

# When Your Marriage Is Invalid, Who Gets Paid?

By Mitchell A. Jacobs and Ryan McEachern

It is generally understood in today's world that if one enters into marriage without a premarital agreement, and they have the misfortune of divorce, they will be forced to divide roughly half of the assets accumulated during the marriage. But should one have to give up half their accumulated wealth to their ex-spouse when it turns out that the ex-spouse was never a spouse in the first place? *In re Marriage of Tejada* said yes in 2009, but *In re Marriage of Guo & Sun*, in 2010, said no. Which one is right, and which holding must be followed? Well, which one is right depends on your point of view, and unfortunately, what holding to follow does as well. Confused? It's okay, so are

the appellate courts. For nearly a century, California has recognized that a person who marries another person with the objective good faith belief that their marriage is valid, when the marriage is void or voidable by operation of law, should not be denied the spousal support or the division of assets pursuant to community property guidelines. The person or persons who had good faith belief that their invalid marriage was in fact valid is termed a "putative spouse," also known as the innocent spouse. The Legislature enacted a statute based upon this doctrine, which has remained substantively the same since enactment, now known as Family Code Section 2251. Upon a finding that one or both of the parties is putative, Section 2251 requires that the property acquired during marriage that would otherwise be community property (had the marriage been valid) be divided accordingly. Yet, the wording of Section 2251 does not explicitly indicate that a non-innocent spouse is precluded from benefiting from a community property-style division of the would-be community property. Coincident

In 2009, in *In re Marriage of Tejada*, the court only found the wife to be a putative spouse, as the husband could not prove he had an objective good faith belief that he was divorced from his first wife. The trial court analyzed the application of Section 2251 and determined that it was bound to divide the assets pursuant to community property guidelines, whether one person or both parties were putative spouses. The appellate court agreed with this premise, reasoning that the plain language of the statute indicated the application of community property division as to both parties whenever at least one of the parties was a putative spouse. The appellate court also pointed out how Section 2251 made no mention of guilt or innocence, while other statutes dealing with putative spouse matters specifically applied to only the innocent spouse. The appellate court further indicated that because fault does not play

into the calculation of the division of assets in a traditional divorce, adding in the concept of fault to the dissolution of a putative marriage would be a departure from this scheme.

The protection of the innocent spouse in a putative marriage is in the crux in *In re Marriage of Guo & Sun*. Here, the husband married his second wife with full knowledge that he was still married to his first wife. The second wife did not seek to be deemed a putative spouse, and did not request a division of assets pursuant to Section 2251. However, the husband took a novel approach at trial, arguing that because his wife had a good faith belief in the validity of the marriage, she was therefore a putative spouse. This in turn meant that he was also a putative spouse, and thus, Section 2251 should apply to divide assets pursuant to community property guidelines. The trial court rejected this concept. The appellate court agreed, describing in detail how, since the inception of the putative spouse doctrine, the innocent spouse was protected, not the guilty spouse, relative to the division of community property. The court presciently pointed out that an equal application of Section 2251 to the guilty spouse could result in allowing guilty spouses to benefit from their own fraud, even when the putative spouse does not seek putative spouse status.

Both these cases reach opposite conclusions on the same issue. Who is right? Pursuant to California rules, both are right. In California, only higher courts can overrule lower courts. Since *Tejada* and *Guo & Sun* are both appellate court opinions, both decisions are binding throughout the state on all lower courts, regardless of which appellate court division issued the opinion. Therefore, *Tejada* and *Guo & Sun* are binding on all Superior Courts (trial courts). This leaves us with competing and wholly divergent interpretations and applications of the same statute. So, if both courts are right, procedurally, which opinion is "better?"

If *Tejada* is right, then the following scenario is possible: The husband, who is still knowingly mar-

ried to his "previous wife", marries another woman. During the marriage, the second wife earns a substantial income of which the majority is saved and invested. There are no other assets. The husband files for divorce and moves back in with his first wife, resulting in the second wife learning that her marriage was invalid. She requests a nullity, and does not seek putative spouse status. The husband proves that the second wife was a putative spouse, and seeks division of the property pursuant to Section 2251. *Marriage of Tejada* requires the trial court to divide the savings and investments as if they were community property, resulting in the husband netting a substantial profit from his fraud. *Marriage of Tejada* argues that this was the intent of the Legislature based upon the wording of the statute.

