Memorandum 92-58

Subject: Study F-1001 - Family Code Issues -- "The List"

As noted in earlier meetings, the staff has been compiling a list of issues in the course of the Family Code study. One purpose of this list is to collect and categorize problems raised by commentators, by the staff, and in Commission meetings. The list was conceived as a way of preserving valuable commentary while moving ahead on the project, particularly in light of the fact that the Commission was charged with a recodification of the law, not a substantive overhaul. If we had paused to work out all of the technical problems in existing law and to consider all of the suggestions for additional reforms, the project would never have been completed in the time period mandated by the Legislature.

Several people who have worked with the Commission on this project, and others who have been following it from afar, have expressed interest in receiving a copy of the list. While it is not standard Commission practice to distribute lists of issues that have not been resolved, in this case it seems appropriate.

The staff has sought to deal with any issues that are purely technical in nature, and particularly with any problems that have resulted from the recodification itself. Generally speaking, the issues remaining on the list are of a more serious nature, and include major substantive matters that are beyond the scope of this project. However, some issues on the list are appropriate for Commission consideration. The Staff Note at the beginning of the list suggests that interested persons might wish to recommend that the Commission study some of these issues. It would be most helpful if interested persons who want to suggest further study would provide a detailed analysis of the issues and make suggestions for solution.

No Commission action is required on this material, but of course the staff is open to any editorial suggestions. The staff will suggest

topics for study drawn from this list when the Commission next considers its priorities for study.

Respectfully submitted,

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FAMILY CODE ISSUES: "THE LIST"

Staff Note. This list of issues has been compiled by the Commission's staff and has not been reviewed by the Commission. Thus, this material does not necessarily represent the views of the Commission. Nor does inclusion of a matter on this list necessarily mean that the staff has concluded that it is a problem meriting further study.

The purpose of this list is to preserve comments made in correspondence and at workshops held in connection with development of the Family Code, as well as potential problems noted by the staff — it is not a formal Commission memorandum. Keep in mind that a number of items on the list may be found to be non-issues on further study. It should also be noted that many other technical issues are in the process of consideration by the Commission and its staff with the goal of making amendments in the 1993 legislative session. These technical issues are considered in Commission meeting materials, and are not listed here.

The list is being distributed to interested persons so they can review the issues and suggest areas appropriate for study by the Commission at some future time. Whether the Commission will study any of these issues will be determined by the Commission when it considers topics for future consideration in the ordinary course of its business.

However, if interested persons believe that any of these issues merits study and resolution before the Family Code becomes operative on January 1, 1994, they should let the Commission know as soon as possible. It is important to provide some analysis of the issue and suggest possible solutions of the problems identified.

Informal abbreviations are used in this material. E.g., "FLA" (the existing Family Law Act, Civ. Code § 4000 et *seq.*), *"FC" (the new Family Code, 1992 Cal. Stat. ch. 162, operative Jan. 1, 1994).*

OTHER CODES

CC § 241-254	*Uniform Civil Liability for Support Act* The UCLSA (CC §§ 241-254) is disbursed to various places in the Family Code. The title of the act is not continued. Consider whether the remaining pieces of this act should be deleted as obsolete or redundant.
CCP § 527	*Civil harassment orders* Should civil harassment orders under § 527.6 be coordinated or combined in some way with domestic violence prevention orders?

FAMILY CODE GENERAL ISSUES

Fam. Code	*Attorney's fees and court costs* The subject of attorney's fees needs to be studied with a view toward clarifying, consolidating, and generalizing the rules.
Fam. Code	*Venue* Study the general CCP venue rules (e.g., §§ 395, 396b, 397, 397.5) to identify the parts that are FC–specific, with a view toward collecting these rules, reconciling them, and putting them either in the general FC provisions or in the part of the code dealing with each proceeding.

