new sentence as follows:

9 "If the action is dismissed judgment for costs shall be entered in  
 10 the judgment docket and lien index."

11 3. Section twenty-seven (27) is further amended by inserting after  
 12 the third sentence the following sentence:

13 "Nothing in this section shall be construed to prohibit publication  
 14 of the original notice as provided by the rules of civil procedure."

15 4. Section thirty-two (32) is amended by striking the period at  
 16 the end thereof and inserting in lieu thereof the following: "as to  
 17 both parties, unless the court shall decree otherwise according to the  
 18 proof."

19 5. Section one (1) is amended by striking therefrom the word and  
 20 number "thirty-three (33)" and inserting in lieu thereof the word and  
 21 number "thirty-five (35)".

22 6. Section nine (9) is amended by striking the first sentence and  
 23 inserting in lieu thereof the following new sentence:

24 "Hearings for dissolution of marriage shall be held in open court  
 25 upon the oral testimony of witnesses, or upon the depositions of such  
 26 witnesses taken as in other equitable actions or taken by a commis-  
 27 sioner appointed by the court."

Approved May 5, 1970.

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\*Chapter 1266.

**CHAPTER 19**

(H. B. No. 56)

## AN ACT

AMENDING SECTION 67-509, IDAHO CODE, RELATING TO LEGISLATIVE JOURNALS, BY PROVIDING THAT PUBLICATION OF THE LEGISLATIVE JOURNALS SHALL BE AS PROVIDED BY THE PRINTING COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-509, Idaho Code, be, and the same is hereby amended to read as follows:

67-509. ~~PRINTING~~ **PUBLICATION OF LEGISLATIVE JOURNALS – DISTRIBUTION.** – On the first legislative day or as soon thereafter as the speaker shall have been elected, it shall be the duty of the president of the senate and the speaker of the house of representatives each to appoint a printing committee for his body whose duties shall be, in addition to its duties prescribed by the rules of said bodies respectively, to immediately meet in joint session and to provide, ~~in the same manner as for other legislative printing,~~ for the **printing publication** of the journals of the two houses of the legislature. Said committee shall determine the form of the journals to be used, the size of the type, the number to be distributed to each member of the legislature and the method of distribution, and the manner in which the journals are to be bound for the permanent copies of the journal.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 11, 1971.

**CHAPTER 20**

(H. B. No. 28)

## AN ACT

RELATING TO DIVORCE, AMENDING SECTION 32-603, IDAHO CODE,

BY ADDING IRRECONCILABLE DIFFERENCES AS A GROUND FOR DIVORCE; AMENDING CHAPTER 6, TITLE 32, IDAHO CODE, BY ADDING A NEW SECTION 32-616, IDAHO CODE, DEFINING IRRECONCILABLE DIFFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-603, Idaho Code, be, and the same is hereby amended to read as follows:

32-603. CAUSES FOR DIVORCE. – Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. When either the husband or wife has become permanently insane, as provided in sections 32-801 to 32-805, inclusive.

**8. Irreconcilable differences.**

SECTION 2. That Chapter 6, Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section, to be known and designated as Section 32-616, Idaho Code, and to read as follows:

32-616. IRRECONCILABLE DIFFERENCES. – Irreconcilable differences are 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.

Approved February 13, 1971.

## CHAPTER 21

(H. B. No. 29)

### AN ACT

RELATING TO DIVORCE, AMENDING CHAPTER 7, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION TO BE KNOWN AND DESIGNATED AS SECTION 32-716, IDAHO CODE, TO PROVIDE THAT A COURT MAY REQUIRE, UPON APPLICATION OF ONE OF THE PARTIES, A CONFERENCE WITH A PERSON OR PERSONS OF HIS CHOOSING OR PERSONS SELECTED BY THE

SECTION 9. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1972.

