

**OUT OF THE WOODWORK: AN UPDATE
ON THE LAW
REGARDING COMMON LAW
MARRIAGE, PUTATIVE SPOUSES AND
ADOPTION BY ESTOPPEL**

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- I Judge Russell Austin and Darlene Payne Smith; “Putative Spouses in the Probate Process”
- II The adoption by estoppel research graciously contributed by Louis Ditta and Gus Tamborello.
- III. Cameron McCulloch; “Challenging Relationships/Common Law Marriages, Putative Marriages and Adoption by Estoppel

Introduction

The probate practitioner should first determine a decedent's marital status and the identity of all lawful children before engaging in the probate of the decedent's estate. Texas has complicated this determination by its recognition of the "common law" and "putative marriage" and "adoption by estoppel"¹ Amazingly, the probate courts are continually confronted with decedents who leave behind multiple spouses and children who feel that because of their relationship with the deceased that they should be considered as an adopted child under the law. A decedent may die leaving both a ceremonial and common law spouse or multiple common law spouses. This article will explain the differences between a ceremonial, common law and putative spouse, and their relative inheritance rights in the decedent's estate. Additionally, this paper will explore the requirements of proving an adoption by estoppel and the subsequent effect on inheritance rights.

Ceremonial Marriages

The requirements for a ceremonial marriage begin with obtaining a license from the county clerk.² The parties must do the following to obtain the license: (1) appear before the clerk; (2) submit proof of identity and age; (3) provide information required in the application; (4) mark the appropriate boxes provided in the application; and (5) take the oath and sign the application.³ The clerk will issue a marriage license if satisfied the application is true and correct.⁴ Thereafter, the parties may engage any person authorized by law to conduct a marriage ceremony to solemnize their union.⁵

Texas law does not require nor suggest any particular form of solemnization.⁶ Texas law has never mandated that any particular ceremonial vows, oaths or other responses be utilized.⁷ The minister, priest, rabbi or other authorized official will complete the license with the date and county wherein the ceremony was performed, subscribe same in his official capacity, and return it to the county clerk within thirty days of the ceremony.⁸ The clerk will then record and mail the license to the address on the application.⁹

The application, ceremony and recordation process allows the probate practitioner to readily ascertain the existence of a valid ceremonial marriage of the decedent, i.e. simply obtain a copy of the marriage license. Unfortunately, few attorneys request proof of a ceremonial marriage.

Common Law Marriages

Most attorneys have a general understanding of the term and elements of a common law marriage. They understand that a spouse claiming a valid marriage under this theory of law must satisfy their burden of proof before they are entitled to inherit from a decedent's estate.

A. Requirements

The Texas Family Code sets forth the requirements for a valid common law marriage.¹⁰ The Code provides that a common law marriage may be evidenced by an executed written declaration of the parties (See attached Exhibit A) or by satisfying all the elements of a three-pronged test.¹¹ The proof presented must evidence that the parties made an agreement to be married; thereafter the couple lived together in Texas as husband and wife; and, the couple represented to others that they were married.¹² In 1997, Family Code § 2.401 was amended to provide that a minor may not be a party to an informal marriage or execute a declaration of informal marriage. Therefore, it does not appear that the parental consent provision in § 2.102 would apply to a common law marriage of a minor or that a minor could ever be a party to a valid common law marriage.

B. Proof

The person seeking to establish the existence of a common law marriage has the burden of proving it by a preponderance of the evidence.¹³ The burden must meet the limitation imposed by Rule 601(b) Tex. Rules of Evidence. Moreover, although the three elements constituting a common law marriage may occur at different times, until all three exist, a common law marriage does not exist.¹⁴

1. Recording the Declaration of Marriage

The probate practitioner can establish a prima facie case of a valid and enforceable common law marriage by proof of an executed declaration of marriage recorded with the county clerk.¹⁵ This evidentiary proof should always be sought because many persons who execute and file the declaration do not realize that it constitutes clear and convincing evidence of the common law marriage, and simply fail to mention it to the attorney. However, a court is not bound to find a common law marriage even if a properly executed declaration of marriage is recorded if one of the required elements is shown to be lacking in actuality.¹⁶

