

CHAPTER 580
ANNULMENT, DIVORCE, AND SEPARATION

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Cross References

Marriage and family therapists, see chapter 451J.

Case Notes

"Allowance" as used in chapter is synonym for spousal or family support. 73 H. 566, 836 P.2d 1081.

"PART I. GENERAL PROVISIONS

§580-1 Jurisdiction; hearing. (a) Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor, except as provided in subsection (b). No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor, except as provided in subsection (b). A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit

shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State or unions recognized as civil unions in this State in the same manner as marriages.

(b) An action for annulment, divorce, or separation may be commenced where neither party to the marriage meets the domicile or physical presence requirements of subsection (a) at the time the action is commenced, if:

- (1) The marriage was solemnized under chapter 572 in this State; and
- (2) Neither party to the marriage is able to pursue an action for annulment, divorce, or separation where the parties are domiciled because both parties are domiciled in a jurisdiction or jurisdictions that do not recognize their marriage.

There shall be a rebuttable presumption that a jurisdiction will not maintain an action for annulment, divorce, or separation if the jurisdiction or jurisdictions where the parties are domiciled do not recognize the parties' marriage.

(c) Actions brought under subsection (b) shall be commenced in the circuit where the marriage was solemnized and the law of this State shall govern. Jurisdiction over actions brought under subsection (b) shall be limited to decrees granting annulment, divorce, or separation that address the status or dissolution of the marriage alone; provided that if both parties to the marriage consent to the family court's personal jurisdiction or if jurisdiction otherwise exists by law, the family court shall adjudicate child custody, spousal support, child support, property division, or other matters related to the annulment, divorce, or separation. [L 1870, c 16, §2; am L 1878, c 26, §1; am L 1903, c 22, §4 and c 33, §1; am L 1919, c 172, §1; RL 1925, §2966; am L 1927, c 126, §1; RL 1935, §4461; am L 1935, c 94, §1; RL 1945, §12211; am L 1949, c 53, §29; RL 1955, §324-21; am L 1957, c 72, §3; am L 1961, c 58, §1; am L 1965, c 76, §1; am L 1967, c 76, §2; HRS §580-1; am L 1973, c 211, §5(a); am L 1977, c 173, §1; am L 2011, c 1, §6; am L 2012, c 267, §15; am L Sp 2013 2d, c 1, §10]

Law Journals and Reviews

"Physically present" construed. Haw Supp, 3 HBJ, Fall 1965, at 20.

For discussion of development of new approach to family problems, see Divorce, Law and Psychology. 7 HBJ 73.

Case Notes

One-year residence requirement does not violate equal protection clause. 512 F.2d 430.

Averments as to jurisdiction held sufficiently set forth. 7 H. 342. Failure to allege that parties last lived together as husband and wife within said circuit may result in dismissal of suit for lack of jurisdiction. 9 H. 405. Suit cannot be brought in circuit other than that in which the parties last lived together. 19 H. 243. Decree where court has jurisdiction cannot be attacked collaterally. 23 H. 451, 455. Reference to a master: power of divorce judge; taking of evidence; review of master's fee. 44 H. 442, 355 P.2d 33. Jurisdiction, custody of children. 49 H. 20, 29-31, 407 P.2d 885.

Public cannot, but persons of immature years may, be excluded from courtroom. 22 H. 425, 428.

"Residence" equivalent to "domicile". 23 H. 376, 377; 37 H. 223; 38 H. 261; 41 H. 37. History of divorce courts discussed; not common law courts. 24 H. 239. Domicile of soldier or sailor. 35 H. 461; 37 H. 223. To acquire domicile. 40 H. 625. Domicile, evidence and continuation of. 54 H. 60, 502 P.2d 380.

The one-year residence requirement for divorce does not violate the equal protection clause. 53 H. 302, 492 P.2d 939.

Appeal from interlocutory order requires allowance of court. 56 H. 662, 548 P.2d 251.

Though wife had not been domiciled in Hawaii for the continuous periods required under this section, as long as wife was domiciled in Hawaii at the time wife filed for divorce, i.e., wife was physically present in Hawaii with the intention of remaining indefinitely, family court had subject matter jurisdiction to entertain the divorce action; family court was then authorized to grant the divorce decree dissolving the marriage as long as wife was domiciled in Hawaii for a continuous period of six months prior to entry of the divorce decree. 94 H. 471 (App.), 16 P.3d 876.

Relevant statutes, rules, and precedent did not permit wife to directly attack in circuit court the validity of the property and distribution part of the divorce decree; circuit court did not have subject matter jurisdiction under §603-21.5 to do what wife must have had done to obtain the relief wife sought; pursuant to §580-47 and this section, only the family court could have granted that relief. 101 H. 370 (App.), 68 P.3d 644.

Sections 572-1, 580-21, and this section must be read together; only the family court can declare void a marriage obtained by force, duress, or fraud, and it cannot do so where there has been subsequent cohabitation. 112 H. 131 (App.), 144 P.3d 579 (2006).

Cited: 3 H. 300, 301; 20 H. 633, 635; 24 H. 29, 34; 30 H. 620, 621.

" §580-2 **Commencement of action; summons.** An action for annulment, divorce, or separation is commenced by filing a complaint with the court, which complaint shall be signed and sworn to by the applicant and shall set forth sufficient facts to constitute a claim for relief. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it for service to a person authorized to serve process in civil actions. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant is required to appear and defend which shall not be less than twenty days after the service of the summons and complaint upon the defendant, and shall notify the defendant that in case of the defendant's failure to appear and defend as required, further proceedings may be taken including judgment for the relief demanded in the complaint without further notice to the defendant. Alternative complaints for annulment, divorce, or separation may be set forth or combined in one complaint. [L 1870, c 16, §3; am L 1878, c 26, §2; am L 1903, c 22, §5; am L 1905, c 19, §1; am L 1907, c 72, §1 and c 109, §1; am L 1909, c 25, §2; am L 1919, c 168, §1; RL 1925, §2967; RL 1935, §4462; RL 1945, §12212; am L 1953, c 221, §1; RL 1955, §324-22; am L 1963, c 85, §3; am L 1965, c 88, §1; am L 1966, c 22, §2; HRS §580-2; gen ch 1985]

Rules of Court

Commencement of action, see HFCR rule 3.
Summons, see HFCR rule 4.

Case Notes

Except under certain circumstances amended libel should be served within reasonable time. 9 H. 405. Service of amended pleading if amendment made in open court before opposing counsel may be waived. Id.

Insane person may file for divorce through guardian. 9 H. 475.

Great particularity not required in prayer for alimony. 14 H. 152.

When decree vacated because thirty days has not elapsed, court should re-try the case after such lapse, upon evidence then adduced. 23 H. 451, 456.

Setting decree aside. 34 H. 675.

Discontinuance, right. 41 H. 481.

Cited: 3 H. 300, 301; 17 H. 463, 464; 20 H. 633, 637; 24 H. 29, 34.

" **§580-3 Service.** (a) The complaint for annulment, divorce, or separation, and the summons shall be served by an authorized process server on the defendant personally if the defendant is within the State, unless the defendant enters an appearance in the case, and except as hereinafter otherwise provided.

(b) If service by an authorized process server is not feasible or is inconvenient or if the defendant is without the State, the court may authorize the service to be made by any other responsible person, or the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall be not less than twenty days after the giving of personal notice, to be given to the defendant personally by such person and in such manner as the court shall designate and the case may be heard and determined at or after the time specified in the notice.

(c) If the defendant is without the circuit, the court may authorize service by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

(d) If it appears that the defendant has refused to accept service by mail, or is concealing oneself, or evading service, or that plaintiff does not know the address or residence of the defendant and has not been able to ascertain the same after reasonable and due inquiry and search for at least fifteen days either before or after the filing of the complaint, the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall not be less than twenty days after the last publication of the published notice, to be given to the defendant by publication thereof at least once in each of three successive weeks in a newspaper suitable for the advertisement of notices of judicial proceedings, published in the State, and the case may be heard and determined at or after the time specified in the notice.

(e) If the plaintiff, as a result of impoverishment, is unable to publish notice as required by subsection (d), the plaintiff shall file an affidavit attesting to impoverishment

and to the fact that after due and diligent search, the whereabouts of the individual sought to be served are unknown. Upon those filings, the court shall order that service be made by forwarding a certified copy of the pleadings and process to the individual at the last known address by registered or certified mail, with a return receipt requested and a directive to deliver to addressee only, sending a certified copy of the pleadings and process to the defendant's closest known relative, if any can be found, and by posting a copy of the pleadings and process at the courthouse in which the pleadings and process has been filed. Service shall be completed thirty days after mailing. The plaintiff shall attest to the fact of the mailing and the date thereof by affidavit, attaching the sender's receipt for that mail and, if available, the return receipt and envelope. [L 1870, c 16, §4; am L 1903, c 22, §6; am L 1907, c 109, §2; am L 1919, c 43, §2; RL 1925, §2968; am L 1925, c 121, §1; RL 1935, §4463; am L 1941, c 217, §1; RL 1945, §12213; am L 1953, c 199, §1; RL 1955, §324-23; am L 1957, c 177, §1; am L 1966, c 22, §3; am L 1967, c 60, pt of §1; HRS §580-3; gen ch 1985; am L 2000, c 190, §1]

Case Notes

Publication prior to April 26, 1903. 14 H. 498.

