CALIFORNIA PUTATIVE SPOUSES: THE INNOCENT, THE GUILTY, AND THE LAW

Helen Chang*

INTRODUCTION

The putative spouse doctrine permits the court to include an otherwise void or voidable
community property system.[1] The doctrine derives its literal meaning from

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spouses are included in the community property system by analogy only.[5] They are not considered legally married.[6] By contrast, same sex married couples are simply deemed legally married.[7] Only certain benefits and privileges of a legal marriage are available to putative spouses whereas all of the benefits and privileges of a legal marriage flow to registered domestic partners.[8] For some marital benefits, the spouse in a putative marriage must qualify as a good faith putative spouse.[9] Without such good faith, certain benefits of a legal marriage are denied to the guilty putative spouse.[10] As to the division of property upon annulment, putative spouses are treated the same as married spouses resulting in an equal division of their property.[11]

California courts traditionally applied the putative spouse doctrine if at

marriage in the equal division of property upon annulment.[12] Even if one spouse lacked good faith, the doctrine still applied if the other spouse held such a belief.[13] One California appellate court has recently questioned the traditional interpretation of the putative spouse doctrine for property division by limiting putative spouse status to the innocent spouse only.[14] California appellate courts are also split as to whether the putative spouse doctrine can be applied to registered domestic couples.[15]

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5. Christopher L. Blakesley, *The Putative Marriage Doctrine*, 60 TUL. L. REV. 1, 33 (1985).

6. *Id.*

7. *In re* Marriage Cases, 183 P.3d 384 (Cal. 2008), *superseded by statute*, CAL. CONST. art. I, § 7.5 (2008), *as recognized in* Hollingsworth v. Perry, 133 S. Ct. 2652, 2659 (U.S. 2013).

8. For example, putative spouses are not entitled to a family allowance during the probate administration of the decedent spouse s estate. *See* Hafner v. Hafner, 229 Cal. Rptr. 676, 691 (Ct.

This Article traces the historical roots of the putative spouse doctrine, its codification in California, its application in California, and recommends that California adopt a pure putative spouse system and simply include putative spouses as legal spouses for all purposes as it has done for registered domestic partners. To allow some but not all of the incidents of marriage to putative spouses is confusing, sometimes inequitable, and contrary to the expectations of the innocent spouse. California has a history

codified, California courts exercised their equitable powers to recognize marital rights in property acquired by the parties during their putative relationship.[21] Putative spouse status was found if either spouse held a good faith belief in the existence of a legal marriage.[22] Upon such a

property rights flowed to the putative spouses.[23]

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of existing judicial decisions[24] and absent legislation changing the doctrine, the courts should be bound by the doctrine of stare decisis. California courts have applied the putative spouse doctrine inconsistently as to the various benefits of a legal marriage. This article illustrates those inconsistencies and recommends that legislature clarify the putative spouse doctrine. Part I explains the historical origins of the putative spouse

discusses the various rights extended to putative spouses. Part IV examines the application and impact of the putative spouse doctrine for California

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21. *See* Vargas v. Vargas (Estate of Vargas), 111 Cal. Rptr. 779, 781 (Ct. App. 1974):

Equity or chancery law has its origin in the necessity for exceptions to the application of rules of law in those cases where the law, by reason of its universality, would create injustice in the affairs of men. Equity acts in order to meet the requirements of every case, and to satisfy the needs of progressive social condition, in which new primary rights and duties are constantly arising, and new kinds of wrongs are constantly committed. Equity need not wait upon precedent but will assert itself in those situations where right and justice would be defeated but for its intervention. (citations omitted.)

22. *See* Ceja v. Rudolph & Sletten, Inc., 302 P.3d 211, 216 (Cal. 2013) ([T]he putative spouse concept [is] a means for enabling a party to an invalid marriage to enjoy certain of the civil benefits of marriage if he or she believed in good faith that the marriage was valid.)