2. The Three-Pronged Test

a. The Agreement to Be Married

The Family Code previously allowed a court to presume that the parties had agreed to be married if they lived together as husband and wife and held themselves out to the community as such.¹⁷ However, the 1989 Legislature deleted this provision and promulgated the necessity of an "agreement to be married" language which raised a new issue of proof.¹⁸ The agreement must evidence that the parties intended to have a present, immediate and permanent marital relationship.¹⁹

The Texas Supreme Court addressed the proof issue in 1993.²⁰ The Court determined that an agreement to be married could be established by circumstantial evidence. Hence, this portion of the three pronged test may be established by direct or circumstantial evidence. The Texas Supreme Court found that an occasional uncontradicted reference to the cohabitant as "my wife" or "my husband" will not prove tacit agreement to be married without further corroboration. That court found that such a reference by the contestant of the union will be stronger evidence than such a statement by the proponent.²¹ Accordingly, the probate courts have entertained examples of proof which include a letter addressed to "My darling wife"; a holiday card embossed with the words "For my wife"; a card accompanying flowers stating "to the best wife a man could have"; and, a note written on the backside of a grocery receipt stating "damn it wife, leave me alone."

b. Living Together As Husband and Wife

The law requires that the parties live together in Texas as husband and wife.²² Living together in another state does not satisfy this element.²³ Interestingly, the cohabitation element has been found to exist when an alleged husband acted "husbandly" by doing errands, working around the house, and generally behaving as if he were married.²⁴ Circumstantial proof of this element includes a lease agreement; an earnest money contract or deed executed by both parties; the joint payment of home furnishings; and, the testimony of neighbors and maids.

c. Representation of Marriage

The third element of a common law marriage relates to the representation by both parties to others that they are married. A representation that they are husband and wife has been interpreted to mean "holding out" to others that you are husband and wife.²⁵ A recent Texas case held that a three-day stay in a hotel with a person of the opposite sex is not enough to establish the "representing to others" element of a common law marriage.²⁶ Essentially, this element must be proven through opinion and reputation testimony from third parties who have concluded an opinion of the couple's marital status based on their verbal representations.²⁷ The rationale underlying this requirement is to prevent a secret common law marriage. Secrecy is inconsistent with the requirement that the couple hold themselves out to be living together as husband and wife.²⁸ And both parties must represent that they are married or there is no "holding out."²⁹ This requirement can be proven through executed documents to third parties and third party testimony. At the death of one spouse, Rule 601(b)

of the Texas Rules of Civil Evidence, or "Dead Man's Statute," may also affect the evidence of a common law marriage.

C. Statute of Limitations

From 1989 until 1995, a proceeding to prove a common law marriage had to be commenced not later than a year after the relationship ended.³⁰ However, the current law provides that if a suit is not commenced to prove the existence of an informal marriage before the second anniversary of the date on which the parties ceased living together, then, it is rebuttably presumed that the parties did not enter into an agreement to be married.³¹ The 1995 amendment to the Family Code controls all suits commenced after September 1995. A recent case out of the Waco Court of Appeals found that although the common law marriage was established in 1992, and the parties separated in 1994, the trial court correctly applied the post 1995 rebuttable presumption instead of the one year statute of limitations.³² The court found that even though a determination of heirship was not initiated until seven years after the couple separated and the wife who was asserting the marriage had remarried, that the date that the suit was initiated to establish the marriage determined the law to be applied. If one was barred by the one year statute between 1989 and 1995 and they did not ever file suit to establish the marriage, under the holding of this case, they could still establish the marriage if they could overcome the rebuttable presumption.

Two separate cases have analyzed whether the act of filing for social security benefits within the limitations period satisfied the "commencement of suit" requirements. The Villegas v. Griffin Industries case found that the request for social security benefits did not qualify as commencement of suit within one year because the application for social security benefits taken alone did not include evidence of the elements required to prove a common law marriage.³³ However, a subsequent case found that the fact that the purported common law spouse had filed an application for social security benefits a month after the death of the deceased at least raised a fact issue as to whether the "widow" commenced a proceeding because the social security application contained evidence of all of the elements required to prove a common law marriage in Texas.³⁴

Common Law "Divorce" Misconception

A problematic common law marriage misconception is that once the parties cease living together, a common law divorce exists. Conversely, there is no such legal remedy in Texas law.³⁵ When the parties have established a common law marriage, it may be terminated only by court decree or death.³⁶ Unfortunately, some people believe that when they cease living with their common law spouse they are divorced and proceed to create another common law marital relationship or enter into a ceremonial marriage. The second marriage is void irrespective of what the subsequent spouse may believe.³⁷ However, a putative spouse relationship may have been created. To complicate this situation, children may have been the product of one or more of these relationships.

