

The Common Law

Gene Grossman

THE COMMON LAW

#6 in the Peter Sharp Legal Mystery Series

By Gene Grossman

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THE COMMON LAW
Peter Sharp Legal Mystery #6

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Marriage can be a great institution, but I don't do too well in institutionalized situations, so mine didn't work out – and that's too bad, because my ex-wife Myra was elected as our county's District Attorney and I missed out on those fancy black tie events offering free food and an open bar.

We got along just fine during the first couple of years we were married, but then she decided to start law school. Why not? I guess she figured that if I could do it, anyone could. It was all down hill from there. I think that some females are born with a prosecution chromo-some so that no one around them can ever get away with anything. Most women utilize that trait as mothers; others become teaching nuns or

deputy district attorneys. Myra was very fortunate in having been able to achieve her maximum genetic potential... she's the chief prosecutor of Los Angeles County. My law practice requires that I do some criminal defense work, so she now gets some opportunities to do to me what I used to enjoy doing to her.

At first there was a feeling in the legal community that because the D.A. is my ex-wife I'd be getting some preferential treatment from her office. Unfortunately though, all the feelings have been proved wrong. Aside from my being wrongfully arrested a few times in the last year or so, I'd say that I've been getting treated fairly by her gang, but anyone who spends time in the downtown Criminal Courts building knows that there's no love lost between us. As a result of my helping her to get elected she gave me her private telephone number so I now have instant access to her, but that's all the thanks I ever received. So much for gratitude.

My good friend Stuart Schwarzman is the complete opposite. He hasn't got a prosecutorial bone in his body, is easygoing, and always concerned about the rights of every person. He isn't married at the present time, or at least I don't think he

is, so when he calls to ask my advice about a domestic situation he claims to be involved in I remind him of my general rule to not do ‘phone law’ and invite him to stop by my boat later this afternoon so that we can talk about his alleged issue face-to-face.

With the help of a certain computer freak who rarely talks to me, my law practice has been doing quite well, and I was able to afford a partnership share in this 50-foot Grand Banks trawler-yacht here in Marina del Rey, California, which is where I live and run my practice. We’re out on the western edge of Los Angeles, so the constant ocean breeze protects us from most of the city’s smog.

I normally wouldn’t have a mini-family living with me on the boat, but in Mel’s last Will and testament he requested that I be appointed Suzi’s legal guardian. She’s an adorable little 12-year old Chinese girl with exception logic and computer skills. I never thought that the court would approve me, and I still suspect that Myra must have had something to do with the judge’s decision. Like everyone else, both Myra and the judge fell in love with Suzi at first sight and couldn’t resist her plea to be allowed to continue her lifestyle of living on a boat in the marina, like she did with her

stepfather on his houseboat. A portion of the multimillion-dollar settlement I was able to get her from Melvin's death bought made her my partner in this boat, and allowed us both to move up: her from Mel's small old houseboat, and me from a client's old wooden cabin cruiser I was staying on. Our Grand Banks is a beautiful boat, but pales in comparison to the 138' mega-yacht everyone says is owned by George Clooney that ties up out on the end tie of our dock. One of these days I hope to bump into him, but so far all of my efforts at meeting him have failed.

After Melvin was gone I discovered that Suzi is a home-schooled genius and was always the brains behind her stepfather's small law firm and her huge beast is a great watchdog. He knows who the 'friendlies' are and Stuart is one of them, so there's no growling whenever he comes to visit the boat.

The other friendlies who can come aboard at will are Stuart's employees Vinnie and Olive, my investigator Jack Bibberman, Suzi's adopted big sister, my ex Myra, all of our dock neighbors, and just about every cop on the west side of town who make frequent visits to the boat to avail themselves of Suzi's computer skills and access to secure criminal databases – with

passwords she probably ‘borrowed’ from Myra’s computer during one of her sleep-overs at what used to be our house in Brentwood Glen.

Suzi is always trying to create some scheme to get Myra and I back together again, but we’re both onto her plan, so we just play along, so as not to upset her. Unfortunately, the good ship *reconciliation* has already sailed, and I’m afraid I’ve missed the boat.

The loud knocking on our hull is probably Stuart. The way this 40-ton boat is starting to rock means that he’s coming up the boarding ladder, and we’re glad it’s a strong one, because he’ll never see 250 again... if he can even see the scale at all, while he’s standing on it.

“What’s up Stu? I haven’t heard from you in a while. By the way, did that deal you were working on to sell your house last year ever come through?”

“It’s funny you should ask, because that’s the problem. I’m facing a big capital gains liability.”

“That’s what happens to successful people Stu. They buy low, sell high and pay taxes on their profits. But that’s not exactly a domestic situation... it’s a tax problem. ”

“I think I’ve figured out a way around that. My accountant says that as a single guy I’m allowed to avoid paying taxes on the first quarter million of profit. But if I’m married and filing jointly with my wife, the exemption is doubled to a half mil... and I’ll be going for the much bigger exemption.”