Service by publication strictly construed, and when publication required to be made in certain newspapers cannot be made in others. 14 H. 596.

Libellee without Territory should be notified when to appear. 17 H. 463.

Decree void where jurisdiction of libellee not acquired. 20 H. 623.

No jurisdiction to hear case until thirty days after completion of service, or after appearance without service. 20 H. 633.

Proceeding being in rem, under certain circumstances, decree may issue although court never acquired actual jurisdiction of defendant. 24 H. 239.

Under the record, plaintiff failed to make reasonable and due inquiry, and service by publication was unauthorized. 55 H. 34, 514 P.2d 865.

Requirements for court to acquire in rem jurisdiction. 7 H. App. 102, 747 P.2d 1281.

Cited: 3 H. 300, 301; 8 H. 478, 490.

" **[§580-3.5] Personal judgment against absent defendant.** In any proceeding in the family court, the court shall have the power to render a personal judgment against a party who is

outside of this State and over whom jurisdiction is acquired by service of process in the manner set forth in section 580-3(b) or (c), if the party was personally served with a copy of the summons or order to show cause and complaint or other pleading upon which the judgment is based and if the party was a domiciliary of this State (1) at the time that the cause of action which is the subject of the proceeding arose, or (2) at the time of the commencement of the proceeding, or (3) at the time of service. [L 1970, c 24, §1]

Rules of Court

Default judgment, see HFCR rule 55.

Case Notes

Where child support proceeding commenced when mother filed complaint for divorce, child support enforcement agency's motion for modification of child support payments filed twelve years later was "continuation of proceeding", and, under §580-47 and this section, court had continuing jurisdiction over non-Hawaii domiciliary father. 87 H. 209 (App.), 953 P.2d 968.

Hawaii Legal Reporter Citations

Division of real property located outside State. 78-2 HLR 78-1129.

" **§580-4 Cross-complaint.** In any action for annulment, divorce, or separation, a cross-complaint for annulment, divorce, or separation may be filed and affirmative relief granted thereon as fully and effectually as on an original complaint. The cross-complaint shall be signed and sworn to by the cross-complainant and shall be served in the same manner as an original complaint. [L 1913, c 121, §1; RL 1925, §2969; RL 1935, §4464; RL 1945, §12214; RL 1955, §324-24; am L 1966, c 22, §4; HRS §580-4]

Case Notes

Statute valid; "divorce" means every kind of divorce. 22 H. 425; 25 H. 638; 29 H. 464.

Error to disregard. 30 H. 473.

Cited: 26 H. 128.

" **§580-5 Proof.** Upon the hearing of every complaint for annulment, divorce, or separation, the court shall require exact

legal proof upon every point, notwithstanding the consent of the parties. Where the matter is uncontested and the court, in its discretion, waives the need for a hearing, then the court shall require exact legal proof upon every point by affidavit. [L 1870, c 16, §5; CpL p 435; am L 1903, c 22, §2; am L 1905, c 19, §2; am L 1915, c 56, §2 and c 192, §2; RL 1925, §2970; RL 1935, §4465; RL 1945, §12215; am L 1949, c 53, §29; RL 1955, §324-25; am L 1957, c 72, §4; am L 1966, c 22, §5; HRS §580-5; am L 1973, c 211, §5(b); am L 1989, c 127, §1]

Case Notes

Burden of "exact legal proof" not met. 37 H. 17.

Burden on libellant. 38 H. 394.

Fact that libellant had been twice divorced immaterial; corroboration of libellant's testimony not required. 42 H. 264.

Libellant's testimony negated "exact legal proof" of "grievous mental suffering". 43 H. 381.

Cited: 24 H. 29, 34; 36 H. 528.

" **§580-6 Guardian ad litem for incompetent defendant.** In any case where the court has reason to believe that the defendant in a matrimonial action is not fully competent to conduct the defendant's defense or to comprehend the nature of the proceedings, the court may appoint a guardian ad litem to represent the interests of the defendant. The court may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify. [L 1919, c 10, pt of §2; RL 1925, §2972; RL 1935, §4467; RL 1945, §12217; am L 1951, c 287, §1(2); RL 1955, §324-27; am L 1966, c 22, §6; am L 1967, c 76, §3; HRS §580-6; gen ch 1985]

Cross References

Maximum fees for appointed counsel and guardian ad litem, see §571-87.

Rules of Court

Guardians ad litem, see HFCR rule 17(c).

" **§580-7 Examination of parties to prevent collusion.** Upon the hearing of any complaint for a divorce or separation, the court may examine either or both of the parties, upon oath, in order to prevent collusion. [CC 1859, §1341; am L 1903, c 22,

§2; RL 1925, §2992; RL 1935, §4489; RL 1945, §12241; RL 1955, §324-66; HRS §580-7; am L 1973, c 211, §5(c)]

" **§580-8 Procedure when collusion suspected.** If there is any reason to suspect collusion, or that important testimony can be procured which has not been produced, the court shall continue the cause from time to time while such reason for suspicion continues. The attorney general or other prosecuting officer and parties not of record shall be heard, to establish the fact of collusion or of the existence of testimony not produced. [L 1870, c 16, §7; am L 1903, c 22, §7; RL 1925, §2976; RL 1935, §4471; RL 1945, §12219; RL 1955, §324-29; HRS §580-8; am L 1973, c 211, §5(d)]

Case Notes

Libel dismissed for collusion. 19 H. 68.

Libels for divorce are not the same as ordinary civil actions; technical law of default not applicable. 24 H. 29.

Section prevents deputies attorney general from acting as attorney for parties in divorce. 35 H. 849.

Cited: 3 H. 300, 301; 39 H. 385.

" **§580-9 Temporary support, etc.** After the filing of a complaint for divorce or separation the court may make such orders relative to the personal liberty and support of either spouse pending the complaint as the court may deem fair and reasonable and may enforce the orders by summary process. The court may also compel either spouse to advance reasonable amounts for the compensation of witnesses and other expenses of the trial, including attorney's fees, to be incurred by the other spouse and may from time to time amend and revise the orders. [L 1870, c 16, §10; L 1872, c 18; am L 1903, c 22, §§2, 8; RL 1925, §2978; RL 1935, §4473; RL 1945, §12224; am L 1955, c 79, §1; RL 1955, §324-34; am L 1966, c 22, §6; HRS §580-9; am L 1973, c 211, §5(e); am L 1974, c 65, pt of §2; gen ch 1985]

Case Notes

Allowance of legal fees and their amount is in discretion of the court. 5 H. 23. Sound discretion of the trial judge will not be reviewed by appellate court. 25 H. 274. Wife's expense money and attorney's fees in resisting revocation of alimony may be taxed to husband. 23 H. 639; 34 H. 22; 38 H. 233. Wife's expense for counsel on appeal to supreme court. 30 H. 61; 35 H. 69; 35 H. 382; 38 H. 647. Application by wife for fees on appeal must be timely. 49 H. 688, 702, 427 P.2d 86. Award of

attorney's fees, abuse of discretion. 49 H. 576, 424 P.2d 671. Does not authorize award of attorney's fees against wife. 49 H. 688, 700, 427 P.2d 86. And where case is discontinued. 28 H. 487. Allowance of counsel fees in equity suit for separate maintenance. 38 H. 148.

Husband not liable at law for fee of attorney in defending wife in divorce case. 19 H. 463. Statutory attorney's fees not taxed in divorce and separation cases. 5 H. 175. Attorney's fees cannot be awarded as damages or costs where not so provided by statute, stipulation or agreement. 40 H. 179; 49 H. 688, 700, 427 P.2d 86.

Jurisdiction over person and property of the one against whom decree awarding alimony is made is necessary, otherwise decree is void. 24 H. 239. Decree of divorce annuls temporary alimony order. 25 H. 274. Contempt. 30 H. 80; 35 H. 541.

Motion in supreme court on appeal for expenses in that court and for temporary alimony, denied, it appearing lower court had denied such a motion. 25 H. 172. Allowances for temporary alimony or expenses, when proper. 44 H. 491, 355 P.2d 188.

Award of attorney's fees is in discretion of court. 58 H. 227, 566 P.2d 1104.

Temporary support. 58 H. 227, 566 P.2d 1104.

Section authorizes attorney's fees in a proceeding after entry of final divorce decree. 59 H. 32, 575 P.2d 468.

Where neither party had sufficient income, it was not error to impair jointly owned marital property pendente lite. 1 H. App. 617, 623 P.2d 1265.