The common law divorce misconception exemplifies the legal rationale for the recognition of a putative spouse. The misconception causes untold problems and frustrations for the families and courts. An example commonly encountered by the probate courts is when a decedent is killed in an accident through the negligence of a third party. The court and surviving spouse generally discover the existence of an earlier spouse through the application to determine heirship process. At that point, the court must determine each “spouses” legal rights.

The Putative Spouse

Texas recognizes the putative spouse doctrine to help remedy the above-described situations.³⁸ A putative marriage, notwithstanding its nullity because of the prior marriage, is recognized as a valid relationship based in contract law if one spouse entered the marriage in good faith.³⁹ The critical distinction is the marriage itself is not rendered valid by reason of the putative spouse doctrine, rather, the doctrine merely gives the parties certain property rights.⁴⁰

Putative Spouse Proof Requirements

1. Good Faith Belief

A good faith belief by one or both parties that a valid marriage exists is an absolute prerequisite to recognition as a putative spouse.⁴¹ Good faith consists of being ignorant of the cause that prevents the formation of a valid marriage or the defects in its celebration that cause it to be a nullity.⁴² Although good faith may be presumed when a spouse is unaware of a prior undissolved marriage, the question of the reasonableness of the belief may be raised.⁴³ An alleged spouse cannot meet the good faith belief standard when that person suffers a legal disability preceding the marital union, i.e. underage, lack of mental capacity or an existing marriage to another person.⁴⁴ A meretricious union reflects these examples and the party suffering the disability is simply a meretricious partner. The good faith belief terminates upon discovery of the previous valid marriage and the accrual of marital benefits also ceases.⁴⁵

2. Valid Marriage Presumption

There is a presumption that the most recent marriage is valid as to marriages that precede it.⁴⁶ The burden of proof to the contrary rests on the person attacking its legality.⁴⁷ However, the presumption that the most recent marriage of a party is the valid one only continues until one proves the impediment of a prior marriage.⁴⁸ The termination of a prior marriage may be rebutted by proof of the nonexistence of a divorce or annulment record

where they should be found.⁴⁹ The Texas Supreme Court addressed this public policy rationale by determining that a presumption in favor of a valid marriage is the strongest known to law; that the validity of the marriage increases over time by the acknowledgments of spouses and the births of children; and, a public policy favoring morality, innocence, marriage and legitimacy is favored over their opposite.⁵⁰

A. Dividing Estate Assets With a Putative Spouse

1. Community Property

a. Putative Spouses Share

Texas Courts have stated that the effect of the putative spouse doctrine is to allow a spouse the same right in property acquired during the marital relationship as if she were a lawful spouse.⁵¹ Early Texas court decisions concluded that the surviving spouse inherited a one-half interest and the child or children received the remainder of the community property acquired during the putative marriage.⁵²

Unfortunately, there is confusion among the Courts regarding these rules of law. The Davis Court enunciated the principle above stated but gave no supporting rationale;⁵³ the Morgan Court stated that the putative wife should not be deprived of property acquired through joint efforts;⁵⁴ the Robertson Court closely followed the joint efforts rationale but restricted the partition of property to that which was acquired solely by joint efforts;⁵⁵ the Lee Court concluded the putative spouse was entitled to one-half of all putative marriage community property;⁵⁶ and, the Garduno Court noted that because no legally recognizable marriage existed, the property to be divided was jointly owned separate property.⁵⁷

b. Remainder Of The Community Estate

The remaining one-half of the putative marriage community property is equally divided between the lawful wife and the children from the lawful and putative marriage. The lawful and putative spouses will equally divide the decedent's estate if there are no children.⁵⁸

2. Separate Property

Texas has clearly taken the position that a putative spouse has no interest in the decedent's separate property.⁵⁹ This rule applies to separate property acquired before and during the putative marriage.⁶⁰ The view is not as clear regarding the decedent's rents, income and profits from separate property. The Family Code provides that rents and profits from separate property are community property.⁶¹ Hence, one-half of rents and interest, dividends and other income revenue should be distributed to the putative spouse if we follow the Davis

rationale. Conversely, the joint efforts theory embraces the concept of jointly owned separate property leaving the putative spouse with no interest.