23. CAL. FAM. CODE § 2251 (West 2004). In addition to marital property rights, putative spouses are entitled to rights of succession at death and support. *See* Krone v. Krone (*In re* Krone s Estate), 189 P.2d 741, 742 (Cal. Dist. Ct. App. 1948) ([T]he logic appears irrefutable that if according to statute the survivor of a valid, ceremonial marriage shall be entitled to take all of the community estate upon its dissolution, then by parity of reasoning why should not the wife inherit the entire estate of a putative union upon the death of her husband intestate? Clearly she does inherit all.); *see also* Smith v. Garvin (Estate of Leslie), 689 P.2d 133, 140 (Cal. 1984) (finding that a putative spouse was an intestate heir to the decedent s separate property under the California Probate Code); Goldberg v. Goldberg (*In re* Estate of Goldberg), 21 Cal. Rptr 626, 632 (Dist. Ct. App. 1962) (discussing the intestate succession rights of a surviving putative spouse, the court said that, [a]s a putative spouse, Edith is entitled to the same share of the community property as she would receive as an actual wife).

24. Monti v. Monti (*In re* Marriage of Monti), 185 Cal. Rptr. 72, 74 (Ct. App. 1982):

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C. Early French Law

The Code Napoleon, adopted by France in 1804,[37] was completed at the order of Napoleon Bonaparte and became the governing law across much of Europe during the Napoleonic Wars.[38] The Napoleon Code recognized the putative spouse doctrine in Articles 201 and 202:

> Art. 201. A marriage which has been declared null draws after it, nevertheless, civil consequences, as well with regard to the married parties as to their children, where the marriage has been contracted in good faith.
>
> Art. 202. Where good faith exists only on the part of one of the married persons, the marriage is only attended by civil consequences in favor of such persons, and the children of the marriage.[39]

The putative spouse doctrine under the Code Napoleon was different from Spanish law in several respects. French law did not punish the guilty or wrongful spouse[40]
were still legitimate.[41] Spanish law denied legitimacy to children born to two guilty spouses.[42] Under French law, the civil effects ended when the putative marriage was declared null but under Spanish law, the civil effects terminated when the innocent spouse ceased to have a good faith belief in the existence of a legal marriage.[43]

Although French legal scholars agreed that a guilty spouse would not forfeit property rights, they disagreed as to how the marital property should be apportioned between the legal spouse, the putative spouse, and their children.[44] Denisart, Toullier, and Vazeille advocated an association or partnership theory which would confer one-half of the property acquired

in the 21st century, and any new interpretations of the putative spouse doctrine must reflect gender neutrality without paternalism.

II. THE PUTATIVE SPOUSE DOCTRINE IN CALIFORNIA

relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is [54] In addition to consent and capacity, licensure and solemnization are also required.[55] Although marriage is generally perceived and accepted as a private and personal decision, the courts have long held that the state has an important interest in the institution of marriage and marriage is thus entitled to some regulation.[56] State regulations vary but typically proscribe limits for those who can marry such as age,[57] gender,[58]

54. CAL. FAM. CODE § 300 (West 2004 & Supp. 2014). Although this section has not been repealed, its man and woman limitation for marriage has been successfully challenged. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2659 (2013) and related Proposition 8 cases. *See also* United States v. Windsor, 133 S. Ct. 2675, 2696 (2013) (holding that at least a part of the Defense of Marriage Act s prohibition on same-sex marriage was unconstitutional as violating the equal protection clause).

55. CAL. FAM. CODE § 300(a) (West 2004 & Supp. 2014) (Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division, [ ].).

56. *See* Maynard v. Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution.