Fam. Code	*Terminology changes in child custody matters* Hugh McIssac, representing the Legislative Committee on Family Reconciliation Court, submitted materials proposing a change in terminology in family law matters, particularly child custody disputes, intended to reduce the adversary nature of such matters and encourage cooperative parenting plans. AB 2621 was introduced in 1990 to achieve this reform, but was not passed.
Fam. Code	*Terminology for mothers and fathers* Definitions and consistent use of terms to refer to fathers. At present there are "presumed," "alleged," "natural," and "birth" fathers. Similarly, mothers are differently designated.
Fam. Code	*Judicial Council rules and forms* California Rules of Court 1201 *et seq.* contain a body of rules and forms that apply to FLA proceedings (dissolution, nullity, legal separation, at a minimum). These should be studied to see how they mesh with the statutory rules and whether any rules should be included in the new code.
Fam. Code	*Terminology concerning clerks* Is there a difference between a "county clerk" and "clerk of the court" or "court clerk?" If so, are the terms used consistently throughout the code? If not, what term should be used? E.g., in Division 13, references to "county" clerk have been omitted in some sections. See, e.g., §§ 8720, 8822, 8917. In other sections, both terms are used. See, e.g., § 9003 (consent of birth parents to stepparent adoption).
Fam. Code	*What to substitute for references to "this part" in Family Law Act* This raises some difficult questions, especially in the division on custody of children. For example, it is not clear whether a particular custody provision are limited to FLA proceedings. Perhaps all custody determinations are dealt with under the custody provisions in the FLA, no matter whether they arise from an FLA proceeding or from an action or proceeding outside the FLA. If this is the case, then substituting "this code" or "this division" would be a general continuation of existing law. If these provisions apply only to former FLA proceedings, then substituting "dissolution, nullity, and legal separation" would be a continuation of existing law. Specific examples of this problem are found in FC §§ 3150 and 3190. [Minutes 10/91] FC § 2251 is an example of a place where nullity is treated differently. Thus, there may be some problems with globally substituting dissolution, legal separation, *and nullity* for "this part," meaning the Family Law Act. E.g., FC §§ 270, 271, and 2010 refer to nullity, but previously may not have been applicable to nullity proceedings. See MARKEY, at §§ 20.04, 25.10.
Fam. Code	*Treatment of employee benefit plans and deferred compensation* The Commission has received a set of proposals from Barbara A. DiFranza for revision of the statutes concerning employee benefit plans and deferred compensation, including revision of the provisions for giving notice to insurance providers. These proposals involve substantive changes and would also need to be reviewed by other experts in the field. The staff will review the materials to see if any noncontroversial, technical changes are appropriate for inclusion in the 1993 bill. (See Minutes 9/92.)

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

§ 11	*Terms including formerly married persons* This definition has been broadened to apply to the entire code (except as context otherwise requires). Does this cause a problem where this term is used?

DIVISION 2. GENERAL PROVISIONS

§ 291	*Effect of lack of diligence in seeking enforcement* Section 291 continues the first sentence of CC § 4384. The second sentence of CC § 4384 is continued in § 5102. The sentence continued in § 291 has been generalized to apply to the entire code, while the sentence continued in § 5102 has been narrowed to apply only to support judgments and orders. Is the rule of § 291 general or is it support-specific, despite the fact that this limitation was not reflected in the original language of the section? How can the support-specific rules in § 5100 *et seq.* be applied to a non-support order, i.e., enforcement of a property division order involving the payment of money?

DIVISION 3. MARRIAGE

§ 302, 353	*Underage marriage, obtaining license* Section 302 makes clear that both consent (of parent, guardian, or, pursuant to § 303, the court) and the court's order granting permission to marry must be filed with the clerk for a minor to get a marriage license. But § 353 is not clear, stating that the "consent *or* court order" must be filed. This is an existing law problem.
§ 303	*Consent of court* Section 302 states that either a parent or a guardian can give consent to a marriage by a minor. But § 303 states that the court will give substituted consent where there is no parent. Does this mean that court consent is required even where the minor has a guardian, i.e., that the guardian cannot give sufficient consent? This is an existing law problem.
§ 589	*Standard serological test; approved laboratory; checking accuracy of tests* Does the addition of "made by an approved laboratory" in the introductory part causes problems? Can "according to law" be eliminated from subdivision (b)(3) or should it be added to subdivision (b)(2)? (Communication with Dept. of Health Services has been unproductive on this issue.)