" **§580-10 Restraining orders; appointment of master.**

(a) When a complaint for annulment, divorce, or separation is filed in this State, on an application by either party, supported by affidavit or a statement made under penalty of perjury, the court, without a hearing, shall:

- (1) Order each of the parties to that action to timely provide to the other party full financial and property disclosure on forms provided by the court; and
- (2) Order and restrain each of the parties to that action from transferring, encumbering, wasting, or otherwise disposing of any of their property, whether real, personal, or mixed, over and above current income, except as necessary for the ordinary course of a business or for usual current living expenses, without the consent and concurrence of the other party to such action for divorce, or further specific order of the court. Where restraining orders are issued against the other party to the action, the non-filing party shall be served promptly with the financial

restraining order and shall be entitled to a prompt hearing to show cause why the order should not be enforced.

(b) In all actions for annulment, divorce, or separation, the court shall have the power to issue such restraining orders against a person or persons not a party to the action, as shall be reasonably required during the pendency of such action, to preserve the estates of the parties. Where such restraining orders are issued against a person or persons not a party to the action, such persons shall be promptly served with the order and shall be entitled to a prompt hearing within a reasonable time to show cause why such order should not be enforced.

(c) In all actions for annulment, divorce, or separation, the court shall have the power to appoint a master, or masters, to make preliminary findings and to report to the court on any issue. The written reports of a master shall be available to interested parties and may be received in evidence if no objection is made; or if objection is made, may be received in evidence provided the person or persons responsible for the reports are available for cross-examination as to any matter contained therein. When a report is received in evidence, any party may introduce other evidence supplementing, supporting, modifying, or rebutting the whole or any part of the report.

(d) Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity. Where necessary, the order may require either or both of the parties involved to leave the marital residence during the period of the order, and may also restrain the party to whom it is directed from contacting, threatening, or physically abusing the children or other relative of the spouse who may be residing with that spouse at the time of the granting of the restraining order. The order may also restrain a party's agents, servants, employees, attorneys, or other persons in active concert or participation with the respective party.

(1) A knowing or intentional violation of a restraining order issued pursuant to this section is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

- (A) For a first conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (B) For the second and any subsequent conviction for violation of the restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under subparagraphs (A) and (B), upon condition that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this section.

- (2) Any law enforcement officer shall enforce a restraining order issued pursuant to this subsection, including lawfully ordering the restrained party to voluntarily leave for a three-hour cooling off period, or, with or without a warrant, where the law enforcement officer has reasonable grounds to believe that the restrained party has violated the restraining order, arresting the restrained party.

(e) Any fines collected pursuant to subsection (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6. [L 1947, c 122, §1; RL 1955, §324-35; am L 1966, c 22, §6; HRS §580-10; am L 1973, c 211, §5(f); am L 1983, c 187, §1 and c 246, §1; am L 1992, c 290, §1; am L 1993, c 6, §24; am L 1999, c 200, §3; am L 2011, c 140, §1]

Cross References

Domestic abuse protective orders, see chapter 586.

Rules of Court

Masters, see HFCR rule 66.

Restraining orders, see HFCR rule 65.

" **§580-11 Care, custody, education, and maintenance of children pendente lite.** During the pendency of any action for divorce or separation the court may make such orders concerning the care, custody, education, and maintenance of the minor children of the parties to the action as law and justice may require and may enforce the orders by summary process. The court may revise and amend the orders from time to time. [L 1931, c 49, §1; RL 1935, §4474; RL 1945, §12225; RL 1955, §324-36; HRS §580-11; am L 1973, c 211, §5(g)]

Cross References

Custody, see §571-46.

Case Notes

Cited: 35 H. 382, 383; 38 H. 233, 235.

" **§580-12 Sequestration of property.** All property within the State of a party to a matrimonial action may by order of the court be sequestered and applied to the payment of any allowance in such action by the court for the support and maintenance of either spouse or for the support, maintenance, and education of minor children, whether temporary or permanent, where service or notice has been effected by any of the methods set forth in section 580-3. [L 1967, c 60, pt of §1; HRS §580-12; am L 1974, c 65, pt of §2]

" **§580-13 Security and enforcement of maintenance and alimony.** Whenever the court makes an order or decree requiring a spouse to provide for the care, maintenance, and education of children, or for an allowance to the other spouse, the court may require the person subject to such order or decree to give reasonable security for such maintenance and allowance. Upon neglect or refusal to give the security, or upon default of the person subject to such order or decree and such person's surety to provide the maintenance and allowance, the court may sequester such person's personal estate, and the rents and profits of such person's real estate, and may appoint a receiver

thereof and cause such person's personal estate and the rents and profits of such person's real estate to be applied towards such maintenance and allowance, as to the court shall from time to time seem just and reasonable. [CC 1859, §1333; am L 1903, c 22, §2; RL 1925, §2981; RL 1935, §4477; RL 1945, §12228; RL 1955, §324-39; HRS §580-13; am L 1973, c 211, §5(h); am L 1974, c 65, pt of §2]

Case Notes

This section is limitation upon words "or out of his property" found in §580-74. 26 H. 128.

Application in connection with contempt. 28 H. 291.

Receiver appointed. 28 H. 291; 35 H. 570.

Sequestration. 33 H. 725.

Judicial sale of real property at suggestion of both parties. 39 H. 653.

Failure to comply with alimony order must be punished as criminal contempt if contemnor lacks present ability to comply. 60 H. 160, 587 P.2d 1220.

Cited: 13 H. 654, 661; 14 H. 152, 156; 23 H. 281, 289; 31 H. 574, 576.

" **§580-14 Renumbered as §571-52.1.** L 1968, c 33, §2.

" **§580-15 County attorneys to represent court.** The county attorneys of Maui and Kauai and the corporation counsels of the city and county of Honolulu and the county of Hawaii, within their respective counties, shall, when and to the extent authorized by their respective county governing bodies and upon request of the family court, represent the court in any contempt proceeding for the enforcement of any order or decree for support of a spouse or child support or both, except that fees may be charged as provided for by chapter 576D. [L 1967, c 63, §2; HRS §580-15; am L 1973, c 211, §5(i); am L 1974, c 65, pt of §2; am L 1984, c 230, §4; am L 1986, c 332, §17]

Hawaii Legal Reporter Citations

Enforcement of support order. 83-1 HLR 830345.

" **[§580-16] Divorce decree, support order; social security number.** The social security number of any individual who is party to a divorce decree or subject to a support order issued under this chapter shall be placed in the records relating to the matter. [L 1997, c 293, §7]

"PART II. ANNULMENT

§580-21 Grounds for annulment. The family court, by a decree of nullity, may declare void the marriage contract for any of the following causes, existing at the time of the marriage:

- (1) That the parties stood in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as the whole blood, uncle and niece, aunt and nephew, whether the relationship is the result of the issue of parents married or not married to each other;
- (2) That the parties, or either of them, had not attained the legal age of marriage;
- (3) That the husband had an undivorced wife living, or the wife had an undivorced husband living;
- (4) That one of the parties lacked the mental capacity to consent to the marriage;
- (5) That consent to the marriage of the party applying for annulment was obtained by force, duress, or fraud, and there has been no subsequent cohabitation; and
- (6) That one of the parties was a sufferer of or afflicted with any loathsome disease and the fact was concealed from, and unknown to, the party applying for annulment. [CC 1859, §1313; am imp L 1866, p 3; rep L 1870, c 10; ree L 1876, c 48; am imp L 1870, c 24, §1; rep L 1872, c 23, §2; am imp L 1872, c 23, §1; am L 1903, c 22, §1; RL 1925, §2955; RL 1935, §4450; am L 1935, c 184, §1; RL 1945, §12201; am L 1949, c 53, §29; RL 1955, §324-1; am L 1957, c 72, §1; am imp L 1965, c 232, §1; HRS §580-21; am L 1980, c 43, §1; am L 1984, c 119, §2; am L 1997, c 52, §8]

Attorney General Opinions

Uncle and niece by adoption not disqualified to intermarry.
Att. Gen. Op. 62-49.

Case Notes

Marriage voidable, not void, of girl under fourteen. 6 H. 289.

Requires proper allegation. 7 H. 219.

Proper parties. 7 H. 278.

Nonassent of a party to marriage is not a statutory ground for annulment. 8 H. 77.

Insufficiency of evidence on ground of nonage. 8 H. 360.

Held that failure to procure license, ground for annulment. 25 H. 397, rev'g 16 H. 377.

Enumeration of grounds does not deprive court of jurisdiction to annul a marriage on some other ground. 26 H. 89; 29 H. 770, 795.

Presumption that marriage was valid; burden on libellant to prove incompetency. 29 H. 716.

Trial court erred in deciding that wife was entitled to prevail on her divorce claim and second husband was not entitled to prevail on his annulment claim where certified copy of judgment of divorce presented undisputed evidence that when wife married second husband, wife had prior lawful living husband and thus did not satisfy the requirement of §572-1(3). 108 H. 459 (App.), 121 P.3d 924.