Others have argued, starting with a footnote in the infamous *Marvin v Marvin* cases, that the wife's expectations are met by this result, as she must have believed throughout the marriage that in the event of divorce the property would have been divided pursuant to community property guidelines. But, what if the husband married her knowing she would earn a substantial income, and sought to use her innocence to tag her as the putative spouse and invoke the *Marriage of Tejada* take on division of assets? When an intentional fraud has been perpetrated, do we really care what the wife's expectations are? And, if a person does not have an objective good faith belief that they are entering a valid marriage with their alleged new spouse, aren't they by definition, at least, recklessly committing fraud?

In *Guo & Sun*, there is no discussion about whether the husband married the wife to benefit from her income and earnings. However, the husband did try to use the wife's putative spouse status, which was not in contention, as a way to backdoor his designation as a putative spouse to force the distribution of assets pursuant to Section 2251.



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# Finding Common Ground in Seemingly Hopeless Disputes

Continued from page 1

and IVAMS Arbitration and Mediation Services, based in Rancho Cucamonga. She also hears cases for the U.S. Equal Employment Opportunity Commission.

For the past 2 1/2 years, Klibanow has been a full-time neutral. She conducts five mediations a month, she said, but has a much fuller arbitration schedule.

Lawyers who have used her in arbitrations said she is extremely

fair and reasoned in her rulings, disciplined and insightful.

Terry E. Sanchez of Munger, Tolles & Olson scheduled a recent arbitration with Klibanow through the American Arbitration Association. The case settled short of arbitration, he said, but Klibanow did several pretrial things he liked.

"She did a very good job in questioning parties about their positions and underlying rationale," Sanchez said. "But the best thing was her follow-up questions

during and after the arguments. She asked for facts that were not highlighted in the submissions but that went to the rationale and motivation of the issue in the dispute."

In mediations, lawyers described Klibanow as low-key, analytical, and very good with difficult clients. They say her understated manner and willingness to sit down and listen is key to her achieving resolutions.

"She understands where you are

coming from and gets to the point quickly," Robert A. Naeve of Jones Day in Irvine said. "At the same time, she's not necessarily a barn burner. She's low key. She looks like a law professor. She won't yell at you. She's understated and uses that to advantage."

Nate Kowalski, in the Cerritos office of Atkinson, Andelson, Loya, Ruud & Romo, described her similarly.

"She doesn't have an overwhelming, dominating personality ... like some [neutrals] who try to resolve cases through the force of their personality," Kowalski said. "She is the opposite. She uses analyses and analytical skills and tries to reason with the parties. She is soft-spoken and articulate."

Generally, her mediations settle within a day, Klibanow said. Occasionally, one will involve further efforts. But usually people come in planning to resolve a dispute.

Because most employment disputes are highly emotional, Klibanow said, the first thing she tries to do is diffuse the tension. She does this through the listening process, by respecting the feelings of each side. Once that is accomplished, she said, she tries to get people to view the dispute from a detached perspective. The final phase of the process, she said, is finding a common ground where both parties can agree.

One reason Klibanow was drawn to employment law and has stayed

## Linda S. Klibanow

Independent, affiliated with American Arbitration Association, Alternative Resolution Centers, IVAMS Arbitration and Mediation Services, EEOC

Southern California

Age: 60

Areas of specialty: Labor and employment



Here are some of the lawyers who have used Klibanow's services:

Terry E. Sanchez, Munger, Tolles & Olson, Los Angeles; Nicholas T. Hua, Law Offices of Nicholas T. Hua, Los Angeles; Phillip A. Baker, Baker, Keener & Nahra, Los Angeles; Paul P. Cheng, Law Offices of Paul P. Cheng, Pasadena; Robert A. Naeve, Jones Day, Irvine; Robert Tomas Olmos, Allred, Maroko & Goldberg, Los Angeles; Patricia A. Ellis, Meserve, Mumper & Hughes, Los Angeles, and Nate Kowalski, Atkinson, Andelson, Loya, Ruud & Romo, Cerritos