DIVISION 4. RIGHTS AND OBLIGATIONS DURING MARRIAGE

§ 721, 1000 *et seq.*	*Management and control of marital property* (1) Extent of retroactivity is unclear. Amendments are effective 1/1/92, but legislature intended to "clarify existing law." (See 1991 Cal. Stat. ch. 1026; *In re* Marriage of Baltins, 212 Cal. App. 3d 66, 91 (1989).) (2) What is the standard of the duty? The new statutes use "fiduciary relationship" and "confidential relationship" interchangeably, but case law distinguishes them. (See Vai v. Bank of America, 56 Cal. 2d 329, 337-38 (1961); Estate of Cover, 188 Cal. 133, 143 (1922); Jones v. Kaufmann 264 Cal. App. 2d 857, 863 (1968); *In re* Marriage of Coffin, 63 Cal. App. 3d 139, 150-55 (1976).) The reference to spouses as trustees is continued, but application of trust law is eliminated. Statutes state that partnership law will apply, but case law relating to partners has imposed stricter duties and liabilities than have been imposed by courts in a spousal situation. (See Leff v. Gunter, 33 Cal. 3d 508, 514-18 (1983).)

§ 721, 1620	*Agreements between spouses and with third parties made during marriage* Consider developing more comprehensive statute governing agreements during marriage. (See Minutes 10/91.)
§ 755	*Payment or refund from employee retirement, death, benefit, or savings plan; discharge from adverse claims* Existing law, carried forward in this section, is unclear. For example, subdivision (b) appears to deal exclusively with ERISA plans and subdivision (c) with non-ERISA plans. This could be made clearer. Subdivision (a) states that certain definitions will be controlled by federal law in relation to the ERISA plans. Should it also be stated that the state plans are controlled by state definitions (e.g., § 80 defining "employee pension benefit plan")?
§ 760 *et seq.*	*Characterization of marital property* Real property purchased while domiciled in a community property state other than California will become quasi-community property on moving to California. Quasi-community property is treated as separate property for purposes of management and control during marriage. Therefore, property that was formerly community property may be stripped of this character for purposes of management and control during marriage on moving to California. Compare Prob. Code § 28.
§ 770	*Separate property of married person* (1) Study to see if the 1991 Staff Note suggestion should be implemented, *viz.*, revise subdivision (b) to read: "A married person has the management and control of the person's separate property, with absolute power of disposition, including testamentary, without the consent of the person's spouse." (2) Consider whether the section should provide that nothing precludes a restraining order that prevents absolute disposition of separate property. Maybe there are other exceptions that could be dealt with by an introductory clause such as, "except as otherwise provided by statute...."
§ 800-801	*Effect of presumptions & community property presumption* [These sections have been eliminated from the code; for their text, see AB 2650 as introduced.] These sections could be combined to state: "Except as otherwise provided by statute, property of a married person is presumed to be community property. This presumption is a presumption affecting the burden of proof." The phrase "acquired during marriage" could be added to make clear that the respondent would not have the burden of showing that the property was separate. (This assumes that, under existing practice, the petitioner would have the initial burden of showing that property was acquired during marriage before a finding that it was community property.)
§ 914, 2623	*Liability for necessaries* This statute (and others with the same language) use both "common necessaries" and "necessaries of life" and cases have dealt with how these two should be defined. The terms "living separately" and "living separate and apart" may have different meanings.
§ 1100 *et seq.*	*Management and control of marital property* Consider drafting procedural rules applicable to enforcement of these rights.
§ 1612	*Subject matter of premarital agreement* Study whether spouses should be permitted to make a binding premarital agreement waiving the right to spousal support. Section 1612 was drawn from the Uniform Premarital Agreement Act (1983), but omitted the portion of the uniform act that specifically provided that parties to a premarital agreement could contract with respect to modification or elimination of spousal support. Consider the subject of premarital agreements regarding attorney's fees in later litigation between spouses. (See Minutes 10/91.)

