

A Short Comment on the Effectiveness of the “Leave with a Clean Slate” Agreements

Dongping Tong

Law School, Hainan Normal University, Hainan, China

Email: tdplawyer@gmail.com

How to cite this paper: Tong, D. P. (2023). A Short Comment on the Effectiveness of the “Leave with a Clean Slate” Agreements. *Beijing Law Review*, 14, 895-900. <https://doi.org/10.4236/blr.2023.142048>

Received: April 17, 2023

Accepted: June 18, 2023

Published: June 21, 2023

Copyright © 2023 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution-NonCommercial International License (CC BY-NC 4.0). <http://creativecommons.org/licenses/by-nc/4.0/>



Open Access

Abstract

Although the “Civil Code” stipulates that there is a 30-day cooling-off period for administrative divorce, the divorce rate in China is still increasing year by year. In many divorce agreements in China, the wrong party will sign “leave with a clean slate” agreements, which will put them in a state of “property disadvantage”. There are several articles discussing the effectiveness of this agreement in both academia and the Internet, but it is easy to draw the conclusion that the agreement is effective when interpreting this agreement from the perspective of practice and theory. Furthermore, in terms of academic research, research means very little, as far as the internet is concerned, such text is just for getting internet traffic.

Keywords

Agreement, Marital Relationship, Effectiveness

1. Problem Statement: Is the Effectiveness of Such Agreements Controversial

During the course of a marriage, couples often sign agreements that contain language such as “if one party does something, then they forfeit all joint assets,” commonly referred to as “leave with a clean slate” agreements (Jinan Intermediate Court, 2023). In this paper, “leave with a clean slate” agreements are defined as those using conditional clauses that result in legal consequences unfavorable to one party. Other types of agreements are not discussed. The effectiveness of such agreements is highly controversial in the field of marital law and theory.

First, in academic research, Jing & Yuan (2018) argue that such agreements are not simply civil contracts, but a type of divorce agreement that does not have independent actionable rights. The effectiveness of such agreements should be determined through a comprehensive evaluation of relevant provisions in mar-

riage law, civil law, contract law, and tort law. Qi & Zhao (2019) believe that due to the diversity of content and form of the “leave with a clean slate” agreements between spouses, it cannot be simply determined as either valid or invalid. Instead, its legal effectiveness should be determined based on the specific content of the agreement from the perspective of the constituent elements of a civil legal act. They argue that the issue of validity or invalidity should be considered in conjunction with various factors, and not be generalized. Jing & Yuan (2018) examine the arguments both for and against the validity of the “leave with a clean slate” agreements. They argue that there are two academic viewpoints on the effectiveness of such agreements: affirmative and negative. They suggest that effectiveness or invalidity should be evaluated in conjunction with various factors and not be generalized. Qi & Zhao (2019) base their viewpoint on the effectiveness or invalidity of the agreements on judicial adjudication, and argue that multiple factors should be considered.

Secondly, in Baidu Encyclopedia, which is commonly used by the majority of people, there is even an expression that “leave with a clean slate” generally occurs when the male party moves into the female party’s family (*Leave with a Clean Slate*, 2023). According to China’s “Marriage Law”, this kind of request has no legal basis. After reading the literature, there are many doubts as to why there is such controversy over the effectiveness of a simple civil subject’s agreement?

2. The “Leave with a Clean Slate” Agreements Is Valid, and the Controversial Issue Is Also Confusing

Theory, as long as it convinces people, can control the masses; and theory, as long as it is thorough, can convince people. Thoroughness means grasping the fundamentals of things (Marx & Engels, 1995). A theory can only be considered relatively correct if it is confirmed by practical application; otherwise, it remains untested and its validity is uncertain. If the conclusion that “leave with a clean slate” agreements are valid is accurate, it should be reflected in the judicial judgments that recognize their validity. However, the lack of appeals against such judgments by concerned parties alone does not indicate that the theory has gained popular support or convinced people. There could be many reasons for not appealing a judgment, such as the cost or strength of evidence, and the absence of appeals does not necessarily demonstrate the theory’s acceptance.