“Yeah Stuart, I’ve heard about that law. I think you’d have had to be married and living there with your wife for two of the past five years in order for that exemption to kick in. Maybe you can find some girl to marry and backdate the marriage certificate. Don’t look at me like that! I’m just kidding.” It’s hard to feel sorry for Stuart and his tax liability. He’s got several successful businesses going on and as a result of some cases I’ve settled for him in the past, he’s also got a couple of million dollars stashed away somewhere. Another thing he’s always successful at is never failing to surprise me.

“I was married. I mean I’m still married. I mean, I have a wife, and we file joint returns.”

“Stu, are you telling me you’re currently married? How come I’ve never met her?”

“You have met her Pete.”

“What are you talking about? You’ve never introduced any woman to me as your wife. Are you secretly married to someone?”

“Well yeah, I guess you could say that.”

“Is it someone I know? What’s this lucky female’s name?”

“Her name’s Priscilla and you’ve met her... at least you’ve seen her around my office.”

I’m struck silent for a minute. Of all the times I’ve been to Stuart’s office the only woman I’ve seen there is Olive, and she’s engaged to Vinnie - Stuart’s other employee.

My thoughts are temporarily interrupted by the sound of large paws approaching. It’s the beast and its master. Usually she just opens the door to her private forward stateroom to listen in on the conversations I have, but this time it must have gotten too interesting, so they’ve decided to come out into the open and eavesdrop in person.

As I rack my brain trying to remember Stuart introducing me to any dame named Priscilla, Stuart saves me the trouble.

“Don’t strain yourself Pete. Priscilla’s not a woman. I mean, she’s female, but not a woman.”

“What do you mean it’s not a woman? You mean you’re married to some girl child named Priscilla?”

I’m dead serious, but this last question of mine forces a giggle out of the kid. It’s the first time I’ve ever seen her do that since a funny car commercial we saw last year.

“Calm down Pete. Priscilla is my cat. You’ve seen her at the office a million times. She sleeps on top of my warm computer monitor during the day.”

“Come on Stuart. This is getting a little too weird for me. I never expected this kind of craziness, even from you.”

“I know it sound nuts Peter, but I had to do it for tax purposes. By the way, all this stuff we talk about today is privileged, isn’t it?”

I can’t believe what I’m hearing, but I think I know where he’s going with this. The kid obviously figured it out already because behind me I hear large paws leaving the room and then the forward stateroom door being closed. “Yes Stuart, it’s privileged.”

“Pete, please listen. I’m not crazy or weird. A couple of years ago when I saw how the property values in my neighborhood were starting to go through the roof, I knew that my old house would be

a valuable item. I bought it over twenty years ago for only thirty-five grand, and now others not even as nice as mine down the street started selling for over four hundred big ones. Over the years I put in a nice pool, air conditioning, a big family room addition and lots of other improvements to make it the nicest place on the block.

“Several local real estate agents told me that if property values in my neighborhood kept going up like they were, I might be able to get over six hundred G’s for the place, so I made some tax-saving plans.

“The government doesn’t come out to verify what a person’s wife looks like, so I applied for and received a social security card for Priscilla and started filing joint returns with her as my wife. My tax guy isn’t a close personal friend, so he never knew. I only contact him once or twice a year, and didn’t retain him until about a year after my cat marriage, so he never questioned it.

“As husband and wife we took the full half-million-dollar capital gains income tax exemption instead of one half that size. And there was no misrepresentation either, because it was our main residence for at

least two of the past five years. We were just following the law.”

I put my hand up as a signal for him to stop talking. I need a brief period of silence to gather my thoughts. As I rub my forehead, I find that no words are coming to mind. This new stunt of his has left me completely speechless.

“Okay Stuart, here’s the way I see it. You’re not really married to that cat, and there are so many reasons why, that I don’t even want to start to explain them all. Suffice it to say that if you want to play out this little charade for tax purposes, my advice is to not do it.

“With your marriage plan, the State of California’s refusal to recognize common law marriage probably doesn’t apply because you’re not using it for purposes of inheritance, insurance, property rights or any other reason where the state’s law comes into play. The I.R.S. doesn’t care about most individual state laws with respect to domestic relations, so maybe you can get away with it. I don’t know, but I advise against it anyway.”

I don’t know what else to say. He’s really gone over the top this time, and I don’t want to dignify this ridiculous situation by responding to it with any type of discussion about the law.

“Thanks for your input Pete, but I think that as long as I’ve reported all my income, the worst that could happen during an audit is that they’d disallow the extra exemption and I’d have to pay the tax. As long as you report your income, they don’t get too mad at you. From what my tax guy tells me, you have to fail to report at least fifteen percent of your income before a criminal investigation kicks in, and I’ve reported every penny of mine. Everyone cheats a little on deductions. Nobody goes to jail for it and believe me - my tax guy is an expert on that subject.”