§ 1620	*Agreements between husband and wife* The source of this section is the original FLA of 1969. Since then, many exceptions to this rule (see comment) have been made so that the rule now is that spouses can contract as to most topics (one exception probably is custody of children). Study this area with a view toward making a comprehensive statement of the law. (Note: This overlaps with the area of fiduciary duty set out in § 721(b).)

DIVISION 6. NULLITY, DISSOLUTION, AND LEGAL SEPARATION

§ 2060, 5103	*Enforcement of order or judgment against an employee pension benefit plan* Consider reconciling these sections. It seems that § 5103 is an exception to § 2060, but they are currently written as if they are two independent rules that can operate simultaneously. Section 5103 appears to be such a large exception as to have become the rule.
§ 2092	*Prima facie evidence of domicile (Uniform Divorce Recognition Act)* Consider the use of "hereafter" in this statute. Is this meant to state that the operative date of the statute is the enactment date (i.e., 1969)? If so, is the operative date now obsolete? The word "hereafter" has been continued in the FC version of the statute with a statement in the comment that it is meant to state the original operative date of the statutory rule. Could "hereafter" be omitted as obsolete, or, if this is not obsolete, should the date be put in the statute?
§ 2251	*Status of putative spouse; division of quasi-marital property* In this section, a reference to Division 7 (division of property) was substituted for a reference to CC § 4800. This substitution seems appropriate, but should be checked with practitioners. There are related problems in Division 7, noted in discussion of § 2500 *et seq.*
§ 2300 *et seq.*	*Legal separation rules* The law does not contain comprehensive rules concerning legal separation, but instead treats separation on a hit or miss basis with dissolution.
§ 2300, 2338-2344	*Final judgment of dissolution of marriage* FC § 2300 states that the effect of a final judgment of dissolution is to return the parties to the state of unmarried persons. FC § 2343 states that on the date of the termination of the marital status, the parties are restored to the status of unmarried persons. FC § 2339 states that a judgment of dissolution will become final "for the purpose of terminating the marriage relationship" six months after certain events. FC § 2340 also refers to a final judgment "for the purpose of terminating the marriage relationship." (In § 2340, this language comes from existing law; in § 2339, it has been added.) Thus, it would appear that "termination of the marriage relationship" refers to a termination of the *status* of being married. However, FC § 2341 seems to make some distinction between a judgment becoming final in relation to the status and it becoming final in relation to something further or something else. If the only effect of a final dissolution of marriage is to dissolve the status of being married, i.e., to return the parties to the state of being unmarried (FC § 2300), then it seems that FC §§ 2341(a) and (b) contradict each other. This is an existing law problem. Note also that FC § 2343 refers to date of termination of the "marital status." Finally, FC § 2344 also seems to imply that the finality of the judgment determines that status of being married or not. Consistent terms would be preferable, i.e., termination of the marital status vs. termination of the marriage relationship. Is the relationship something more that the status of being married? See § 2000 Comment, § 2010.

§ 2313	*Duty of support not affected by dissolution on grounds of insanity* Consider eliminating this rule as unnecessary and confusing. (See Minutes 10/91.)
§ 2344	*Effect of death of either party after entry of judgment of dissolution* What is the rule of subdivision (b)? CEB's PRACTICE UNDER THE CALIFORNIA FAMILY LAW ACT § 17.42 states that death in the interim does not affect the required waiting period for termination of marital status. But the section does not say that, and other provisions seem to say otherwise. See §§ 301, 310; see also *In re* Marriage of Allen, 10 Cal. Rptr. 2d 916 (1992).

DIVISION 7. DIVISION OF PROPERTY

§ 2554	*Arbitration where parties do not voluntarily agree to division* Should this section apply to community estate liabilities as well as assets? How does the $50,000 limit apply? CC § 4800.9 applies if the total value of community property in controversy does not exceed that amount. What does "total value" mean? Is it net value? What if liabilities exceed assets? The amount in controversy arguably should be the amount of assets plus the amount of liabilities, ignoring sign.
§ 2610	*Division of retirement plan benefits* *In re* Marriage of Colvin, 2 Cal. App. 4th 1570, 1577 n.7 (1992), suggests revision of this statute to add a subdivision providing for division of contributions and credits as provided in "Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code," i.e., adding a cross-reference to the part of the Judge's Retirement Law dealing with community property.
§ 2610	*Division of retirement plan benefits* The office of the City Attorney of Los Angeles reported that this section has created "tremendous confusion" and needs to be clarified. (See Minutes 10/91.)
§ 2626	*Reimbursement for debts paid after separation but before trial* Cases are split as to whether the *Epstein* reimbursement survives the codification carried forward in FC § 2626.