3. Various Other Rights

a. Homestead Rights

The Texas Constitution provides that on the death of the husband or wife the homestead shall not be partitioned among the heirs of the deceased during the occupancy of the survivor.⁶² The Texas Supreme Court's position in *Davis* that a putative spouse has the same rights in property as a lawful wife lends credibility to her obtaining survivorship rights in the homestead. A nearly century old case does, however, argue in dicta that a putative spouse cannot ascend to the homestead rights in the decedent's separate realty.⁶³

b. Right to Be Appointed Administrator

The Probate Code provides that upon the decedent's death the surviving spouse has first preference in receiving letters of administration.⁶⁴ Case law provides that the lawful wife has a preferential right to the appointment.⁶⁵ Therefore, the putative spouse will not control the administration of the estate from which she is seeking assets and rights.

c. Family Allowance And Exempt Property

The Probate Code requires that all exempt property be set aside for the benefit of the lawful spouse.⁶⁶ The probate court must also make an allowance for the lawful spouse should no exempt property exist.⁶⁷ There is no Texas case law regarding this rule's effect on a putative spouse. However, the issue has been addressed by analogy in the context of a wrongful death action.

The Civil Practice and Remedies Code provides that an action to recover damages for wrongful death is for the exclusive benefit of the surviving spouse, children, and decedent's parents.⁶⁸ The Texas Supreme Court has ruled that a putative spouse is not entitled to bring this action nor receive any benefits under the Workman's Compensation Statutes.⁶⁹

The right of a widowed putative spouse to receive social security benefits was recently upheld in a federal court action citing the rationale in the *Davis* and *Garduno* cases.⁷⁰

d. Will Provisions

Problems arise when a decedent attempts to devise property by will to a putative spouse to the exclusion of the lawful spouse. An early federal case addressed the issue when the decedent bequeathed his estate to his putative spouse and children while making a separate

bequest to the daughter of his lawful marriage.⁷¹ The Court determined that since the first marriage still existed the lawful wife possessed an interest in the putative marriage estate. An award of a one-half interest was made to the putative spouse with the remainder being divided between the lawful wife and the children of the putative marriage.

Adoption by Estoppel

The elements necessary to establish an equitable adoption are (1) the existence of an agreement to adopt and (2) performance by the child.⁷² The additional requirement that the child must know of the agreement to adopt and act in reliance upon it appears to have been rejected by two appellate courts recently.⁷³ The agreement to adopt is usually the contested issue and has been found by the Texas Supreme Court to be a necessary predicate for the interposition of the equity powers of the courts to decree an adoption by estoppel.⁷⁴ Merely recognizing and referring to a child as an adopted child or the fact that a child lives with foster parents from an early age, calling them “mommy” and “daddy” and goes to school under their name is not adequate to prove an adoption by estoppel in the absence of a contract to adopt.⁷⁵ Unlike the doctrine of common law marriage which is recognized in probate, family, civil and criminal law, the doctrine of adoption by estoppel is only recognized in the probate area.⁷⁶ Additionally, the equitable adoption functions to enforce the rights of the child under the agreement to adopt, but does not confer additional rights on the adoptive parents or their collateral kin, such as the right to inherit from the adoptive child.⁷⁷ Therefore, the natural parent still retains their right to inherit from the adoptive child even if a court finds the child was adopted by estoppel.⁷⁸

a. Proof of the Agreement to Adopt

As with the agreement to be married in a common law marriage, the agreement to adopt can be proved by direct evidence or circumstantial evidence such as the acts conduct and admissions of the parties as well as other relevant facts and circumstances.⁷⁹ The agreement can be between the adoptive parents and the child’s parents or someone in loco parentis.⁸⁰ The Luna court found that if one natural parent abandons the child, then the agreement to adopt with the other parent is sufficient.⁸¹ The Luna court overruled the trial courts determination that there was no adoption by estoppel even though the natural father’s parental rights had never been terminated and the natural father refused to consent to the adoption of his son by his step-father. The appellate court found that the natural father had abandoned his son “for all intents and purposes” even though there was still a distant relationship with the natural father. The Spiers court found an equitable adoption even though there was evidence that the natural father had divorced the natural mother over her decision to give the child away.⁸² Therefore, only a minority of courts have required both of the natural parents to consent to the “adoption”.