Sections 572-1, 580-1, and this section must be read together; only the family court can declare void a marriage obtained by force, duress, or fraud, and it cannot do so where there has been subsequent cohabitation. 112 H. 131 (App.), 144 P.3d 579 (2006).

" **§580-22 Nonage.** An action to annul a marriage on the ground that one of the parties was under legal age, may be brought by the parent or guardian entitled to the custody of the minor, or by any person admitted by the court to prosecute as the friend of the minor. In no case shall the marriage be annulled on the application of a party who was of legal age at the time it was contracted; nor when it appears that the parties, after they attained the legal age, had for any time freely cohabited as man and wife. [CC 1859, §1314; am L 1903, c 22, §2; RL 1925, §2956; RL 1935, §4451; RL 1945, §12202; RL 1955, §324-2; HRS §580-22; am L 1973, c 211, §5(j)]

Case Notes

Once nonage spouse dies no ground to annul such marriage. 6 H. 289.

Suit should be in name of minor by parent or guardian or in name of parent and minor made defendant. 7 H. 219, 278.

" **§580-23 Former husband or wife living.** A marriage may be declared null on the ground that one of the parties has an undivorced husband or wife living, on the application of either of the parties during the lifetime of the other, or on the application of the former husband or wife. [CC 1859, §1315; RL 1925, §2957; RL 1935, §4452; RL 1945, §12203; RL 1955, §324-3; HRS §580-23]

" **§580-24 Allowance for spouse and family.** Every person who is deceived into contracting an illegal marriage with a man or woman having another spouse living, under the belief that he or she was unmarried, may be entitled to a just allowance for the support of the deceived spouse and family out of the property of the deceiving spouse, which the deceived spouse may obtain at any time after action commenced upon application to the family court having jurisdiction. In addition to the allowance, the court may also compel the defendant to advance reasonable amounts for the compensation of witnesses and other reasonable expenses of trial to be incurred by the plaintiff. [CC 1859, §1316; am L 1903, c 22, §3; am L 1919, c 43, §1; RL 1925, §2958; RL 1935, §4453; RL 1945, §12204; RL 1955, §324-4; am L 1966, c 22, §6; HRS §580-24; am L 1973, c 211, §5(k); am L 1974, c 65, pt of §2]

Case Notes

Application to claim of "putative wife". See 27 F.2d 582 rev'g 29 H. 770.

Cited: 3 H. 489, 495; 20 H. 633, 637.

" **§580-25 Inheritance by children.** The children of such illegal marriage shall be entitled to succeed in the same manner as legitimate children, to all the real and personal estate of both parents in the State. [CC 1859, §1317; RL 1925, §2959; RL 1935, §4454; RL 1945, §12205; RL 1955, §324-5; HRS §580-25]

Case Notes

Cited: 20 H. 722, 723.

" **§580-26 Lack of mental capacity.** The marriage of a person who lacked the mental capacity to consent to the marriage may be annulled on the application of either party, or on the application of a guardian of the party who lacked such capacity; but in such case, no sentence of nullity shall be pronounced if it appears that the parties freely cohabited as husband and wife after the party who lacked such mental capacity attained the mental capacity necessary to consent to marriage. [CC 1859, §1318; am L 1903, c 22, §2; RL 1925, §2960; RL 1935, §4455; RL 1945, §12206; RL 1955, §324-6; HRS §580-26; am L 1973, c 211, §5(1); am L 1980, c 43, §2]

" **§580-27 Legitimacy in case of annulment.** Upon the annulment of a marriage on account of nonage, lack of mental capacity of either party to consent to the marriage, or of a

marriage that is prohibited on account of consanguinity between the parties, or for any other ground specified in section 580-21, the issue of the marriage shall be legitimate. [CC 1859, §§1319, 1320; am imp L 1870, c 24, §1, rep L 1872, c 23, §2; am L 1872, c 23, §1; RL 1925, §§2961, 2962; RL 1935, §§4456, 4457; am L 1935, c 115, §§1, 2; RL 1945, §12207; RL 1955, §324-7; HRS §580-27; am L 1980, c 43, §3]

Case Notes

Cited: 6 H. 289, 291.

" **§580-28 Physical incapacity.** An action to annul the marriage on the ground of physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage. [CC 1859, §1321; RL 1925, §2963; RL 1935, §4458; RL 1945, §12208; RL 1955, §324-8; HRS §580-28; am L 1973, c 211, §5(m)]

" **§580-29 No annulment solely on confessions.** No sentence of nullity of marriage shall be pronounced solely on the declarations or confessions of the parties. The court shall, in all cases, require other satisfactory evidence of the facts on which the allegation of nullity is founded. [CC 1859, §1322; am L 1903, c 22, §2; RL 1925, §2964; RL 1935, §4459; RL 1945, §12209; RL 1955, §324-9; HRS §580-29; am L 1973, c 211, §5(n)]

"PART III. DIVORCE

Cross References

Distribution of property (employees' retirement system benefits) in a divorce, see §88-93.5.

Law Journals and Reviews

Why is My Client Nuts?... Dealing with the Difficult Divorce Client. II HBJ No. 13, at pg. 91.

§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, 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. [L 1870, c 16, §1; am L 1903, c 22, §2; am L 1909, c 25, §1; am L 1915, c 56, §1 and c 192, §1; am L 1919, c 10, §1; RL 1925, §2965; am L 1931, c 196, §1; RL 1935, §4460; am L 1935, c 27, §1; RL 1945, §12210; am L 1949, c 53, §29 and c 174, §1; am L 1951, c 287, §1; RL 1955, §324-20; am L 1957, c 72, §2; am L 1965, c 52, §3; am L 1966, c 22, §6; am L 1967, c 76, §1; HRS §580-41; am L 1970, c 116, §1; am L 1972, c 11, §1]

Law Journals and Reviews

For discussion of development of new approach to family problems, see Divorce, Law and Psychology. 7 HBJ 73.

The Case Against Uncontested Divorce Practice. 12 HBJ No. 4 Winter 1977, pg. 21.

" **§580-41.5 Battered spouses; exemption from mediation in divorce proceedings.** (a) In contested divorce proceedings where there are allegations of spousal abuse, the court shall not require a party alleging the spousal abuse to participate in any component of any mediation program against the wishes of that party.

(b) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of family violence between the parties. A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that family violence has occurred unless:

- (1) Mediation is authorized by the victim of the alleged family violence;

- (2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and
- (3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate.

(c) In a proceeding concerning the custody or visitation of a child, if a protective order is in effect, the court shall not require a party alleging family violence to participate in any component of any mediation program against the wishes of that party.

(d) In a proceeding concerning the custody or visitation of a child, if there is an allegation of family violence and a protective order is not in effect, the court may order mediation or refer either party to mediation only if:

- (1) Mediation is authorized by the victim of the alleged family violence;
- (2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and
- (3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate. [L 1993, c 88, §1; am L 1996, c 198, §4]

Law Journals and Reviews

Empowering Battered Women: Changes in Domestic Violence Laws in Hawai'i. 17 UH L. Rev. 575.

" **§580-42 [OLD] REPEALED.** L 1972, c 11, §2.

§580-42 Irretrievable breakdown. (a) If both of the parties by complaint 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. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit.

(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 complaint 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. [L 1972, c 11, §3; am L 1973, c 211, §5(o); am L 1989, c 127, §2]

" **[§580-42.5] Recrimination no defense.** Recrimination shall not be a defense to an application for divorce or separation. [L 1971, c 77, §2]

" **§580-43 REPEALED.** L 1972, c 11, §5.

" **§580-44 Persons affected with Hansen's disease represented by attorney general.** Upon application of the director of health, the attorney general or the attorney general's deputies shall represent any person affected with Hansen's disease detained at any hospital, settlement, or place for the care and treatment of persons affected with Hansen's disease in proceedings for divorce. [L 1943, c 39, §1; RL 1945, §12220; am L 1949, c 53, §29; RL 1955, §324-30; am L Sp 1959 2d, c 1, §19; HRS §580-44; am L 1969, c 152, §1; am L 1983, c 124, §16; gen ch 1985]

" **§580-45 Decree.** If after a full hearing, the court 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 in the decree. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit. 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. [L 1870, c 16, §8; am L 1878, c 26, §4; am L 1903, c 22, §2; am L 1911, c 136, §1; RL 1925, §2977; am L 1931, c 247, §1; RL 1935, §4472; RL 1945,

§12221; am L 1949, c 53, §29; RL 1955, §324-31; am L 1957, c 72, §5; am L 1965, c 52, §1; am L 1967, c 81, §§1, 2; HRS §580-45; am L 1969, c 44, §§1, 2; am L 1970, c 116, §2; am L 1971, c 72, §1; am L 1972, c 11, §4; am L 1973, c 211, §5(p); am L 1989, c 127, §3]

Case Notes

Exceptions could have been taken to supreme court from decree in reference to property rights notwithstanding death of libellant. 10 H. 117, 121.

Decree in divorce remains binding on the parties subject to reversal thereof for error. 23 H. 646, 650.

