

Daily Journal

Established 1888

www.dailyjournal.com

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

LEARN MORE >



Jobs/Office Space/Services Experts/Legal Resource Center MCLE Search Logout

FRIDAY

MONDAY

TUESDAY

WEDNESDAY

TODAY

Questions and Comments

TODAY'S COLUMNS

LIBRARY

NEWS

RULINGS

VERDICTS

Search >>

Bookmark Reprints

Thursday, July 28, 2016

This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

New law jettisons controversial divorce ruling

Maya Shulman is an attorney with Shulman Family Law Group of Calabasas.



It's a sad fact many estranged California couples live with each other for years. Their marriages are shot but they stay together, emotionally separated and loveless, in order to keep a roof over their heads or raise their children.

For many years, the family courts were sympathetic to that reality. They agreed that the couple could legally separate but remain under the same roof.

Last year, in *In re Marriage of Davis*, 2015 DJDAR 8320, the California Supreme Court turned that on its ear and created problems for many families when it ruled that, no matter when a marriage actually ended in the couple's eyes, until one party physically moved out there was no legal separation.

Thankfully, now it's the *Davis* ruling that's been given its walking papers.

On Monday, Gov. Jerry Brown signed [Senate Bill 1255](#) into law, marking a major change affecting the divorce process and making the Supreme Court's ruling moot. This is a very considerate move by the state that shows sympathy for estranged couples that continue to live together out of economic necessity. Family law attorneys should be embracing and celebrating this change in the law.

The new law, which becomes effective in January, replaces the *Davis* ruling that a couple living under the same roof could not be considered "separate and apart" until one of the parties moved out of the home. That's important because until a couple is considered "separate and apart," state law says all property and income are held in common by both parties.

Writing for the court, Chief Justice Tani Cantil-Sakauye had said that, to be legally separated, spouses could not live under the same roof. "A bright-line rule ... promotes fairness by providing a measure of predictability to the parties and their attorney, as well as clear guidance to judges," she wrote.

In some cases, the decision had a tremendous impact that caused lengthy court battles to determine the actual separation date and the most appropriate interpretation of *Davis*.

In fact, it was one of the most horrific decisions from the bench in its long history. As

Weekly Appellate Report Podcast

Justin Brown (Brown & Nieto), appellate counsel to Adnan Syed, chats long-shot criminal appeals; Ben Feuer (Cal. App. Law Group) previews OT2016's design patent rumble between Samsung and Apple



[see more](#)

Labor/Employment

Judge takes McDonald's workers class certification under submission

A judge denied, for now, certifying a class of California McDonald's Corp. workers suing over missed meal and rest periods, but tentatively granted classes on less serious allegations that McDonald's is not paying overtime to night shift workers and does not reimburse employees to maintain their uniforms.

Bar Associations

ABA bar exam rule proposal draws critics

Some California legal education experts are critical of an American Bar Association proposal that would require 75 percent of a law school's bar exam takers to pass within two years in order for the institution to maintain its accreditation.

Mergers & Acquisitions

Dealmakers

A roundup of recent transactions and the California lawyers involved.

Litigation

Claims of sex slave ownership lead to defamation suit

The salacious legal dispute between venture capital investor Michael Goguen, his former mistress and their \$40 million contract has spilled over into Missouri's gubernatorial race.

Trade secrets trial pits heavyweight litigators

A trade secrets trial in federal court is not only pitting a technology company against a major Dubai-based bank accused of stealing its potentially billion-dollar software, but is matching up two heavyweight litigators as well.

California is community property state, all things acquired during marriage, other than by inheritance or gift, are community property. It follows that the date of marriage and the date of separation are the determinative dates.

Davis also caused parties to have to maintain separate residences for the purposes of their divorce case when, in actuality, a huge percentage of divorced-to-be couples can't sustain two households prior to the finalization of their divorce.

The problem was largely irrelevant for couples who didn't contest the date of their separation or who were highly litigious anyway.

The new law helps estranged couples reduce costs and raise children while working on their divorce. The bill's author, state Sen. John Moorlach, R-Costa Mesa, in a statement to SFGate.com, said, "SB1255 will assist families as they enter a highly transitional time, both relationally and financially within the family unit."

Judges will be allowed to consider a couple's behavior and statements that their marriage is over in determining their official date of separation. Where they live becomes just another factor in the judge's determination, not a hard and fast rule.

The impact of such a reasonable change is clear. All property acquired after legal separation belongs to the individual, a critical step in building a new life independent of one's former spouse. And just as one spouse would no longer have any claim to the post-separation income of the other, responsibility for debts incurred after separation wouldn't be shared either.

Davis was a nightmare for families because setting up separate households while going through a divorce drained money from the whole family and diverted it from the real issues in dealing with the division of assets, business valuation and so on.

Furthermore, the trial on the issue of the date of separation was very expensive and took days to resolve.

If a family business needed to be valued, and when under appropriate circumstances the business is valued as of the date of separation, the date of separation becomes an even bigger factor involving forensic experts and costly litigation.

Thanks to this new law, for many, the extremely financially burdensome process of divorce will become a little easier to navigate.

Maya Shulman is an attorney with *Shulman Family Law Group of Calabasas*.

RELATED RULINGS

In re Marriage of Davis (Sheryl Jones and Keith Xavier) July 21, 2015
"[L]iving separate and apart" under Family Code Section 771(a) requires spouses to live in separate residences when establishing date of separation.

U.S. Court of Appeals for the 9th Circuit 9th Circuit seeks state high court guidance on Heller bankruptcy

The 9th U.S. Circuit Court of Appeals has asked the state Supreme Court to decide whether a dissolved law firm can collect profits on legal work that began at the firm before dissolution but completed elsewhere once shareholders left for other employers.

California Courts of Appeal Hikers cannot use old fire road, a split 2nd District panel rules

A divided 2nd District Court of Appeal on Wednesday ruled hikers can no longer use an old Los Angeles fire road that for decades the public used even after homes and a gated community was constructed.

Labor/Employment

Sedgwick faces gender discrimination suit

Sedgwick LLP is facing a putative class action filed by a partner who claims she was subjected to "systemic gender discrimination" and that firm leadership retaliated against her for attempting to address her concerns.

Litigation

Jail whistleblower trial begins

Attorneys for a state correctional officer who claims he was conspired against, demoted, then fired for reporting misconduct at a minimum security forest camp called their first witness Wednesday, eliciting testimony about an alleged policy to keep certain violations in-house in lieu of making formal complaints.

Family

New law jettisons controversial divorce ruling

SB 1255, which becomes effective in January, replaces a state high court ruling that a couple living under the same roof could not be considered "separate and apart" until one of the parties moved out of the home. By **Maya Shulman**

Perspective

The geography of the high court docket

How closely do the three principal areas of the California Supreme Court's docket — civil, criminal and death penalty — correlate to the distribution of the state's population? By **Kirk C. Jenkins**

Personal Injury & Torts

Is there a duty to warn Olympic travelers about Zika?

The Summer Olympics are less than two weeks away, and among the many concerns facing these Olympics is the Zika virus. By **Laurie E. Sherwood**

Corporate

For LLCs, breaking up is now easier to do

Under existing law, it takes at least a majority vote of the members of an LLC to dissolve the entity and wind up its activities. But AB 1722 will change