The courts have been inconsistent in their holdings in cases in which no direct evidence is presented and no definite pattern has been established. Some courts will uphold the finding of an adoption by estoppel based solely on circumstantial evidence with no direct evidence of an agreement, and other courts will not. For example, in Spiers, the court found that there was an agreement to adopt the child based on the testimony of the adoptive aunt that the natural mother gave the child to the adoptive mother as a permanent arrangement.⁸³ Additionally, the adoptive mother had listed the child as a dependent on her tax returns, listed child as “daughter” on a life insurance application registered her at school as her daughter.⁸⁴ However, in the seminal Cavanaugh case, the fact that the aunt took her orphaned niece to raise from infancy was not evidence of an agreement to adopt even though there was some evidence that the natural mother may have delivered the baby to her sister before her death.⁸⁵ There was also controverting evidence that the sister only took the baby because she was the only one who could and that she would have given the child up to another family member if one had stepped forward. An attorney who is attempting to prove up an equitable adoption will be able to find many conflicting cases that can probably be distinguished from the current situation. There is rarely a fact pattern that fully complies with the requirements of adoption by estoppel. An attorney must carefully consider the venue and the trial judge in evaluating a claim of this sort as the appellate decisions are not consistent.

Performance by Child

The performance by a child requirement is fulfilled by the child by conferring love, affection and other benefits on the adoptive parents.⁸⁶ This love and affection can be evidenced by taking care of the parent when they are sick, celebrating birthdays and Christmas together and doing regular household chores.⁸⁷ This prong of the test is easily fulfilled and rarely a point of contention in litigation.

Conclusion

Even with increased litigation, people still enter into meretricious, common law, putative spouse relationships and adoptions by estoppel out of ignorance or by design. Unfortunately, for the spouse and families, the case law and the seemingly infinite variety of fact patterns rarely present a definitive determination of rights in the decedent's estate. Hopefully, this article will assist you in determining the rights of your client.

1. Texas is one of thirteen states recognizing a common law marriage. Duke Minier & Johanson, *Wills, Trust & Estates*, 5th edition, Little Brown & Co. (1995).

2. Tex. Fam. Code Ann. §2.001 (West 2001).

3. Id @ §2.002.

4. Id @ §2.009.

5. Id @ 2.202.

6. *Coulter v. Melady*, 489 S.W.2d 156 (Tex. App. - Texarkana 1972, writ ref. n.r.e.).

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7. *Smith v. Smith*, 1 Tex. 621 (1846).
 8. Tex. Fam. Code Ann. §2.206 (West 2001).
 9. *Id* @ §2.208.
 10. *Id* @ §2.401.
 11. *Id* @ §2.402.
 12. *Russell v. Russell*, 865 S.W.2d 929 (Tex. 1993).
 13. *Durand v. State*, 881 S.W.2d 569 (Tex. App. - Houston [1st Dist.] 1994)
 14. *Winfield v. Renfro*, 821 S.W.2d 640 (Tex. App. - Houston [1st Dist.] 1991, writ denied; and, *Bolash v. Heid*, 733 S.W.2d 698 (Tex. App. - San Antonio 1987, no writ).
 15. Tex. Fam. Code Ann. §2.404 (West 2001).
 16. *Colburn v. State*, 966 S.W.2d 511 (Tex. Crim App. 1998).
 - 17.. Act of June 2, 1969, 61st Leg. R.S., ch. 888, §1, 1969 Tex. Gen. Laws 2707, 2717.
 - 18.. Tex. Fam. Code Ann. §2.401 (Vernon 1998).
 - 19.. *Winfield v. Renfro*, 821 S.W.2d 640 (Tex. App. - Houston [1st Dist.] 1991, writ denied; and, *Bolash v. Heid*, 733 S.W.2d 698 (Tex. App. - San Antonio 1987, no writ)..
 - 20.. *Russell v. Russell*, 865 S.W.2d 929 (Tex. 1993).
 21. *Id* @ 932.
 - 22.. Tex. Fam. Code Ann. §2.401 (a)(2) (West 2001).
 - 23.. *Winfield v. Renfro*, 821 S.W.2d 640 (Tex. App. - Houston [1st Dist.] 1991, writ denied.
 - 24.. *Id* @ §647.
 - 25.. *Id* @ §648.
 - 26.. *Id* @ §647.
 - 27.. *In re: Estate of Giesel*, 734 S.W.2d 27 (Tex. App. - Houston [1st Dist.] 1987, writ ref. n.r.e..
 - 28.. *Ex parte Threet*, 333 S.W.2d 361 (Tex. 1960).