Premature appeal. 28 H. 403.

Findings. 30 H. 240.

Appeal must be taken from the decree not the decision. 30 H. 620. See 29 H. 464.

Jurisdiction. 31 H. 603.

Great weight as to findings. 32 H. 177; 37 H. 512.

Appeal does not abrogate decree. 35 H. 440.

The express reservation of custody and support questions does not impair the finality of divorce decree. 57 H. 519, 559 P.2d 744.

Decree, how construed. 59 H. 575, 585 P.2d 938.

In light of the legislative history of this section, courts have discretion in fixing the effective date of the divorce decree but this discretion is limited to a one month period commencing the date of the entry of the decree; thus, it does not authorize courts to order the divorce decree to be effective prior to the date of its entry. 109 H. 469 (App.), 128 P.3d 351.

" **§580-46 Final judgment; nunc pro tunc entry; validation of certain marriages.** Whenever either party to a divorce action is entitled to a final decree dissolving the bonds of matrimony, but by mistake, negligence, or inadvertence the final decree has not been entered, the court on motion of either party or upon its own motion may cause a final decree to be entered granting the divorce as of the date when the decree could have been entered. Upon the entry of the final decree, the parties to the divorce action shall be deemed to have been restored to the status of single persons as of the date set forth in the final decree, and any marriage of either party after such date shall not be subject to attack on the grounds that the marriage was contracted at a time when the party was undivorced in the divorce action. The court may cause a final decree to be entered nunc pro tunc as provided in this section even though

another final decree may have been entered previously but by mistake, negligence, or inadvertence was not entered as soon as a final decree could have been entered. [L 1967, c 76, §4; HRS §580-46]

Case Notes

Distinction between court's power to enter judgments nunc pro tunc and power to amend judgments discussed. 53 H. 123, 488 P.2d 537.

" **§580-47 Support orders; division of property.** (a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of those matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make any further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney's fees, costs, and expenses incurred by each party by reason of the divorce. In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset, or violation of a restraining order issued under section 580-10(a) or (b), if any, by either party, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the petition is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or

adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made; and
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new

occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment.

(b) An order as to the custody, management, and division of property and as to the payment of debts and the attorney's fees, costs and expenses incurred in the divorce shall be final and conclusive as to both parties subject only to appeal as in civil cases. The court shall at all times, including during the pendency of any appeal, have the power to grant any and all orders that may be necessary to protect and provide for the support and maintenance of the parties and any children of the parties to secure justice, to compel either party to advance reasonable amounts for the expenses of the appeal including attorney's fees to be incurred by the other party, and to amend and revise such orders from time to time.

(c) No order entered under the authority of subsection (a) or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to the support, maintenance, and education. The establishment of the guidelines or the adoption of any modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The need to provide for the child's health care needs through health insurance or other means shall be a basis for petitioning for a modification of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) Upon the motion of either party supported by an affidavit setting forth in particular a material change in the physical or financial circumstances of either party, or upon a showing of other good cause, the moving party, in the discretion of the court, and upon adequate notice to the other party, may be granted a hearing. The fact that the moving party is in default or arrears in the performance of any act or payment of any sums theretofore ordered to be done or paid by the party shall not necessarily constitute a bar to the granting of the

hearing. The court, upon such hearing, for good cause shown may amend or revise any order and shall consider all proper circumstances in determining the amount of the allowance, if any, which shall thereafter be ordered.

(e) The responsible parent or the custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

(f) Attorney's fees and costs. The court hearing any motion for orders either revising an order for the custody, support, maintenance, and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney's fees, costs, and expenses of the other party relating to such motion and hearing as shall appear just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset, or violation of a restraining order issued under section 580-10(a) or (b), if any, by either party, and all other circumstances of the case. [CC 1859, §1328; am L 1903, c 22, §2; RL 1925, §2979; RL 1935, §4475; am L Sp 1941, c 68, §1; RL 1945, §12226; am L 1955, c 77, §1; RL 1955, §324-37; am L 1967, c 76, §5; HRS §580-47; am L 1969, c 221, §§1, 2; am L 1977, c 37, §1; am L 1978, c 77, §2; am L 1983, c 19, §1; am L 1986, c 332, §18; am L 1991, c 216, §4; am L 1992, c 115, §3 and c 212, §3; am L 1995, c 107, §2; am L 1997, c 293, §40 and c 294, §5; am L 2011, c 140, §2]

Cross References

Dower, none in case of divorce, see §533-9.

Law Journals and Reviews

Hawaii's Statewide Child Support Guidelines. 14 HBJ, no. 13, at 9 (2011).

An Essay in Family Law: Property Division, Alimony, Child Support, and Child Custody. 6 UH L. Rev. 381.

Administering Justice or Just Administration: The Hawaii Supreme Court and the Intermediate Court of Appeals. 14 UH L. Rev. 271.

Gussin v. Gussin: Appellate Courts Powerless to Mandate Uniform Starting Points in Divorce Proceedings. 15 UH L. Rev. 423.

Slow-Baked, Flash-Fried, Not to be Devoured: Development of the Partnership Model of Property Division in Hawai'i and Beyond. 20 UH L. Rev. 1.

Case Notes

Death of former husband does not preclude appeal by divorced wife where property rights are involved. 10 H. 117, 121.

Amount of alimony rests in sound discretion of trial court and is subject to modification for cogent reasons only. 10 H. 183; 35 H. 382; 41 H. 345. Granting of alimony is ancillary to granting of divorce. 14 H. 152. In estimating amount not necessary to consult tables of mortality and annuities. 14 H. 152. Provisions of statute are broader than "alimony" as known to common law. 13 H. 654. Allowance in gross may be made for wife on decree for adultery of husband. 13 H. 654; 33 H. 690. To wife of leper. 33 H. 268. Alimony in gross: when warranted, computation. 40 H. 644.

No alimony on divorce for desertion by wife. 21 H. 264. Failure to provide is an offense amounting to adultery. 19 H. 326. Jurisdiction, specific property. 31 H. 603. Foreign judgment. 40 H. 397, 416. Habeas corpus, children, divorce pending. 32 H. 731. Contempt. 30 H. 80; 32 H. 567, 604. Allowance to wife of attorney's fees upon appeal. 38 H. 233. Attorney fees. 40 H. 179; 40 H. 315, 324.

Support may be awarded at a date later than the decree. 23 H. 281.

Judge may modify decree respecting alimony upon proper showing. 23 H. 639, 643; 34 H. 237; 39 H. 245. See also on modifying decree. 29 H. 866; 30 H. 652; 31 H. 574. As to where amount held to be clearly excessive and time too short to pay. 14 H. 152. Settlement agreements, power of divorce judge to modify. 41 H. 89. Child support orders, modification thereof, court's inherent power over welfare of child. 52 H. 480, 478 P.2d 852.

Under L 1955, c 77, court has the power on granting divorce to make property settlements between the parties of all property, real, personal or mixed, howsoever held. 42 H. 279. Division of property: "Respective merits of parties" construed:

meritorious claim not established. 44 H. 491, 355 P.2d 188.
Decree affirmed when within reasonable discretion of trial
court. 49 H. 258, 262, 414 P.2d 82; 49 H. 576, 424 P.2d 671.

Upon granting divorce, court may order party to maintain his
former wife and children as beneficiaries under the state
retirement system. 52 H. 357, 477 P.2d 620.

In making property settlement, court may order conveyance of
real property. 54 H. 60, 502 P.2d 380.

Complex arrangements imposed by court indicate that financial
situation was considered. 56 H. 295, 535 P.2d 1109.

Divorce court in one state does not have power to directly
affect, by decree, title to real property in another state. 56
H. 295, 535 P.2d 1109.

The express reservation of custody and support questions does
not impair the finality of divorce decree. 57 H. 519, 559 P.2d
744.

Division of interests in corporate stock. 58 H. 98, 564 P.2d
1274.

Division of property is discretionary with the trial court and
will not be disturbed unless abuse of discretion is clearly
shown. 58 H. 227, 566 P.2d 1104.

Division of property, standards for determining. 58 H. 227,
566 P.2d 1104.

Whether interest in pension and retirement benefits is a
property interest for purposes of property division depends upon
the terms of the obligation securing payment. 58 H. 541, 574
P.2d 125.

Cited as authority for family court to distribute the separate
property of the parties. 59 H. 32, 575 P.2d 468.

There is no conflict between this section and §573-1. 59 H.
32, 575 P.2d 468.

Agreement between parties concerning child support, validity
of. 59 H. 619, 585 P.2d 1270.

Court's jurisdiction over child support, nature of. 59 H.
619, 585 P.2d 1270.

Court did not abuse its discretion in allowing each party to
keep his separate estate where such award is fair under all
circumstances. 60 H. 354, 590 P.2d 80.

Alimony for educational purposes. 61 H. 338, 603 P.2d 564.

Distribution of increase in value of separately owned interest
in property; within discretion of family court to adjust for
inflation in determining value of separate property. 68 H. 383,
716 P.2d 1133.