DIVISION 9. SUPPORT

§ 3500 *et seq.*	*Federal safe-harbor issue.* (1) Should there be a general section that deals with the effect of federal law in the support area? Federal law increasingly requires state law to conform to federal law on penalty of not receiving federal funds. Apparently DA's want some clear statement in these situations, that state courts have the authority to construe state law to conform with federal law. (2) Can specific citations to federal law be deleted and put into comments? This would avoid problems that arise when the federal law is changed and conforming revisions to corresponding state laws are not made. (See, e.g., § 3653.)
§ 3552	*Tax returns of parties* Study whether the sections on tax returns found throughout the code can be consolidated and generalized. See § 3552 Comment for list of other sections. Search division for other possible sections dealing with tax returns.

§ 3556	*Effect of failure to implement custody or visitation rights* Consider whether existing case law supports the proposition that a custodial parent cannot deny visitation because of non-payment of support. If this is existing law, it could be added to this section.
§ 3600	*Order for support during pendency of proceeding* The State Bar agreed with the Staff Note in the December draft which asked whether there should be an explicit procedure for ex parte spousal support orders.
§ 3629	*Production of tax returns at hearing; effect of failure to produce required documents* The provisions regarding tax returns need to be studied to see if they can be reconciled and generalized.
§ 3652	*Attorney's fees and court costs in modification of support* The subject of attorney's fees needs to be studied with a view toward consolidating and generalizing where possible.
§ 3663, 3682	*Limitation on use of discovery before modification; simplified modification* Each of these articles combines two separate statutes that provided the same procedure, one in relation to child support and the other in relation to spousal support. Each provided that the procedure could only be used one time per year. When the two statutes stood separately, it was clear that the once-per-year limitations applied only to the separate section in which they appeared. However, where the two sections are combined, this is not clear. See §§ 3663, 3682. See also Staff Note in August draft, which argued that in the case of FC § 3663 (discovery of certain financial documents) only *one* request per year should be allowed since the documents at issue are the same no matter which type of support order is at issue. However, the same argument would not apply to the request for modification of the orders themselves pursuant to § 3682. It seems that the simplified modification procedure provided in § 3680 *et seq.* could be more like a cost of living increase (and would not necessarily be based on the documents requested under the § 3660 *et seq.* discovery procedure). Still, the language of both of these statutes is very similar and ambiguous. Study to determine what the rule should be.
§ 3692	*Compliance with federal requirements* Consider why the child support part of this section is limited to public assistance cases, but the spousal support part is not.
§ 3750, 3760, 3780	*Health plan, health coverage, health insurance* The terminology used to describe health plans needs work.
§ 3771	*Employer providing information to district attorney* Should "employee parent" be substituted for "absent parent"? Other sections also should be reviewed. See §§ 3140, 3750.
§ 3900	*Duty of parents* Consider whether "father and mother" should be changed to parents.
§ 3910, 4400-4414	*Duty of parent to support incapacitated adult child; duty of adult child to support parent* Study the area of financial responsibility for adult children and for parents. Consider the relevance of public aid programs' right of reimbursement. See §§ 3910, 4400, 4403 Comments.
§ 4002, 4303, 4403	*County enforcement of duty to support child, spouse or parent* All three of these sections are based on former CC § 248, part of the former Uniform Civil Liability for Support Act. Are these provisions obsolete because of the more detailed provisions for enforcement of support by public entities provided for in the W&I Code?