 29. *Shepherd v. Ledford*, 962 S.W.2d 28 (Tex. 1998); Tex. Fam. Code Ann.
 30. Tex. Fam. Code Ann. § 1.91(b) Act of May 25, 1989 71st Leg. Ch 369 § 9, 1989 Tex. Gen. Laws 1458, 1461 *amended by* Act of May 25, 1995, 74th Leg. R.S., ch 891, § 1, 1995 Tex. Gen. Laws 4404 *repealed by* Act of May 26, 1997, 75th Leg, ch 7, § 3.
 31. *Lavelly v. Heafner*, 976 S.W.2d 896, 899 (Tex. App.—Houston [14th Dist.]1998, no writ).
 - 32 . *Wilson v. Estate of Williams*, 99 S.W.3d 640 (Tex. App.– Waco, 2003, no writ).

 - 33.. *Villegas v. Griffin Industries*, 975 S.W.2d 745 (Tex.App.—Corpus Christi 1998, writ den'd).
 34. *Nava v. Reddy Partnership/Quail Chase*, 988 S.W.2d 346 (Tex.App.--Houston [1st Dist.] 1999, no writ).
 - 35.. *Estate of Claveria v. Claveria*, 615 S.W.2d 164 (Tex. 1981).
 - 36.. *Id* @ §167.
 - 37.. Tex. Fam. Code Ann. §6.202 (West 2001).
 - 38.. *Davis v. Davis*, 521 S.W.2d 603 (Tex. 1975).
 - 39.. *Mathews v Mathews*, 292 S.W.2d 662 (Tex. App. - Galveston 1956, no writ).
 - 40.. *Consolidated Underwriters v. Kelly*, 15 S.W.2d 229 (Tex. Comm'n. App. 1929, judgm't adopted).
 - 41.. *Dean v. Goldwire*, 480 S.W.2d 494 (Tex. App. - Waco 1972, writ denied).
 - 42.. *Id* @ §496.
 - 43.. *Whaley v. Peat*, 377 S.W.2d 855 (Tex. App. - Houston [1st Dist.] 1964, writ denied); See *Garduno v. Garduno*, 760 S.W.2d 735 (Tex. App. - Corpus Christi 1988, no writ) at 740 allowing the reasonableness of the belief to be raised.
 - 44.. See *Dean v. Goldwire* @ 496.
 - 45.. *Id* @ §496.
 - 46.. Tex. Fam. Code Ann. §1.102 (West 2001).
 - 47.. *Texas Employer's Ins. Ass'n. v. Elder*, 282 S.W.2d 371 (Tex. 1955).
 48. *Villegas v. Griffin Industries*, 975 S.W.2d 745 (Tex App--Corpus Christi 1998, writ den'd).
 - 49.. *Caruso v. Lucius*, 448 S.W.2d 711 (Tex. App. - Austin 1969, writ denied) See *Jordan v. Jordan*, 938 S.W.2d 177 (Tex. App. - Houston [1st Dist.] 1997, no writ) regarding rebuttal of presumptions.
 - 50.. See *Texas Employer's Ins. Ass'n.* @ 373.