Effect of premarital agreements in relation to spousal support
and property division. 69 H. 497, 748 P.2d 1362.

No presumption that nonowning spouse is not entitled to any
part of appreciation of property legally owned by other spouse

after declaration by either spouse that marriage has ended. 70 H. 143, 764 P.2d 1237.

Where one of the divorced parties died before division of property, the family court was instructed to divide the property in accord with the premarital agreement, if valid, and enforceable, or effect a property division that is just and equitable. 70 H. 605, 780 P.2d 80.

Uniform starting points, as mandated by intermediate court of appeals, violate section by restricting family courts' discretion in the equitable division and distribution of parties' estates; transmutation of property discussed. 73 H. 470, 836 P.2d 484.

Allowing decree-judgment creditor to enforce collection in circuit court of installment property settlement payments did not usurp family court's exclusive jurisdiction over matters subject to modification by post-divorce decree. 73 H. 566, 836 P.2d 1081.

Family court did not disregard any applicable rules or principles of law and did not improperly rely on uniform starting points in marital estate distribution; court's deviation from equal division of joint property was justified in light of wife's significant separate property holdings. 76 H. 19, 868 P.2d 437.

Intellectual property is capable of division for purposes of equitable distribution. 99 H. 101, 53 P.3d 240.

Trade secrets may be subject to equitable division pursuant to this section, depending upon when the right to the trade secret vested. 99 H. 101, 53 P.3d 240.

As the trial court is afforded broad discretion to allocate between the parties the responsibilities for the payment of the debt of the parties, whether joint, separate, or community, and attorney's fees, costs, and expenses incurred by each party by reason of the divorce, the trial court did not abuse its discretion in allocating the second deed of trust debt to wife where wife expressly testified that the funds therefrom were used to pay her attorneys' fees and costs. 125 H. 19, 250 P.3d 775 (2011).

The family court correctly applied the good cause standard in deciding whether to bifurcate the dissolution of husband and wife's marriage from the remaining parts of the divorce proceeding. 125 H. 308, 260 P.3d 1126 (2011).

Family court did not abuse its discretion when it ordered educational support for daughter under subsection (a) where the court found that daughter had been blind since birth, completed high school at age 20, and was pursuing her college education by taking a reasonable and appropriate amount of credits to complete college in a timely fashion and was considered a full-

time student in view of her sight disability. 125 H. 369, 262 P.3d 245 (2011).

Subsection (a) gives the family court broad authority to make "just and equitable" orders compelling a parent "to provide for the support, maintenance, and education of the children of the parties" and does not contain any age limit for a child; neither the intermediate appeals court (ICA) case law, the family court's 2004 amended child support guidelines, the legislative history of amendments to this section, nor the legislature's failure to act in response to ICA case law supported father's argument for the age limitation of 23 for educational support. 125 H. 369, 262 P.3d 245 (2011).

With respect to the equitable division of ownership interests in a copyright, any distribution by the court must result in the authoring-spouse retaining the exclusive rights set forth under 17 U.S.C. §106 (rights to reproduce, adapt, distribute, perform, and display copyrighted works), but the non-authoring spouse is entitled to an economic interest in the copyright. 127 H. 243, 277 P.3d 968 (2012).

Provision entitling receipt of rental payments in lieu of payments for spousal support is not a division of property. 1 H. App. 57, 613 P.2d 363.

Where payer is (1) unemployed or (2) working but earning less than he or she is capable of earning in other fields, court may consider what payer is capable of earning if payer attempts in good faith to secure proper employment. Court may also consider size of payer's estate and net worth. 1 H. App. 187, 616 P.2d 1014.

"Estate of the parties" construed; phrase includes nonvested military retirement benefits. 1 H. App. 272, 618 P.2d 748.

Single lump sum payment, representing plaintiff's interest in defendant's federal civil service retirement, may be awarded rather than a percentage of each monthly payment payable as and when received. 1 H. App. 288, 618 P.2d 754.

Power of family court to set aside its judgments (before court rules). 1 H. App. 315, 619 P.2d 511.

Financial assistance for adult children. 1 H. App. 324, 619 P.2d 112.

The source of an asset such as inheritance or gift, is one of the "circumstances of the case". 1 H. App. 324, 619 P.2d 112.

Where one party unilaterally transfers cash to the children during pendency of the divorce, it is not error for family court to credit the amount of the cash transferred to the party in the division of assets. 1 H. App. 324, 619 P.2d 112.

Foreign judgment; full faith and credit. 1 H. App. 496, 621 P.2d 387.

In reviewing the property settlement entered, the standard of review is whether the court below clearly abused its discretion. 1 H. App. 533, 621 P.2d 984.

Appropriateness of taking into account husband's current economic status, including his remarriage, in determining his obligation to his first family. 1 H. App. 581, 623 P.2d 97.

It was not error to receive evidence that wife was living with an adult male friend who was paying part of the living costs and that they planned to be married. 1 H. App. 595, 623 P.2d 95.

It was within the lower court's allowable discretion to divide the wife's inheritance from the husband's father. 1 H. App. 595, 623 P.2d 95.

Family court's division in the disposition of property will not be set aside unless there has been a manifest abuse of discretion. 1 H. App. 599, 623 P.2d 890.

Award of costs and attorney's fees. 1 H. App. 617, 623 P.2d 1265.

Factors that may be considered in dividing property. 1 H. App. 617, 623 P.2d 1265.

Not error to consider presence of wife's mother and resulting financial impact. 1 H. App. 617, 623 P.2d 1265.

Valuation of partnership. 2 H. App. 485, 634 P.2d 1039.

Division of property is res judicata, and any unfairness in that aspect of case is not relevant to spousal support issue; in support modification hearing, burden is on moving party to provide entitlement to modification; hearing is not a rehearing, but a new hearing based on changed circumstances; party receiving spousal support has duty to attain self-sufficiency and party paying spousal support has duty to maintain ability to pay support, neither may benefit from violation of that duty. 3 H. App. 20, 641 P.2d 1342.

Discretion in dividing property. 3 H. App. 602, 658 P.2d 329; 4 H. App. 68, 660 P.2d 529; 4 H. App. 333, 666 P.2d 617.

Equitable to award each party date of marriage net value of premarital property and date of acquisition net value of gifts and inheritances received during marriage. 3 H. App. 602, 658 P.2d 329.

Distribution of increase in value of separately owned interest in property. 4 H. App. 68, 660 P.2d 529.

Equitable to award each party one-half of net value of property jointly owned at time of divorce. 4 H. App. 68, 660 P.2d 529.

Antenuptial agreement not binding on court. 4 H. App. 333, 666 P.2d 617.

Manifest abuse of discretion in property division. 4 H. App. 652, 672 P.2d 1044.

Division of retirement benefits was equitable. 5 H. App. 55, 677 P.2d 966.

No error in disregarding conveyance of real property by husband to husband and wife as tenants by entirety. 5 H. App. 348, 691 P.2d 771.

If occupancy of residence by mother and children are a combination of spousal and child support, termination of occupancy must be justified as to both spouse and children. 5 H. App. 385, 695 P.2d 1194.

Spousal support payable for indefinite period is subject to further court order. 6 H. App. 66, 708 P.2d 143.

Equitable to award each party one-half of real increase, during marriage, of net value of separately owned property; division of retirement benefits; factors to determine whether spousal support must be paid and the length and amount of payments. 6 H. App. 207, 716 P.2d 1145.

Categories of net market values for purposes of property division modified. 7 H. App. 11, 740 P.2d 36.

Antenuptial agreement binding if equitable; inequitable antenuptial agreement only one of factors considered regarding property division or spousal support; Hawaii's public policy as reflected in this section, takes precedence over parties' right to enforce their antenuptial agreement; no abuse of discretion in court's refusal to enforce antenuptial agreement. 7 H. App. 155, 747 P.2d 698.

Inequitable antenuptial agreement only one of factors to be considered regarding property division; property division terms of antenuptial agreement held inequitable when viewed at time of divorce. 7 H. App. 163, 747 P.2d 703.

The family court always has the discretion to award attorney's fees and costs to a party. 7 H. App. 266, 752 P.2d 1079.

"Estate of the parties" means anything of present or prospective value. 7 H. App. 377, 768 P.2d 243.

Three step process in dividing and distributing marital property discussed. 7 H. App. 430, 776 P.2d 418.

Husband's right to receive veterans' and military disability pay cannot be used as the basis to award wife equal cash value in division of property. 7 H. App. 496, 780 P.2d 581.

Cannot be used against a person who has refused to become legally married. 8 H. App. 215, 797 P.2d 74.

Uniform starting point and other uniform categories are only processes for the family courts to consider, courts must still exercise a wide range of choices and equitable discretion when deciding divorce cases. 8 H. App. 415, 807 P.2d 597.

Where record contained insufficient relevant circumstances prior to entry of initial child support order, proof of sufficient relevant circumstances existing at time of

modification hearing was conclusive proof of a material change in circumstances. 8 H. App. 437, 809 P.2d 449.