§ 4005(a)	*Factors in determining amount of child support* This statute is based on former CC § 246 in the former Uniform Civil Liability for Support Act. As written (prior to implementation of the 1992 amendments, specifically SB 370), this section appears to provide factors for determining the amount of support in relation to both minor children (i.e., FC §§ 3900, 3901) and incapacitated adult children (FC § 3910). However, as to minor children, the statewide support guideline must be applied; presumably this is why SB 370 (containing the latest support guideline) repealed CC § 246. See also SB 1614. But, it appears that these are the only factors applicable to determination of support pursuant to FC § 3910 (incapacitated adult children). Should these be retained for that purpose?
§ 4009	*Retroactivity of order* Consider changing the "notice of motion or order to show cause" language to make this section include initial proceedings and not just situations in which a proceeding is already pending. Suggested language includes "pleading or paper requesting support."
§ 4323	*Effect of cohabitation on support* The "cohabitation" rule is limited to opposite sex cohabitants. The financial circumstances in relation to a live-in partner are all that should affect the entitlement to receive or the obligation to pay support, not the gender of the other person or persons in the house.
§ 4331	*Examination by vocational training consultant* Consider expanding to all proceedings in which spousal support is an issue.
§ 4332	*Court findings concerning circumstances* Consider expanding to all proceedings in which spousal support is an issue.
§ 4338	*Order of resort to property for payment of spousal support* Consider expanding this section to apply during the pendency of a proceeding and without regard to whether an order for support has been obtained.
§ 4352	*County responsible for expenses and fees* Consider making this consistent with the child support rule in § 4203.
§ 4400	*Duty to support parent in need* Consider elimination of this duty, since federal law probably prohibits a government entity from recovering public funds from adult children. It has been suggested that the Uniform Commissioners may eliminate this duty from the uniform act.
§ 4500 *et seq.*	*Enforcement of support orders* Throughout this part, references to "judgment" have been omitted as surplus, citing § 155 ("support order" means judgment or order of support). However, this same definition states "whether temporary or final...." This highlights a problem in existing law. It is unclear what methods of enforcement are available for temporary orders, as opposed to permanent orders. A fair interpretation of the statutes is that unless a section expressly prevents it, any method of enforcement is equally available to enforce a temporary order as a permanent order. MARKEY § 21.50 cites what is now FC § 290 (former CC § 4380) for the proposition that both temporary and permanent orders are enforceable by the court by any method within the court's discretion. The same rule would seem to apply equally to child support orders. (Notes: (1) Former CC § 4383, as added in 1980, stated that it applied to a "final judgment, order, or decree" for payment of support. However, "final" was removed by later amendments. (2) The procedure for deposit of money to secure future child support payments added in 1991 (see FC § 4550 *et seq.*) states that it does not apply to temporary child support orders. See § 4551(a).)

§ 4506	*Submitting list of places applied for employment where default in support due to unemployment* Consider expanding this provision to apply to spousal support.
§ 4560	*Order for child support security deposit* Consider making explicit that a parent cannot waive child support where a district attorney is involved.
§ 4614	*Determination by court of assets subject to order* Consider whether the $6000 limitation is too low.
§ 5230	*Support order must include earnings assignment order* Consider drafting a more comprehensive mechanism dealing with modification and making the right to modify available to both obligee and obligor.
§ 5239-5240	*Manner of computing arrearages of support payments; termination of order* Consider what these sections are meant to accomplish. There was general agreement in workshop sessions that the existing law, which is continued in these sections, is impossible to comply with. Consider drafting a more comprehensive mechanism dealing with termination and making it clear that one of the grounds for termination of a wage assignment is when the underlying duty to support has terminated.
§ 5290	*Assignment not grounds for refusal to hire, discharge, or disciplinary action* Consider adding language to make clear that a civil penalty can be sought in the same proceeding and that a separate action or proceeding is not required.