The secret of Stuart’s financial success has always been an uncanny ability to find some small way to change the odds just a little bit toward his favor. The way he once explained it to me was like a game of blackjack in Las Vegas. As far as games go, Stuart thinks that blackjack is the one with the best odds of a customer winning. Those odds are still with the ‘house,’ but at blackjack the player has some kind of chance if he doesn’t do anything stupid. The question Stuart asked me was “what if you played blackjack in Las Vegas, but were legally allowed to see what card the dealer had face down on the table?” His logic becomes apparent. Even if you could see the dealer’s ‘hole’ card,

there's no guarantee that you'll win every hand, but just that little edge gives you a slight boost in the odds, because of your knowing when the dealer will have to either hit or stand pat.

This marriage scam of his is no different. Once again he wants to skew the odds. I can see there's no sense in continuing to argue with him because his mind is obviously made up, and that's that. But who am I to question him? He's avoided being arrested so far in his life, and he's wealthy, so maybe he's right and I'm wrong.

"By the way Pete, are you doing anything special next Thursday afternoon?"

For some strange reason I don't like the sound of his question. It's too innocent. "I don't know, Stu. What do you have in mind?"

"Well, I got this letter from the I.R.S. and it seems that they'd like me to stop by their office next Thursday to clear up some questions they have about my capital gains tax marriage exemption."

The other shoe just dropped. I had a feeling he might be leading up to something like this.

"Stuart, I might be wrong about this, but I think that's what they call an audit. I don't know too much about tax law, so you'd be much better served by having your

C.P.A. go there with you... and bring your checkbook, because they might not look favorably at your wife not exactly being human.”

“You mean I might get arrested?”

“I think that commitment to an asylum would be more likely. Talk it over with your C.P.A. He’ll handle it for you. I also think that if a representative appears on your behalf, there’s no need for you to be there. Come to think of it, that would be a good idea. If your representative doesn’t know anything about Priscilla’s lower classification in the food-chain, and you’re not there, there’s less of a possibility of that little detail leaking out.”

“That’s a slight problem Pete. My tax guy can’t make it next Thursday.”

“If he’s a C.P.A., there’s probably someone else in his office that can handle the appearance for you. He is a C.P.A., isn’t he?”

“Not exactly.”

“That’s okay. Even if he’s not a C.P.A., as your accountant, he can still make the appearance on your behalf.” He is a real accountant, isn’t he?” I can tell by the hesitation what Stuart’s answer probably is to my question. I just hope he hasn’t been having his taxes done in some storefront fortune-teller’s place.

“C’mon Stuart. If he’s not a C.P.A. and he’s not even an accountant, what the hell is he, your gardener?”

“No, no, it’s nothing like that. He really knows his tax law, it’s just that he’s unavailable next Thursday.”

“That’s no problem. I’m sure you can get a continuance of your appointment until your guy is available.”

This causes more hesitation on Stuart’s part. It looks like he’s racking his brain for another excuse he can make for his accountant.

“They might not want to continue the appointment until he’s available... I mean, it might be a while.

“You mean he’s that busy?”

“No. He’s out of town.”

“Exactly where out of town? Timbuktu?”

“3901 Klein Boulevard. That’s in Lompoc, California.”

For some strange reason that address sounds familiar. Whoa, it just hit me. Some time ago I had to go up to Lompoc to visit a former client, and if my memory serves me correctly, that’s the location of a correctional facility. “Stuart is your accountant currently a guest of the federal government?”

Stuart looks down towards the floor. Why am I not surprised?

“Stuart, I suppose you know that address is a federal penitentiary. Is your tax accountant a convicted felon doing hard time?”

Stuart’s silence says enough.

“How did you happen to find this criminal? His ad in the yellow pages?”

“No. We met in a tax chat room on the Internet. He sounded really knowledgeable, so we made a deal for him to do my income taxes, and at first I didn’t know he was in prison. I knew he wasn’t local because all my written correspondence to him was sent to a P.O. Box in Buelton, California. I now know that’s a town near Lompoc, where some of the prisoners are allowed to receive mail.

“He did my taxes for the first two years and I was really satisfied with his work. It wasn’t until I wanted to meet with him in person to discuss my capital gains problem that he confessed to me he was serving time. He let me know that he would understand if I decided to pull my business and find another accountant... one on the outside.

“I appreciated his honesty with me, went up there to visit with him a couple of times and realized that I’d have to find

someone on the outside to help me with the audit.

“And that’s where it stands now. I know that you’re not a tax lawyer Peter, so there’re no hard feelings in your not wanting to go with me next week. I’ll find someone else. There’re a lot of accountants in the San Fernando Valley.”

I’m glad he understands my reluctance to get involved in his beastial tax matter.

Ever since Stuart started classes at some fly-by-night correspondence law school his main purpose in visiting our boat is to meet with Suzi, who is tutoring him in his studies and helping him brief some cases.

Realizing that his discussion with me has now come to a dead end, Stuart goes to the forward stateroom, knocks and enters. As he closes the door behind him I hear the kid’s voice. “Hello Stuart. How’s the wife?”