Family court overemphasized marriage and underemphasized relative abilities of parties and condition in which each party would be left by divorce in division and distribution of net market value of marital property; discussion of deviation from applicable uniform starting point, when authorized. 9 H. App. 1, 818 P.2d 277.

Section gave family court discretion to enter conclusion of law regarding payment of attorney's fees and costs. 9 H. App. 184, 828 P.2d 1291.

If all relevant and valid considerations equal, deviation from partnership model not justified. 80 H. 79 (App.), 905 P.2d 54.

Court properly excluded testimony of wife's alleged pecuniary purpose for marrying husband and her TRO against lover where no evidence that alleged premarital intentions or extramarital relationship negatively affected accumulation or preservation of husband's separate property. 80 H. 274 (App.), 909 P.2d 602.

If decree or order finally obtained by offeree after hearing is patently not more favorable as a whole than settlement offer, Hawaii family court rule 68 requires offeree to pay costs, including reasonable attorney fees incurred after making of offer, unless court determines such would be inequitable under this section. 82 H. 539 (App.), 923 P.2d 956.

Adoption of 1988 child support guidelines constituted a change in circumstances sufficient to permit review under subsection (c) of 1983 support order. 87 H. 209 (App.), 953 P.2d 968.

Where child support proceeding commenced when mother filed complaint for divorce, child support enforcement agency's motion for modification of child support payments filed twelve years later was "continuation of proceeding", and, under §580-3.5 and this section, court had continuing jurisdiction over non-Hawaii domiciliary father. 87 H. 209 (App.), 953 P.2d 968.

Where father offered no evidence to support an exceptional circumstance deviation, father failed to overcome presumption that support obligation calculated by using amended child support guidelines was the amount that should be ordered. 87 H. 209 (App.), 953 P.2d 968.

It is within family court's discretion to order custodial parent to pay all or part of interstate transportation expenses incurred by children when visiting noncustodial parent if order can be complied with without decreasing funds reasonably necessary to support children and custodial parent at relevant standard of living. 87 H. 369 (App.), 956 P.2d 1301.

Once it is determined that a divorce decree award obtained by an offeree is patently not more favorable as a whole than a HFCR rule 68 settlement offer, the trial court must determine whether

it would be inequitable to award attorney's fees and costs under rule 68 to the offeror, applying the standards of subsection (f). 89 H. 17 (App.), 968 P.2d 184.

Relevant statutes, rules, and precedent did not permit wife to directly attack in circuit court the validity of the property and distribution part of the divorce decree; circuit court did not have subject matter jurisdiction under §603-21.5 to do what wife must have had done to obtain the relief wife sought; pursuant to §580-1 and this section, only the family court could have granted that relief. 101 H. 370 (App.), 68 P.3d 644.

The family court may and should consider regular and consistent monetary gifts received by a spouse as part of the spouse's actual financial resources, condition and ability when determining spousal support; pursuant to subsection (d), if and when husband's parents materially reduce their regular and consistent monetary gifts to husband, husband may allege a material change in circumstance and ask the family court for a review of its orders. 112 H. 437 (App.), 146 P.3d 597 (2006).

Where the family court determined that there were valid and relevant considerations authorizing a deviation from the partnership model division, and the family court's extensive findings of fact clearly showed that in dividing and distributing husband and wife's assets and debts, the court took into consideration the conditions each would be left in after their divorce, court did not violate this section. 120 H. 283 (App.), 205 P.3d 548 (2009).

Family court abused its discretion by omitting husband's escrow commissions from the marital estate and by excluding any commissions receivable by husband on the non-binding condominium reservation agreements where: (1) the escrow commissions constituted "income" earned during the marriage; (2) there was no evidence that husband's existing escrows were for units in projects with financial problems or any other evidence that those escrows might not close, or that husband had to perform any additional duties to receive the escrow commissions; and (3) the commissions were not too speculative to be included in the marital estate. 124 H. 455 (App.), 248 P.3d 221 (2011).

Where the marriage itself and the existence of jointly owned property were not the only facts proved, the family court was not required to divide each asset and debt equally, and properly equalized the property based on numerous, undisputed findings of fact regarding the circumstances of the marriage pursuant to this section. 124 H. 455 (App.), 248 P.3d 221 (2011).

Family court did not err when it concluded that husband and wife formed a premarital economic partnership; whether cohabitation was illegal in China did not affect the family court's determination whether prior to their marriage, husband

and wife lived together and supported each other financially such that they had established a premarital economic partnership under Hawaii law, and it was within the family court's wide discretion under this section to use this information to formulate a just and equitable division of the parties' property. 127 H. 346 (App.), 279 P.3d 11 (2012).

Section 580-56(d) does not divest the family court of jurisdiction to issue further property distribution orders in response to an order of remand from an appellate court of a timely-decided property division order under subsection (b); upon remand and absent extraordinarily compelling circumstances, the family court retains jurisdiction for no more than one year after the date that the case is lodged again on remand in order to redivide and redistribute the parties' property to the extent required on remand. 127 H. 346 (App.), 279 P.3d 11 (2012).

Cited: 14 H. 554, 564; 26 H. 128, 130; 29 H. 464, 470; 44 H. 442, 451, 355 P.2d 33.

Mentioned: 85 H. 108 (App.), 937 P.2d 949.

Hawaii Legal Reporter Citations

Antenuptial agreement reviewable by court. 79 HLR 79-0865.

Property settlement between unmarried couple. 82-1 HLR 820253.

Pre-nuptial agreements. 82-1 HLR 820387.

" **[\$580-47.5] Notice to parties with children.** When a party files for divorce and there are minor children involved, or when a party institutes a proceeding under chapter 576D or 576E, the court or the office of child support hearings shall provide notice to each party informing them of the opportunity to enter into an alternative arrangement for direct payment of child support under chapter 576D. A party may petition the court at any time, under chapter 576D or 576E, to opt out of the child support enforcement agency system and such a petition shall be assigned priority on the docket and be acted on expeditiously by the court. [L 1999, c 300, §2]

" **§580-48 REPEALED.** L 1972, c 11, §6.

" **§580-49 Support of insane spouse after divorce.** In every action 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, revise 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. [L 1919, c 10, pt of §2; RL 1925, §2973; RL 1935, §4468; RL 1945, §12223; am L 1951, c 287, §1(5); RL 1955, §324-33; am L 1957, c 72, §6; am L 1966, c 22, §6; HRS §580-49; am L 1972, c 11, §7; am L 1973, c 211, §5(q)]

" **§580-50 REPEALED.** L 1972, c 11, §8.

" **§580-51 Modification of alimony on remarriage.** (a) Upon the remarriage of a party in whose favor a final decree or order for support and maintenance has been made, all rights to receive and all duties to make payments for support and maintenance shall automatically terminate for all payments due after the date of the remarriage, unless the final decree or order, or an agreement of the parties approved by the final decree or order, provides specifically for the payments to continue after such remarriage.

(b) The remarried party shall file a notice of the remarriage with the court which made the order for support and maintenance and serve within thirty days of such marriage, by personal service or registered or certified mail, a copy of the notice on the former paying party. In any proceeding relating to the payment of support and maintenance to a remarried party, the failure of that party to file a notice of remarriage shall be considered by the court in awarding attorney's fees and costs for the proceeding and in determining reimbursement to the former paying party. [L Sp 1933, c 35, §1; RL 1935, §4478; RL 1945, §12229; RL 1955, §324-40; HRS §580-51; am L 1973, c 211, §5(r); am L 1974, c 65, pt of §2; am L 1983, c 17, §1]

Case Notes

Part of decree ordering defendant to convey property to wife is nonmodifiable because it was a final property division, but that part ordering defendant to make mortgage payments on the property is modifiable as being in nature of support. 54 H. 60, 502 P.2d 380.

Section mandates termination of entitlement to rental payments that were specified as being in lieu of spousal support. 1 H. App. 57, 613 P.2d 363.

Effect of cohabitation on spousal support. 5 H. App. 385, 695 P.2d 1194.

" **§580-52 Marriage after divorce.** Whenever a marriage is dissolved, either party to the divorce may marry again at any time. [CC 1859, §1334; am L 1866, p 3; am L 1870, c 10, §2; am L 1876, c 48, §2; RL 1925, §2982; RL 1935, §4479; RL 1945, §12230; RL 1955, §324-41; HRS §580-52]

Case Notes

Remarriage during pendency of appeal. 37 H. 34.

" **§§580-53, 54 REPEALED.** L 1972, c 11, §§9, 10.

" **§580-55 REPEALED.** L 1971, c 77, §1.

" **§580-56 Property rights following dissolution of marriage.**

(a) Every decree of divorce which does not specifically recite that the final division of the property of the parties is reserved for further hearing, decision, and orders shall finally divide the property of the parties to such action.