57. The legal age of marriage in most states is 18. *See* Naomi Cahn and June Carbone, *Deep Purple: Religious Shades of Family Law*, 110 W. VA. L. REV. 459, 481 (2007). Most states permit marriages for certain minors with parental consent and/or judicial consent. *See, e.g.*, 750 ILL.. COMP. STAT.

affinity,[59] consanguinity,[60] mental capacity,[61] and physical capacity.[62] In California, eighteen is the legal age for consent to marry.[63] However,

59. States typically prohibit incestuous marriages although some states permit first cousin marriages. *See, e.g.*, 750 ILL. STAT. ANN. 5/212(a) (West 1999 & Supp. 2014) (permitting marriages between first cousins over the age of 50 years or if one of them is permanently sterile):

> The following marriages are prohibited: (1) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties; (2) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption; (3) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood; (4) a marriage between cousins of the first degree; however, a marriage between first cousins is not prohibited if: (i) both parties are 50 years

Columbia recognize common law marriage under some circumstances.[69] States that recognize common law marriage include: Alabama,[70] Colorado,[71] Georgia (if created before January 1, 1997),[72] Idaho (if created before January 1, 1996),[73] Iowa,[74] Kansas,[75] Montana,[76] New Hampshire (for inheritance purposes only),[77] Ohio (if created before October 10, 1991),[78] Oklahoma,[79] Pennsylvania (if created before January 1, 2005),[80] Rhode Island,[81] South Carolina,[82] Texas,[83] and Utah.[84]

marriage to avoid any embarrassment for a child born out of wedlock or pre-marital cohabitation.[87] Other types of legal marriages include marriages by declaration,[88] marriages by contract,[89] and tribal marriages.[90]

The putative spouse doctrine is considered a curative device to validate an otherwise invalid marriage.[91]

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87. *See* CAL. FAM. CODE § 500 (West 2004) (When an unmarried man and an unmarried woman, not minors, have been living together as husband and wife, they may be married pursuant to this chapter. . .); MICH. COMP. LAWS ANN. § 551.201 (West 2005) (When a person desires to keep the exact date of his or her marriage to a person of the opposite sex a secret, the judge of probate may issue, without publicity, a marriage license to any person making application, under oath, if there is good reason expressed in the application and determined to be sufficient by the judge of probate.); Ashley E. Rathbun, *Marrying Into Financial Abuse: A Solution to Protect the Elderly in California*, 47 SAN DIEGO L. REV. 227, 238 (California has recognized confidential marriage since 1878. At the time the legislature codified confidential marriage, society considered it sinful for couples to live together before marriage.).

88. *See* MONT. CODE ANN. § [illegible]

in their attempt to do so.[92] Exercising equitable powers, the courts have invoked the putative spouse doctrine to protect those who in good faith, attempted to comply with the formalities required for a legal marriage.[93] In general, the doctrine applies when at least one of the parties has a good faith belief in the existence of a legal marriage.[94] Even

Elizabeth as his first wife.[99] However, he believed Elizabeth was dead since he had heard no news from her or her family for over seven years prior to his second marriage in California.[100] Upon discovery of the

husband transfer certain real property to her.[101] Believing the first wife deceased and, to avoid the making of a will and probate, the husband complied.[102] The parties subsequently discovered that Elizabeth was alive.[103] The second wife sought an annulment and the husband filed a cross-claim to set aside the transfer deed on the grounds of fraud and/or mistake.[104] The court annulled the marriage, vacated the transfer deed, and divided the property equally between the husband and the second wife.[105]

Although the court did not specifically refer to the second marriage as a putative one, the court noted that in the equal division of the transferred real

the parties.[106]

as if it were a legal marriage and in the community property system. Of further significance is the concurring opinion which stated that upon di

grounds for an equal division of the property that had been acquired by the parties during the existence of the relation of husband and wife as would exist upon the dissolution of any valid contract of marriage for a cause other [107]

This equitable community property doctrine was again applied in the 1911 case of *Coats v. Coats*.[108] Ida and Lee were married in November 1887.[109] After eighteen years together, Lee sought an annulment of the

Id The value of the Los Angeles real property deeded to the second wife was $125,00000.

marriage state.[110] After the judgment of annulment became final, Ida filed an action for a division and share in the property accumulated during their

Id

Id

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at 959.