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- 51.. See *Davis v. Davis* @ 606.
- 52.. *Lee v. Lee*, 247 S.W.2d 828 (Tex. 1923) and *Morgan v. Morgan*, 21 S.W.2d 154 (Tex. Civ. App. 1892, no writ).
- 53.. Tex. Fam. Code Ann. § 1.91(b) Act of May 25, 1989 71st Leg. Ch 369 § 9, 1989 Tex. Gen. Laws 1458, 1461 *amended by* Act of May 25, 1995, 74th Leg, R.S., ch 891, § 1, 1995 Tex. Gen. Laws 4404 *repealed by* Act of May 26, 1997, 75th Leg, ch 7, § 3.
- 54.. See endnote no. 43.
- 55.. *Fort Worth & Rio Grande Railway v. Robertson*, 131 S.W. 400 (Tex. 1910).
- 56.. *Whaley v. Peat*, 377 S.W.2d 855 (Tex. App. - Houston [1st Dist.] 1964, writ denied); See *Garduno v. Garduno*, 760 S.W.2d 735 (Tex. App. - Corpus Christi 1988, no writ) at 740 allowing the reasonableness of the belief to be raised.
- 57.. *Estate of Claveria v. Claveria*, 615 S.W.2d 164 (Tex. 1981).
- 58.. Tex. Fam. Code Ann. § 1.91(b) Act of May 25, 1989 71st Leg. Ch 369 § 9, 1989 Tex. Gen. Laws 1458, 1461 *amended by* Act of May 25, 1995, 74th Leg, R.S., ch 891, § 1, 1995 Tex. Gen. Laws 4404 *repealed by* Act of May 26, 1997, 75th Leg, ch 7, § 3.
- 59.. See endnote no's. 30, 43 and *Hamond v. Hamond*, 108 S.W. 1024 (Tex. Civ. App. 1908, writ denied).
- 60.. See endnote no. 47 holding that the putative wife did not have an interest in a cause of action accruing to the husband; and, *Chapman v. Chapman*, 32 S.W. 564 (Tex. Civ. App. 1895) holding that the putative wife has no interest in property gifted to husband.
- 61.. Tex. Fam. Code Ann. §5.01 (West 2001).
- 62.. Tex. Const. Art. XVI, §52.
- 63.. *Lawson v. Lawson*, 69 S.W. 246 (Tex. Civ. App. 1902, writ denied).
- 64.. Tex. Prob. Code Ann. §77 (West 2001).
- 65.. *Foix v. Jordan*, 421 S.W.2d 481 (Tex. App. - El Paso 1967, writ denied).
- 66.. Tex. Prob. Code Ann. §271 (West 2001).
- 67.. *Id* @ 273.
- 68.. Tex. Civ. Prac. & Rem. Code Ann. §71.003 (Vernon 1986).
- 69.. *Texas Employer's Ins. Ass'n. v. Grimes*, 269 S.W.2d 332 (Tex. 1954).
70. *McDonald v. Apfel*, No. 4:97-CV-411-A, (N.D. Tex. Filed Dec. 1, 1997).
- 71.. *Parker v. Parker*, 222 F. 186 (5th Cir. 1915), cert. Denied, 239 U.S. 643, 60 L. Ed. 483, 36 S. Ct. 164.
- 72 *Speirs v. Maples*, 970 S.W.2d 166 (Tex.App.--Ft.Worth 1998, no writ).
73. *Id* at 171; and *Luna v. Estate of Rodriguez*, 906 S.W.2d 576 (Tex.App.--Austin 1995, no writ).
74. *Cavanaugh v. Davis*; 235 S.W.2d 972 (Tex. 1951).
- 75.. *Lowrey v. Botello*, 473 S.W.2d 239 (Tex.App.--San Antonio 1971, no writ).
- 76.. *In Re M.L.P.J.* 16 S.W.3d 45 (Tex.App.--Eastland 2000, no writ). See also, *Flynn v. State*, 707 S.W. 2d 87 (Ct. Crim. App.– 1986).
77. *Heien v. Crabtree*, 369 S.W.2d 28 (Tex. 1963).
78. *Curry v. Williman*, 834 S.W.2d 443 (Tex.App.--Dallas 1992, writ den'd).
79. *Spiers* at 975.
80. *Luna* at 581.
81. *Id* at 581.
82. *Id* at 578.
83. *Spiers* at 172.
84. *Id* at 171.
85. *Cavanaugh* at 977.
86. *Spiers* at 172.
87. *Spiers* at 172 and *Luna* at 578.