DIVISION 11. MINORS

§ 6700	*Contractual capacity of minor* Study concerning completeness of statement of law. E.g., the reference to the "title on master and servant" was omitted, since that title has been repealed. But, are there sections in the current labor law that would be applicable? Are there other limitations on a minor's right to contract that should be recognized?
§ 6710 *et seq.*	*Disaffirmance of contracts* There are other rules concerning disaffirmance that are not in this chapter. See e.g., §§ 6751 (contract in arts, entertainment, and professional sports not subject to disaffirmance if approved by court), 6921 (consent to medical, dental, or psychiatric care not subject to disaffirmance). (Note: There is a related problem in § 6700, which cross-references this chapter for the rules regarding disaffirmance. If the chapter is expanded to include the other two rules regarding disaffirmance, then the cross-reference in § 6700 is correct. If not, then perhaps § 6700 should be amended.)
§ 6922	*Consent by minor 15 or older living separately* Consider whether this section is superseded by the Emancipation of Minors Law. The requirements in FC § 6922 for consenting to medical care are similar, though not identical, to the requirements for obtaining a declaration of emancipation in FC § 7120. FC § 7050(e)(1) allows an emancipated minor to consent to medical care. The source of FC § 6922 was enacted in 1968 and the Emancipation of Minors Act in 1978. On the other hand, it may be that FC § 6922 is still used since it appears that the minor's right to consent under § 6922 arises without having obtained a court declaration of emancipation. Perhaps FC § 6922 is used in emergency situations where it would be impractical to obtain a court declaration prior to the giving of the consent.

§ 6925	*Consent by minor to pregnancy treatment* The existing section refers to an "unemancipated minor," but FC § 6925 only refers to "minor." This change was probably made to conform with other sections in this chapter and elsewhere. Study the possibility of using "unemancipated minor" in place of "minor" throughout this division and the code. FC § 6500 could be amended to include this concept. (Note: FC § 6500 is not a definition.)
§ 7001	*Purpose and intent of the Emancipation of Minors Law* Study whether to eliminate the last sentence of this section. MARKEY §§ 60.07-60.08 states that there are still conditions for emancipation that arise only from the case law. It appears that the effect of emancipation based on one of the case law conditions may not be the same as emancipation based on the Emancipation of Minors Act. Are these rules obsolete?

DIVISION 12. PARENT AND CHILD RELATIONSHIP

§ 7500 *et seq.*	*Termination of parental rights* Arguably there should be only one procedure and set of standards for terminating parental rights under the Family Code. This would eliminate apparently arbitrary inconsistencies among the three procedures carried into the Family Code: in adoption, the UPA, and CC § 232.
§ 7500-7557	*Blood tests and paternity* Study to reconcile conflicts and clarify ambiguities. There may be a conflict between the "preponderance of the evidence" test set out in § 7555 and the "clear and convincing evidence" test in § 7612 of the UPA.
§ 7600 *et seq.*	*Uniform Parentage Act* Aside from the more complex issues raised in relation to integration of the UPA with adoption law, these sections are very badly drafted and use unclear terminology. The UPA needs to be updated in light of modern scientific developments making determination of paternity more precise. The part of the UPA dealing with the establishment of paternity could be simplified, and the remainder (which grew out of *Stanley v. Illinois* and the recognition of rights of unwed fathers) could be moved into the adoption law.
§ 7660, 7662	*Relinquishment or consent by mother; notice to and rights of presumed father or father as to whom child is a legitimate child; proceeding to terminate parental rights of father* References to "prior" law have been omitted. What remains is confusing. The concept of legitimacy of children is no longer recognized in California law. See FC § 7602. Therefore, how could a child be "a legitimate child under the [current] law of this state?"
§ 7800 *et seq.*	*Freedom from parental custody and control (termination of parental rights)* It has been suggested that this procedure be revised to require a finding of adoptability as a condition precedent to the termination of parental rights in all cases. The courts of appeal have apparently been divided on this question. (See Minutes 10/91).

§ 7820 *et seq.*	*Termination of parental rights* What parts of CC § 232 survive the creation in the Welfare and Institutions Code of a procedure to terminate parental rights after a finding in the Juvenile Court that the parents cannot be reunited and their rights should be terminated? Adoption practitioners use parts of this statute, such as the abandonment rule. If it will now only be used by adoption attorneys, is a separate procedure needed? Are all of these procedural protections necessary, especially where the stepparent adoptions are being treated in the summary procedure of § 8604?