Id (Harrison, J., concurring).

118 P. 441, 444 (Cal. 1911).

Id

relationship.[111] Ida was awarded $10,000 and Lee appealed.[112] In upholding the $10,000 judgment, the California Supreme Court stated that

would receive out of community property on the termination of the [113] In the absence of a statute directing the division of the property accumulated during a marriage that is subsequently annulled, the court applied by analogy community property principles that would otherwise apply to a legal marriage in the exercise of equity.

> in dividing gains made by the joint efforts of a man and a woman living together under a voidable marriage which is subsequently annulled, apply, by analogy, the rules which would obtain with regard to community property where a valid marriage is terminated by death of the husband or by divorce. The apportionment of such property between the parties is not provided by any statute. It must, therefore, be made on equitable principles. In the absence of special circumstances, such as might arise

[118] Although Sarah believed that she had legally divorced her first husband in 1905, the divorce was invalid which meant [119]

The court discussed the common law doctrine of dower[120] and

marriage; a good faith belief in the existence of a legal marriage would not salvage a dower claim.[121] After reviewing several Texas cases involving putative marriages, the court distinguished the community property regime from the common law marital property system and held the common law

property regime:[122]

> This conclusion is dictated by simple justice, for where persons domiciled in such a jurisdiction, believing themselves to be lawfully married to each other, acquire property as the result of their joint efforts, they have impliedly adopted, as is said in the Texas case cited, the rule of an equal division of their acquisitions, and the expectation of such a division should not be defeated in the case of innocent persons.[123]

The court concluded that Sarah was entitled to an equal division of the marital property, applying the same rule of property division for legal marriages.[124]

she is entitled to the same interest in property acquired by the parties as if [125]

Subsequent cases continued to apply the same equitable principles to putative spouses in dissolution and probate proceedings.[126] The equitable putative spouse doctrine was later extended to intestate succession rights.[127]

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118. *Id.*

119. *Id.*

120. *See* 28 C.J.S. *Dower and Curtesy* § 4 (Dower at common-law and under many statutes entitles the wife to a life estate, in a certain portion of all the lands of which the husband was seized or possessed at any time during the marriage, unless she is lawfully barred or has relinquished the right. (citations omitted).).

121. *Schneider*, 191 P. 533 at 534 (In the states where the common-law right of dower exists it is generally held that a woman, in order to be entitled to dower, must base her claim upon a legal marriage. In those states if a man has a wife living, and enters into a second marriage, no matter how innocent of wrongdoing the other party to it may be, nor how gross the deception by which she enters into the marriage, she is not entitled to dower, not being his lawful wife. (citation omitted).).

122. *Id.* at 535.

123. *Id.* (citing Barkley v. Dumke, 99 Tex. 0 1 1m2/F1 8t3( )-3(o)7(n)7(d)7( )-101(m)7/F1 8.52 Tft EMC /P <

In 1948, the California court recognized the succession rights of a putative spouse in *Estate of Krone*.[128] *Krone* was a probate case involving a

against his three children from a former marriage.[129] The children claimed that the putative wife could not inherit
intestacy provisions of the Probate Code but the court disagreed:

> [T]he logic appears irrefutable that if according to statute the survivor of a valid, ceremonial marriage shall be entitled to take all of the community estate upon its dissolution, then by parity of reasoning why should not the wife inherit the entire estate of a putative union upon the death of her husband intestate? Clearly she does inherit all.[130]

The effect of *Krone* was to recognize a putative wife as a legal spouse for the purpose of succession.[131] Subsequent cases followed the same
[132]

courts have consistently required that a putative union be founded upon the good faith belief in the existence of their legal marriage held by at least one of the parties.[137] The 1970 codification of the putative spouse doctrine was intended as a codification of existing substantive law and included the requirement of a good faith belief in the existence of a legal marriage.[138]