(b) Following the entry of a decree of divorce in any matrimonial action in which the final division of the property of the parties to such action is reserved for further hearings, decisions, and orders, notwithstanding the provisions of section 560:2-802, or any other provisions of the law to the contrary, each party to such action shall continue to have all of the rights to and interests in the property of the other party to such action as provided by chapter 533 and chapter 560, or as otherwise provided by law to the same extent he or she would have had such rights or interests if the decree of divorce had not been entered, until the entry of a decree or order finally dividing the property of the parties to such matrimonial action, or as provided in subsection (d) of this section.

(c) When a party to a matrimonial action has remarried following the entry of a decree of divorce, in which the final division of the property of the parties is reserved for further hearings, decisions, and orders, but prior to the entry of a decree or order finally dividing the property owned by the parties to that action, notwithstanding the provisions of chapter 533 and chapter 560, the spouse of such remarried party shall have none of the rights or interests in the former spouse's real property or personal estate as provided in chapter 533 and chapter 560, or as otherwise provided by law, until such time as a decree or order finally dividing the property owned by the parties or either of them as of the effective date of the entry of the decree of divorce dissolving his or her prior marriage shall be entered. Upon the entry of a decree or order finally dividing the property of the parties to a matrimonial

action in which a decree of divorce has been entered, the spouse of a party to such action who has remarried shall have all of the rights of a spouse as provided by chapter 533 and chapter 560, or as otherwise provided by law, in and to the property of the former spouse vested in such spouse by such decree or order finally dividing the property of the parties or either of them, as of the effective date of the entry of the decree of dissolution of the prior marriage.

(d) Following the entry of a decree of divorce, or the entry of a decree or order finally dividing the property of the parties to a matrimonial action if the same is reserved in the decree of divorce, or the elapse of one year after entry of a decree or order reserving the final division of property of the party, a divorced spouse shall not be entitled to dower or curtesy in the former spouse's real estate, or any part thereof, nor to any share of the former spouse's personal estate. [CC 1859, §1332; RL 1925, §2986; RL 1935, §4483; RL 1945, §12234; RL 1955, §324-45; HRS §580-56; am L 1973, c 192, §2; am L 1983, c 209, §1]

Case Notes

Divorce cuts off right to dower. 12 H. 265; 35 H. 440.

Divorce court in one state does not have power to directly affect, by decree, title to real property in another state. 56 H. 295, 535 P.2d 1109.

One-year limitation applies to all entitlements to former spouse's personal estate; "personal estate" includes living person's property. Section does not violate due process by imposing unreasonable procedural requirement on adjudication of claim. 69 H. 1, 730 P.2d 338.

Section 580-47 controls the division of property of divorced parties in the event one dies in the interim between their divorce and the division of property. 70 H. 605, 780 P.2d 80.

Where family court's domestic relations order amending the initial divorce decree was not inconsistent with the language of the initial divorce decree or this section, the family court possessed appropriate jurisdiction to amend the divorce decree. 100 H. 397, 60 P.3d 798.

Subsection (d) was intended to apply only in the narrow context of limiting a spouse's right to dower or curtesy in his or her deceased former spouse's estate; thus, subsection (d) did not divest family court of jurisdiction over the property division in the case. 128 H. 1, 282 P.3d 543 (2012).

Where jurisdiction to divide the parties' property is not reserved, it terminates when the time to appeal the decree expires. 1 H. App. 605, 623 P.2d 893.

No inchoate dower right in property if only a reservation to purchase property existed on date of divorce decree. 4 H. App. 41, 659 P.2d 759.

Divorced spouse not entitled to former spouse's personal estate. 7 H. App. 286, 758 P.2d 197.

Does not divest family court of jurisdiction under family court rule to change division of property issue when request for change is based on a retroactive change in relevant federal law. 8 H. App. 559, 815 P.2d 28.

Section does not apply where family court lacks jurisdiction to finally adjudicate division and distribution of property and debts of parties. 9 H. App. 176, 830 P.2d 1158.

When computing subsection (d)'s "one year" period, the time from filing a notice of appeal of the family court's decree deciding division and distribution of property and debts to the entry of the appellate court's judgment on appeal is excluded. 9 H. App. 214, 832 P.2d 280.

In light of subsection (a), when the divorce decree ordered husband to transfer a specified value of husband's stocks and funds to wife, that specified value of husband's stocks and funds, for purposes of subsection (d), was no longer a part of husband's personal estate. 108 H. 504 (App.), 122 P.3d 284.

Subsection (d) does not divest the family court of jurisdiction to issue further property distribution orders in response to an order of remand from an appellate court of a timely-decided property division order under §580-47(b); upon remand and absent extraordinarily compelling circumstances, the family court retains jurisdiction for no more than one year after the date that the case is lodged again on remand in order to redivide and redistribute the parties' property to the extent required on remand. 127 H. 346 (App.), 279 P.3d 11 (2012).

Where the divorce decree was filed on July 17, 2006 and the decision, entered on June 18, 2007, did not merely state findings of fact and conclusions of law, but also contained the order which divided the parties' property and addressed all remaining claims, the family court fully and finally divided the parties' assets within one year of the decree in compliance with subsection (d). 127 H. 346 (App.), 279 P.3d 11 (2012).

Cited: 21 H. 264, 266.

"PART IV. SEPARATION

§580-71 Grounds for separation. The family court may decree a separation from bed and board for a period not to exceed two years in any matrimonial action upon a petition for separation when the court finds the marriage is temporarily disrupted. [CC 1859, §1336; am L 1903, c 22, §10; RL 1925,

§2987; RL 1935, §4484; am L Sp 1941, c 93, §1; RL 1945, §12235; RL 1955, §324-60; HRS §580-71; am L 1973, c 211, §5(s); am L 1976, c 140, §2]

" **§580-71.5 Separation no bar to divorce.** Any party to a matrimonial action in which a decree of separation from bed and board has been entered, or any party to an action for separate maintenance in which a decree has been entered, may, notwithstanding the existence of such a decree, institute a matrimonial action and petition for the dissolution of that marriage, on any ground other than those set forth in paragraphs (2) and (3) of section 580-41, and in support of such petition may introduce evidence relating to events and facts occurring and existing both prior and subsequent to the entry of the decree of separation from bed and board in the prior matrimonial action, or the prior action for separate maintenance. [L 1976, c 140, §3]

" **§580-72 Married persons may bring action in own name.** Whenever any married person has the right to sue for separate maintenance, that person may bring the action in that person's own name. [L 1937, c 45, §1; RL 1945, §12236; RL 1955, §324-61; HRS §580-72; am L 1973, c 211, §5(t); am L 1984, c 265, §1]

" **§580-73 REPEALED.** L 1971, c 77, §1.

" **§580-74 Support of spouse and children.** Upon decreeing a separation, the court may make such further decree for the support and maintenance of either spouse and for the support, maintenance, and education of minor children, by either spouse, or out of the property of either spouse, as may appear just and proper; provided that the court shall apply the considerations required by section 580-47(a) in formulation of any support decree in any action under this part; and provided further that the court may amend or revise any such decree in the same manner and under the same circumstances as provided for by section 580-47(d). [CC 1859, §1338; am L 1903, c 22, §2; RL 1925, §2989; RL 1935, §4486; RL 1945, §12238; RL 1955, §324-63; HRS §580-74; am L 1973, c 211, §5(u); am L 1974, c 65, pt of §2; am L 1978, c 77, §3]

Case Notes

Order awarding alimony will not be disturbed where there has been no abuse of discretion. 9 H. 352.

Court cannot upon decreeing separation award specific property as alimony; words "or out of his property" limited by §580-13. 26 H. 128.

Alimony in gross not allowable upon decree of separation from bed and board. 27 H. 230.

Liability under order for temporary maintenance despite final decree of separate maintenance. 38 H. 148.

Considerations when decreeing alimony. 42 H. 279.

Section does not authorize division of property. 42 H. 279.

Cited: 31 H. 574, 576.

" **§580-75 Status of spouse during separation.** Every decree of separation shall have the effect of allowing each of the spouses to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if the spouse were an unmarried person. [CC 1859, §1339; RL 1925, §2990; RL 1935, §4487; RL 1945, §12339; RL 1955, §324-64; HRS §580-75; am L 1984, c 158, §1]

Case Notes

Effect of separation upon the parties. 42 H. 279.

" **§580-76 Revocation or modification of separation decrees.** Where a decree of separation from bed and board has been entered, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and upon their producing satisfactory evidence of their reconciliation. The court may also, for good cause shown from time to time, increase or decrease the period of separation decreed, provided that the maximum period of separation does not exceed two years from the effective date of the original decree of separation. [CC 1859, §1340; am L 1903, c 22, §2; RL 1925, §2991; RL 1935, §4488; am L Sp 1941, c 93, §2; RL 1945, §12240; RL 1955, §324-65; am L 1965, c 52, §5; HRS §580-76; am L 1973, c 211, §5(v)]

Case Notes

Cited: 27 H. 230, 233; 38 H. 394, 400; 42 H. 279, 284.