#### CHAPTER 176

(S. B. No. 1480, As Amended in House)

##### AN ACT

AMENDING SECTION 67-510, IDAHO CODE, BY EXTENDING THE EFFECTIVE DATE OF ACTS PASSED BY THE LEGISLATURE AND PROVIDING THAT EMERGENCIES SHALL BE BASED UPON FACTS DECLARED IN THE PREAMBLE OR BODY OF THE LAW; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-510, Idaho Code, be, and the same is hereby amended to read as follows:

67-510. STATUTES AND RESOLUTIONS – WHEN EFFECTIVE. – No act shall take effect until **July 1 of the year of the regular session** or sixty days from the end of the session at which the same shall have been passed, **whichever date occurs last**, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 17, 1972.

#### CHAPTER 177

(S. B. No. 1481, As Amended in House)

##### AN ACT

AMENDING SECTION 5-310, IDAHO CODE, RELATING TO ACTION FOR INJURY OR DEATH OF MINOR CHILD, BY DESIGNATING

GENERAL AND SPECIAL LAWS  
OF THE  
STATE OF IDAHO



PASSED BY  
THE FIRST REGULAR SESSION OF THE  
FORTY-FIRST IDAHO LEGISLATURE

Convened January 11, 1971  
Adjourned March 20, 1971

AND THE FIRST EXTRAORDINARY SESSION OF  
THE FORTY-FIRST IDAHO LEGISLATURE  
1971

Convened March 22, 1971  
Adjourned April 8, 1971

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Idaho Official Directory and Roster of State Officials and Members  
of State Legislature Follows the Index.

PUBLISHED BY AUTHORITY OF THE  
SECRETARY OF STATE

P E T E T . C E N A R R U S A  
Secretary of State  
Boise, Idaho

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Printed by The Caxton Printers, Ltd.  
Caldwell, Idaho

overweight = the fine is \$475  
 from 5001 or more pounds  
 overweight = the fine shall be computed at the rate of \$75 for each increment of 500 pounds overweight or fractions thereof.

In addition any person, firm or corporation convicted of 4 or more violations of Section 15-111 of this Chapter within any 12 month period shall be fined an additional amount of \$2500 for the fourth and each subsequent conviction within the 12 month period. Provided, however, that with regard to a firm or corporation, a fourth or subsequent conviction shall mean a fourth or subsequent conviction attributable to any one employee-driver.

(b) Whenever any vehicle is operated in violation of the provisions of Sections 15-102, 15-103 or 15-107, the owner or driver of such vehicle shall be deemed guilty of such violation and either may be prosecuted for such violation. Any person, firm or corporation convicted of any violation of Sections 15-102, 15-103 or 15-107 shall be fined for the first or second conviction an amount equal to not less than \$50 nor more than \$500, and for the third and subsequent convictions by the same person, firm or corporation within a period of one year after the date of the first offense, not less than \$500 nor more than \$1,000.

Section 2. Section 7 is added to the "Motor Fuel Standards Act", approved September 26, 1983, P.A. 83-862, the added Section to read as follows:

*Sec. 7. This Act takes effect January 1, 1984.*

Section 3. This Act takes effect upon becoming law.

#### PUBLIC ACT HISTORY

Passed in the General Assembly November 4, 1983.

Approved December 2, 1983.

Effective December 2, 1983.

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#### PUBLIC ACT 83-954.

#### MARRIAGE AND DISSOLUTION OF MARRIAGE ACT — NO FAULT DIVORCE.

(Senate Bill No. 189. Approved December 2, 1983.)

**Changes or additions indicated by *italics* deletions by ~~strikeout~~.**

## PUBLIC ACT TEXT

AN ACT to amend Section 401 of the "Illinois Marriage and Dissolution of Marriage Act", approved September 22, 1977, as amended.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 401 of the "Illinois Marriage and Dissolution of Marriage Act", approved September 22, 1977, as amended, is amended to read as follows:

(Ch. 40, par. 401)

Sec. 401. Dissolution of Marriage.) (a) The court shall enter a judgment of dissolution of marriage (~~formerly known as divorce~~) if: (1) ~~the court finds that one of the parties~~, at the time the action was commenced, *one of the spouses* was a resident of this State or was stationed in this State while a member of the armed services, and ~~that~~ the residence or military presence has been maintained for 90 days next preceding the making of the *finding findings*; and if *one of the following grounds for dissolution has been proved*:

(1) ~~That, (2) the court finds that,~~ without cause or provocation by the petitioner: *the respondent was either party* at the time of such marriage ~~was~~, and continues to be naturally impotent; or *the respondent either party* had a wife or husband living at the time of such marriage; or *the respondent had either party* has committed adultery subsequent to the marriage, or has wilfully deserted or absented himself or herself from the *petitioner husband or wife* for the space of one year, *including any period during which litigation may have pended between the spouses for dissolution of marriage or legal separation*, or has been guilty of habitual drunkenness for the space of 2 years, or has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years, or has attempted the life of the other by poison or other means showing malice, or has been guilty of extreme and repeated physical or mental cruelty, or has been convicted of a felony or other infamous crime or has infected the other with a communicable venereal disease. "Excessive use of addictive drugs", as used in this Section, refers to use of an addictive drug by a person when using the drug becomes a controlling or a dominant purpose of his life; or:

(2) *That the spouses have lived separate and apart for a continuous period in excess of 2 years and irreconcilable differences have caused the irretrievable breakdown of the marriage and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not*

**Changes or additions indicated by italics deletions by ~~strikeout~~.**



*in the best interests of the family; provided that if the spouses have lived separate and apart for a continuous period of not less than 6 months next preceding the entry of the judgment dissolving the marriage, as evidenced by testimony or affidavits of the spouses, the requirement herein of living separate and apart for a continuous period in excess of 2 years may be waived upon written stipulation of both spouses filed with the clerk of the court.*

If, during the period of any desertion which if uninterrupted for one year would be a ground for dissolution of marriage under this Act, litigation for either dissolution of marriage or legal separation shall pend between the parties; the time so consumed by said litigation shall not be deducted in any computation of the desertion period.

(b)(3) Such judgment may not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property. The court may bifurcate the judgment for dissolution and reserve questions of child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property regardless of whether i) the court has in personam jurisdiction over the respondent, or ii) one of the parties would be unable to pay child support or maintenance if so ordered, or iii) the court has set aside an adequate fund for child support pursuant to subsection (d) of Section 503, or iv) the child or children of the parties do not reside with either parent.

All judgments for dissolution of marriage reserving any such questions entered prior to *August 14, 1981* the effective date of this amendatory Act of 1981 are declared to be valid as of the date of entry.

If any provision of this Section or application thereof shall be adjudged unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not inpair, affect or invalidate any other provision or application of this Section, which shall remain in full force and effect.

#### PUBLIC ACT HISTORY

Passed in the General Assembly November 4, 1983.

Approved December 2, 1983.

Effective July 1, 1984.

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Changes or additions indicated by *italics* deletions by ~~strikeout~~.

same authority to enforce such judgment as he would have had if the action had accrued and if the judgment had been given in his own jurisdiction. The provisions of this ~~act~~ **chapter** shall not apply to children who have not lived with or who have not been supported by their parents when such children were ~~minors~~ **under eighteen (18) years of age.**

## PUBLIC LAW NO. 297

[S. 68. Approved April 12, 1973.]

AN ACT to amend IC 1971, 31-1 by adding a new chapter relating to dissolution of marriage.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 1971, 31-1 is amended by adding a new chapter to be numbered 11.5 and to read as follows:

Chapter 11.5. Dissolution of Marriage.

Sec. 1. Purposes; Rules of Construction. (a) This chapter shall be construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

(1) to abolish the existing grounds for absolute and limited divorce and to provide as the basis for dissolution of marriage: (i) irretrievable breakdown of the marriage, (ii) the conviction of either party, subsequent to the marriage, of an infamous crime, (iii) impotency, existing at the time of the marriage, and (iv) incurable insanity of either party for a period of at least two (2) years;

(2) to provide for the appropriate procedures for the dissolution of marriage;

(3) to provide for the disposition of property, child support and child custody; **and**

(4) to provide for separation agreements.