B. The 1969 Family Law Act (effective 1970)

The codification of the putative spouse doctrine was part of a introduction of no-fault divorce.[139] The 1969 Act made California the first state to implement no-fault divorce and to eliminate fault as a basis for obtaining a divorce.[140] Prior to 1970, fault impacted the division of property in a divorce since the innocent spouse was entitled to a greater share of the community property.[141] The reasons behind the passage of no-fault divorce were many. Among the reasons were the need to reduce acrimony between the spouses, reduce the emotional harm to children, reduce the need for salacious evidence, reduce domestic violence, and eliminate the need for perjury.[142]

became a revolution.[144]
decade.[145] At the core of the no-fault concept was the equal division of community property at divorce regardless of fault.[146] Although no-fault divorce was heralded as a fresh and modern approach to the anachronistic and punitive fault based divorce, no-fault divorce was and remains controversial, in particular as to its alleged impact on the feminization of poverty, the high divorce rate, and declining moral standards.[147]

The newly enacted putative spouse statute was deemed a mere codification of existing law and the courts continued to require a good faith belief in the existence of a legal marriage for putative spouse status.[148] The codification of the putative spouse doctrine was discussed in *In re Marriage of Cary*.[149] In *Cary*, Janet and Paul lived together for eight years, held themselves to others as husband and wife, had four children together, filed joint income tax returns, and acquired property together but never legally married.[150]

the requisite good faith belief, their relationship then qualifies as a putative marriage.[154] The guilt of one spouse does not disqualify the putative status of the marriage.[155] The California Supreme Court later rejected *Cary* holding that non-

Sonny Bono, Tony Curtis, Joan Collins, Bianca Jagger, Carl Sagan, and Connie Stevens.[188] Although Michele lost her case in the California courts,[189] the door to the rights of unmarried cohabitants was now opened and the legal distinction between putative spouses and unmarried cohabitants became even more important since putative spouses are in

E. The 1992 Amendment

The 1992 amendment of the putative spouse statute is codified in Family Code section 2251 and left its predecessor largely unchanged.[190] If a marriage is void or voidable and the court finds that either or both parties

the party or parties to have the status of a putative spouse. . . [191] Upon a determination of putative spouse status, any property acquired during the putative marriage which would have been community property (if the

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if such property were community property.[192] Although the 1992 amendment was not a substantive change,[193] two California appellate courts interpreted the exact same statutory language diametrically.

188. See Linda Deutsch, *Marvin Mitchelson, 76; Was Divorce Attorney for the Stars*, ASSOCIATED PRESS (Sept. 20, 2004), *available at* http://www.boston.com/news/globe/obituaries/articles/2004/09/20/marvin_mitchelson_76_was_divorce_attorney_for_the_stars/; Dennis McLellan, *Marvin Mitchelson, 76, Attorney, Pioneered Concept of Palimony*, http://articles.latimes.com/2004/sep/21/local/me-obituari li Pa torney,a10(i)-59(P)5(5

In 1997, Xiao Hua Sun aka David Sun, a famous Italian/Chinese opera singer, met Xia Guo and began dating.[194] Ms. Guo knew that Mr. Sun was married and that his wife and two children lived in Italy.[195] Nevertheless, Mr. Sun and Ms. Guo relocated to the United States and cohabitated together for the next five years.[196] They decided to get married but first Mr. Sun needed to obtain a divorce from his wife.[197] Together they retained [198] Ms. Guo completed the necessary paperwork for the dissolution and both parties apparently believed that the divorce was final.[199] On February 14, [200] Each believed [201] Their marriage certificate was recorded on February 15, 2001 and issued on February 23, 2001.[202]

Unbeknownst to either of them, attorney Cheng did not file the dissolution papers until February 15, 2001, and the final judgment of dissolution was not filed until August 21, 2001.[203]

putative spouse status.[209] In particular, because Mr. Sun was the party seeking putative spouse status, the trial court required him to hold the required good faith belief in the validity of the marriage. The trial court found that Mr. Sun did not have the requisite good faith belief and denied him putative spouse status.[210] Mr. Sun appealed and claimed that the court

marriage.[211] The Second District Court of Appeal affirmed.[212]

The court of appeals reiterated the equitable nature of the putative spouse doctrine and purpose to protect innocent spouses.

