

Is Adultery Illegal in California?

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Recently, I have learned that it still is against the law to cheat in twenty-two (22) states!

What about California?

My research unveiled the unfortunate answer of NO. However, it USED to be.

In 1872, the California Penal Code read,

§ 269a. Adultery. Every person who lives in a state of cohabitation and adultery is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both.

§ 269b. Adultery of married persons. If two persons, each being married to another, live together in a state of cohabitation and adultery, each is guilty of a felony, and punishable by imprisonment in the state prison not exceeding five years. A recorded certificate of marriage or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purpose of this action. [Amendment approved 1911; Stats. 1911, p. 426.]

Unfortunately, both of these laws were repealed long ago as unconstitutional. These days, it is NOT against the law in California to commit adultery.

HOWEVER, California Family Code section 720 clearly states that in a marriage, "Husband and wife contract toward each other obligations of mutual respect, **fidelity**, and support."

Meaning, marriage is a contract consisting of FIDELITY, and cheating would be breach of contract for which, presumably, there may exist a civil remedy.

THIS LEADS TO EVERYONE'S BIGGEST QUESTION: ARE THERE ANY CONSEQUENCES TO ADULTERY?

We all know California is a "no-fault" state. (To read a full explanation on the "no-fault" system, go to my previous blog entry [here](#).)

Does it affect child custody and visitation?

Cheating alone would probably not affect custody. Sad but true, we all know a couple of cheaters here and there that are still decent parents. Arguably, they cannot provide the moral background children deserve and need in this day and age...but neither does Grand Theft Auto and/or Facebook, and there are non-cheating parents that allow their children access to such!

Child custody and visitation is always determined strictly by the "best interests of the children". It is PRESUMED that children benefit the most from "frequent and continuing contact" with both mother and father.

I personally believe there must be boundaries when introducing children to a new girlfriend/boyfriend. Children are incredibly sensitive and delicate, and the sincere damage to them in being improperly exposed to a new girlfriend/boyfriend is irreparable. Parents should take their personal feelings and emotions OUT of the equation. No matter how you feel about your spouse, it is NOT ok to expose your children.

THINK BEFORE YOU ACT.

Does it affect support?

It does NOT affect child support.

However, it CAN affect spousal support. California Family Code section 4323 states, "There is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex."

Does it affect property division?

California is a community property state. All property (NOT inheritance or gift) acquired during the marriage, before the date of separation, is community property.

This means specifically, if the cheating spouse is spending his or her salary acquired during the marriage OUTSIDE the marriage on someone else, they are spending community property and should be required to reimburse the community, sometimes with added interest.

I once had a case where I represented the spouse being cheated on. The "cheater" spouse spend close to 200,000 on extravagant trips, *Cartier* jewelry, Louis Vuitton handbags, lingerie, and other sundries. My deposition of the mistress revealed several thousands of other property.

Interestingly enough, this former mistress (she has long since been replaced, several times over), felt sincere regret and apologized on record and became friends with my client; thereby liberally disclosing all the information I needed to secure settlement within the HOUR.

Moral of the story: Don't cheat.