

# Forum

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## Leveling Divorce Outcomes

### Let's End Inequity in Court's Division of Business Goodwill

By Fred Silberberg

**I**t is time to stop treating members of different businesses differently when dividing up business assets in a divorce. Spouses of individuals whose income is based strictly on their reputation shouldn't be deprived of their spouse's goodwill in the business simply because of the form that the working spouse's business takes.

"A rose by any other name is still a rose," goes the saying. However, in California, goodwill by any other name is not goodwill. The following stories illustrate this principle and all are supported by existing case law:

■ Catherine left college in her sophomore year to pursue a career as a recording artist. She spent two years pounding on doors in Hollywood, trying to get her one big break. In that period of time she met Sam, who worked in his family's hardware store. The couple got married a year after they met. Sam continued to work in his family's store in order to support him and Catherine. Catherine spent her days taking voice lessons, composing music and auditioning.

In the fifth year of their marriage, Catherine got a record contract. Her first album had two No. 1 singles and soon Catherine had three platinum albums. After several tours, one TV special and appearances on major talk shows, she was offered a role in a major motion picture.

At the end of that second year, Catherine left Sam. During the divorce, Sam claimed that he was entitled to one-half of the "goodwill" resulting from her reputation as a superstar. The trial court told Sam to take a walk.

■ Phil met Marjorie while he was in law school at UCLA. In his third year, they married. Marjorie worked for several years in public accounting and Phil left his job at a large downtown law firm to start his own entertainment law practice. Two

years into the marriage, the practice was doing very well and Marjorie stopped working in order to raise children. Over the next five years, Marjorie stayed home while Phil continued working on his practice. Soon, Phil was regarded as one of the pre-eminent entertainment lawyers in town, with a cadre of associates working under him. Phil had enough of Marjorie and bought his own house.

In the divorce, Marjorie received a handsome sum for her share of the goodwill that existed in Phil's practice.

■ Jenna and Paul were interns when they met. Jenna took up a specialty in anesthesiology, while Paul specialized in orthopedic surgery. They married upon completion of their internships. Jenna, known for her outgoing personality and meticulousness, aligned herself with some of this town's most pre-eminent surgeons at the leading hospital. She was consistently busy and made significant money. Paul went to work for a medical group and soon was given an ownership interest in the practice. Jenna loved her work and didn't want to be away from the hospital.

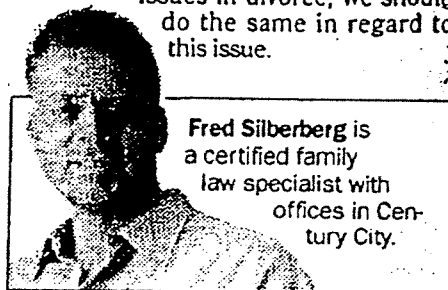
Five years into their marriage, she told him that she could leave her career to raise children. The trial court gave Jenna one-half the value of Paul's goodwill. However, as for Paul's request that Jenna also had goodwill, he was shut out.

We are told that the family law court is one of equity, yet there is none in any of these hypotheticals, nor would any of these decisions be overturned on appeal.

If you look at the facts of each case, how can you come out with differing results?

There is no way to reconcile these findings that all turn on a narrow interpretation of Business and Professions Code, Section 14100, which states that, "The 'good will' of a business is the expectation of continued public patronage." Under California law, the recording artist did not have a business although she practically became a cottage industry, while one of the physicians and the lawyer did. And why is the practice of anesthesiology any different from orthopedic surgery? In each case, the individuals were successful based on a reputation built up over years of hard work. Their ownership of capital, which is usually a basis for valuation of an asset, was irrelevant to their success.

The appellate courts of various other states, including New York and New Jersey, have rectified this inequity in the case of celebrities. If our courts won't take the initiative, then perhaps our Legislature should. Because we try to level the playing field when it comes to other financial issues in divorce, we should do the same in regard to this issue.



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