> [T]he statute is based on equitable principles and is meant to protect an *innocent* party who in good faith asedaseMievJ-1357sedh4n-3(i)-4(ag)9h25(o)-e11(h4)(o)-5aanlty b

presumably be divided according to common law rules of title and contribution. Allowing Bigamous Husband to claim putative spouse status simply gives Innocent Wife what she expected from a legal marriage. Any other rule lead -
fault system.

Such was the conclusion of the California Sixth Appellate District Court of Appeals in *Marriage of Tejeda*.[215] In *Tejeda*, the bigamous husband and innocent wife were in a putative marriage for over thirty years.[216] When the husband petitioned for dissolution, the wife petitioned for a nullification and requested that property titled in her name be confirmed as her separate property.[217] The *Tejeda* court found the putative spouse statut [218] The court held that upon a finding that one spouse has a good faith belief in the existence of a legal marriage, the union itself becomes a putative marriage.[219] The property acquired during the putative marriage although titled
name, was then characterized as quasi-marital property and divided equally between the putative spouses.[220] At first blush, this result may appear to give the bigamous husband a windfall but in fact, this property division merely gives the innocent wife what she expected from a legal marriage
equal division of the marital property. Indeed, the *Tejeda* court specifically rejected an interpretation of the putative spouse statute that would limit the doctrine to innocent spouses only.[221]

In reaching its decision, the *Tejeda* court considered both related statutes and the purpose of the putative spouse doctrine.[222] First the court considered sections 2254 and 2255 of the California Family Code. Section 2254 permits an order for support for an innocent putative spouse.[223]

spouses.[224] Since the L

providing for support, but did not limit quasi-marital property division to an innocent spouse, the *Tejeda* court concluded that the Legislature intended

215. Tejada v. Tejada (*In re* Marriage of Tejeda), 102 Cal. Rptr. 3d 361 (Ct. App. 2009).

216. *Id.* at 364.

217. *Id.*

218. *Id.* at 367.

219. *Id.* at 368.

220. The Court of Appeals affirmed the trial court s decision that the property was quasi-marital property. *See id.* at 364.

221. *Id.* at 369.

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for an equal division of the marital property even if one of the spouses was [225]

The *Tejeda* court next addressed the statutory purpose of the putative spouse doctrine and stated:

> Disregarding guilt and innocence in property division also serves to support the purposes of the Family Law Act. The main focus of the act was to eliminate the artificial fault standard. The basic substantive change in the law engendered by the act was the elimination of fault or guilt as grounds for granting or denying divorce and for refusing alimony and making unequal division of community property. The equal division of
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> no-fault philosophy. The equal division of quasi-marital property likewise serves those purposes.[226]

The *Tejeda* court continues the historical understanding of the putative spouse doctrine which is to include the putative union in the community

The Second Circuit Court of Appeals in the Guo and Sun case is simply wrong in its interpretation of the putative spouse statute.

III. A PUTATIVE SPOUSE S RIGHTS TO THE INCIDENTS OF A LEGAL MARRIAGE

The classic putative spouse doctrine is designed to accord all of the civil rights, privileges, and benefits of a legal marriage to the putative marriage.[227] Although California includes putative spouses in its

treatment of putative spouses is not a classic or pure application of the doctrine.[228] Property acquired by p -
property because true community property can only exist when there is a legal marriage.[229] By contrast, Louisiana establishes the exact same community property rights for putative spouses as legally married spouses rather than using an equivalent or analogue.[230] Although California provides for an equal division of the marital property, not all of the other civil effects of a legal marriage necessarily flow to putative spouses.[231] For

225. *In re Marriage of Tejeda*, 102 Cal. Rptr. 3d at 368-69.
226. *Id.* at 369 (citations omitted).
227. Blakesley, *supra* note 5, at 2.
228. *Id.* at 32-34.
229. *Id.* at 33.
230. *Id.* at 31.
231. *Id*. at 33-34.

lifornia courts have interpreted the statutes to exclude the guilty spouse.