DIVISION 13. ADOPTION

§ 8500 *et seq.*	*Terminology* The concept of "consent" versus "relinquishment" raises a number of problems. "Relinquishment" is used in agency adoptions, while "consent" is the term used in independent adoptions. An important distinction between these is that relinquishment immediately extinguishes the parental rights, whereas a consent in an independent adoption does not by itself extinguish the parental rights. They continue to be able to withdraw their consent until a much later point in the process. Commentators agree that these terms are not used carefully. In subdivision (a), it seems that the term should be relinquishment, not consent. It has been suggested that "relinquishment or consent" might be substituted. Consent has at least three uses: (1) consent by a birth parent in an independent adoption, (2) consent by an agency in an agency adoption, and (3) in an agency adoption where the second birth parent refuses to relinquish, his or her consent (in the general and non-legal sense) is required. A specific example is found in § 8750.
§ 8500 *et seq.*	*Terminology* "Person" versus "parent" (see for example § 8705). "Birth parent," "natural parent," "biological parent," and "parent" (unmodified) are confusing.
§ 8500 *et seq.*	*Adoption law and the UPA* The adoption law does not take account of the requirements of the UPA — these two areas need to be integrated. It is complex, however, since the two areas of law have developed with opposite emphases. The UPA has focused on the "rights of unwed fathers" (which have been recognized in constitutional law) and, from a certain perspective, adoption law is concerned with terminating the rights of birth parents quickly and efficiently in order to free the child for adoption and make adoptions more certain. CC § 7017 in the UPA needs to be integrated with adoption law.
§ 8548	*Stepparent adoption* Study the conflict between the existing definition of stepparent adoption (which seems to allow the adoption to go forward without the parent and stepparent still being married) and the substantive rules (e.g., § 9000) which speak in terms of "spouses," thereby implying that the parties need to be married. (Note: § 11 states that "spouse" includes ex-spouses; this could cut against implying that use of the term "spouse" limits to intact marriage.)
§ 8601	*Required age difference between adoptive parents and child* Consider eliminating this rule. How is it in the public interest to allow someone younger to adopt someone older? It has been suggested that this raises problems regarding manipulation of heirship and tax consequences.

§ 8604	*Consent of parents* Subdivision (b) was written before the development of joint custody orders. Another problem arises from the fact that this statute was written before "physical" custody was distinguished from "legal" custody. The disappearing parent under a joint custody order can never be eliminated under this provision. This section is used exclusively in stepparent adoption cases though this is not stated. Case law has held that this section does not apply to joint custody cases. This statute may create problems by duplicating the abandonment standard in CC § 232. Others suggest expanding the application of this section to joint custody situations because this procedure is summary and is cheaper than going through the entire CC § 232 procedure. Notice to the absent parent under § 8604 should be the same as under CC § 232 or the UPA, because it is a constitutional requirement. The § 8604 procedure takes place within the adoption proceeding, while the CC § 232 procedure is separate from the adoption proceeding. Thus, § 8604 could be moved into the stepparent adoption section, if that is its only purpose. Perhaps it should be limited to a situation in which one birth parent has sole (or primary) physical custody.
§ 8700	*Relinquishment of child to department or licensed adoption agency* It is suggested that subdivision (c) should state: "is *or will be* cared for or is *or will be* placed for adoption." Existing law seems to state that an out-of-state relinquishment cannot be taken until the child has already been transferred to the California agency.
§ 8702	*Statement to birth parents at time of relinquishment* Is there a statute requiring this filing? If not, such a provision could be added in § 8713. This would require drafting time requirements, service rules, etc. Perhaps "attached to the report shall be a copy of the relinquishment" could be added to § 8715.
§ 9003	*Consent of birth parents to adoption* Subdivision (c) is out of date given the rights of unwed fathers that have since arisen. Prima facie evidence should not be sufficient to eliminate the notice requirements in the Uniform Parentage Act. However, this section may still have value in the case where no presumed father can be found and this type of evidence would be all that is available. Consider whether it can be eliminated. This language appears in the law on other types of adoptions.