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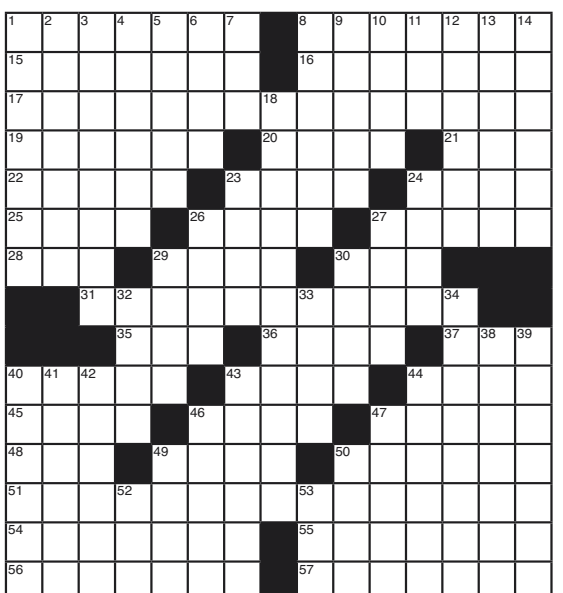
## The New York Times Crossword

- |  |   |                                   |
|--|---|-----------------------------------|
| <b>Across</b>                                  | 30 Jubilant cry                           | 55 Foggy                          |
| 1 Kind of mouse                                | 31 Group that may be hounded?             | 56 Takes over                     |
| 8 Indicator that you're back to your own words | 35 Headache cause                         | 57 Waved a knife at, maybe        |
| 15 Nearly shot                                 | 36 Hub for Air Carabibes                  | <b>Down</b>                       |
| 16 Sew up a hole?                              | 37 Do some course work                    | 1 Wrong                           |
| 17 Winter weather hazard                       | 40 Primates vis-à-vis humans              | 2 Go down a slope with a chute    |
| 19 Dresses down ... or butters up?             | 43 Barrie's "oddly genial man"            | 3 Do wrong                        |
| 20 Scratch                                     | 44 Tot's plea                             | 4 "Save the explanation"          |
| 21 Maccabiah Games setting: Abbr.              | 45 Stand-up comic's fear                  | 5 Filmmaker                       |
| 22 Defense secretary after Cheney              | 46 Latitude                               | 6 French cordial flavoring        |
| 23 Backpack alternative                        | 47 Like some joints                       | 7 Perfect-game pitcher Barker     |
| 24 Jacket material                             | 48 Suffix with cartoon                    | 8 Many a software download        |
| 25 Game with trumps                            | 49 "Rhapsodie Hongroise" composer         | 9 An operator may call on one     |
| 26 See 27-Down                                 | 50 Cobwebs may be a sign of it            | 10 Stick in a cabinet             |
| 27 "Five Weeks in a Balloon" author            | 51 Part of many a daily supplement        | 11 Snack food brand               |
| 28 Surface for the Olympische Winterspiele     | 54 Like the midafternoon hours, typically | 12 More like the Blob             |
| 29 Antisubversive grp. of old                  |   | 13 Certain Tornado Alley resident |

### ANSWER TO PREVIOUS PUZZLE

F A B E R G E E G G A S H E  
I N A D I L E M M A P T A S  
L O W S P I R I T S R O T S  
E N L O N I T S P I R E A  
E S T E P T O L E M Y  
S P O R T S F L O P S H O T  
E L U D E S L A V E O N E  
M U T E P E A C E M U G S  
I R S B A R G E B E S E T  
M A H J O N G G S E D E R S  
A L I E N E C I E S  
T I N S E L H U A C M A O  
U Z I S S C O R C H M A R K  
R E N I A G L I O E O L I O  
E D G E W I D O W S P E A K

Edited by Will Shortz No. 0821



Puzzle by Barry C. Silk

- |  |                                       |  |
|--|---------------------------------------|--|
| 30 Ivy with deep roots                             | 40 Native of the Lake Superior region | 46 Good thing for a medic to find        |
| 32 Fulda feeder                                    | 41 Checkout correction                | 47 Trig ratio                            |
| 33 Food chain part                                 | 42 Render harmless, in a way          | 49 Mountaineer's goal                    |
| 34 Princess Najla player in Broadway's "Flahooley" | 43 Falls like 17-Across               | 50 Complement of Dante's circles of hell |
| 38 Endlessly adjustable, as clothing               | 44 Where Family Day is observed       | 52 Title of Dickens's Defarge: Abbr.     |
| 39 Diversified                                     |                                       | 53 Punch                                 |

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