A. Wrongful Death

Even before the putative spouse doctrine was codified, California courts recognized that a putative spouse had standing to bring a wrongful death claim.[232] Since a putative spouse is an heir for purposes of succession, she is an heir for purposes of maintaining an action for wrongful death.[233] As of 1975, California specifically included putative spouses in its wrongful death statute.[234] The most recent version of the

surviving spouse from the existence of a legal marriage. Moreover, as a no-
be irrelevant.

B. Intestate Succession

California courts have historically permitted putative spouses an [242] The California Probate

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Since the family allowance is a purely statutory creation intended to provide temporary support to dependents pending probate administration, the term

spouses.[249]

Although a putative spouse may have been wholly dependent upon a decedent spouse for many years, the Probate Code meanly excludes both innocent and guilty putative spouses from any temporary support during probate administration. Putative spouses have most certainly agreed inter se, to support each other. The exclusion of putative spouses from receiving a family allowance makes little sense given its purpose and the wide discretion given to the probate court in deciding the amount and duration of the award.[250] We are also left with an inconsistency in the interpretation of

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allowance while waiting for estate administration to end so that they can inherit.[251]

D. Spousal Support

Section 2254 of the California Family Code specifically provides for support to a putative spouse:

> The court may, during the pendency of a proceeding for nullity of marriage or upon judgment of nullity of marriage, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable if the party for whose benefit the order is made is found to be a putative spouse.[252]

While lacking full equal status as legally married couples, the domestic partner legislation created awareness as to the developing legal status of same

laws would now apply to registered domestic partners but the precise details putative spouse doctrine applies to domestic partners.

B. Putative Domestic Partners

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[276] Apparently, Velez believed she had a valid state domestic partnership because she incorrectly believed that their San Francisco domestic partnership was included in the [277] If Velez held a good faith belief in the existence of a valid state domestic partnership because of the San Francisco registration, such a good faith belief should have qualified her as a putative domestic partner.

Second, the court ignored the clear legislative mandate and purpose of the domestic partnership legislation. The application of the putative spouse doctrine to domestic partners would certainly have been consistent with the express legislative purpose to equalize the rights of same-sex couples with married couples:

> The act is intended to help California move closer to fulfilling the promises of inalienable rights, liberty, and equality. . .by providing all caring and committed couples, regardless of their. . .sexual orientation, the opportunity to obtain essential rights, protections, and benefits and to assume corresponding responsibilities, obligations, and duties and to
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> relationships.[278]

Velez was incorrect and in 2008, the Fourth Appellate District Court of Appeals applied the putative spouse doctrine to domestic partners.[279] In *In re the Domestic Partnership of Ellis and Arriaga*, Ellis and Arriaga signed and had notarized the necessary paperwork to register their domestic partnership with the Secretary of State.[280] Ellis believed the paperwork was duly filed and their partnership properly registered.[281] When Ellis discovered that their partnership was not registered with the State, he claimed to be a putative domestic partner.[282] The Fourth District Court of Appeal agreed and specificlyC6[(2)] TJ0055>30052>50050190052>50057004C>90051>5004A.-

California again led the way in recognizing domestic partnerships and later

not been taken with putative spouses. The unfortunate result is a patchwork of inconsistent statutes and judicial decisions.

California needs legislation adopting the putative spouse doctrine purely and wholly into its family and community property system. The fault or guilt of one spouse should not preclude the application of all marital benefits to the putative spouses. This is not a windfall to the guilty but

marriage.