First, on the China Judgements Online website, using “leave with a clean slate” as the full-text search condition, “marriage” as the keyword, “civil” as the cause of action, and “judgment” as the type, a total of 2632 cases were obtained, of which 2111 were first-instance cases and 514 were second-instance cases. However, the website only displays the first 600 cases. In the first-instance cases involving the validity of the “leave with a clean slate” agreements, a sample survey was conducted based on the location as the sampling standard, and the first five judgments from each location were found to be valid. If the parties believe that

the agreement should not be valid, they will appeal the judgment. Assuming that all second-instance judgments are appeals from the parties who did not comply with the first-instance judgment, then it accounts for about 19.52% of the total cases, which means that about 80% of the parties have no objections to the validity of “leave with a clean slate”, just as Article 24 of the “Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Civil Lending Cases” stipulates that if interest is not agreed upon in a lending relationship, it shall be deemed that the borrower does not claim interest. This provision was based on empirical research by the legislators, who found that 70% - 80% of creditors do not claim interest, and therefore, the legislation was formulated accordingly.

Secondly, the theoretical foundation of Jing and Yuan’s research is based on arguments regarding the effectiveness and invalidity of clean break agreements. However, when discussing the invalidity argument, the author did not cite other viewpoints, giving the impression that the distinction between effectiveness and invalidity is the author’s own viewpoint. When discussing the effectiveness argument, the author cited a footnote to an article on the fidelity agreement. However, fidelity agreements have two types of results: partial separation and complete separation, and “leave with a clean slate” agreements cannot be equated with fidelity agreements. Only fidelity agreements that do not separate property can be regarded as clean break agreements. The conclusion of the effectiveness argument depends on another concept, which may lead to confusion. [Qi & Zhao \(2019\)](#) discussed the effectiveness and invalidity arguments based on judicial practice. The invalidity argument cites the judgment of Beijing Second Intermediate People’s Court in (2016) Jing 02 Min Zhong 3879, which may not be available online due to time factors. However, in the same year, the judgment of (2016) Jing 02 Min Zhong 1661, also by Beijing Second Intermediate People’s Court, considered the clean break agreement to be valid, in accordance with its theory of effectiveness rather than the author’s claim of invalidity.

Finally, what the public sees is not necessarily the truth. Whether through search engines or articles on WeChat public accounts, the content presented is the opinion of the editors. Some theories that have not been tested in practice are cited and advocated by editors, and some even intentionally present surprising theories to attract attention. This is a concrete manifestation of ideological collision in the age of internet traffic, but incorrect statements should be corrected. Firstly, the legal basis contained in the webpage is the “Marriage Law”, which has been outdated for more than a year since the “Civil Code” came into effect, yet it is still being referenced. Secondly, there are contradictions in the explanation of its effectiveness, with the cited cases being described as both effective and ineffective, leaving readers even more confused. Finally, the content has been liked 469 times and shared 26 times, and this kind of misunderstanding is not in line with the concept of comprehensively governing the country according to law.

In summary, from the perspective of practice, it seems that we have already

obtained the conclusion that “leave with a clean slate” agreements are valid, and the arguments that they are invalid in society seem to be for the sake of catching people’s attention or due to research premises leading to incorrect conclusions. So, from a theoretical perspective, can we also reach the conclusion that “leave with a clean slate” agreements are valid?

3. My Views on the Issue of “Leave with a Clean Slate” Agreements

The “leave with a clean slate” agreements are civil agreements that arise from the mutual consent of civil subjects. Like other agreements between civil subjects, it is subject to the general principles of the “Civil Code”, relevant chapters and sections, as well as relevant judicial interpretations. From a theoretical perspective, that is, from the perspective of the legal provisions, it can also be concluded that the “leave with a clean slate” agreements are valid.

First of all, Article 464 of the “Civil Code” stipulates that the marriage agreement shall apply the relevant legal provisions concerning the status relationship. In the absence of such provisions, the provisions of this book, which is the contract book, may be referred to base on its nature. As a civil legal act, the validity of the “leave with a clean slate” agreements is governed by the provisions of the general principles of the “Civil Code”, such as Article 144, Article 146, Article 153, and Article 154. The existence of factors such as fraud, coercion, false expressions of intent, etc., may hinder the validity of the “leave with a clean slate” agreements, but these factors are not prerequisites for the validity of the agreements. Similar questions arise for contracts such as “contracts without authority”, “pledge clauses”, and “post-guarantee transfers”, for which scholars’ conclusions may differ on their validity. It is generally not appropriate to judge based on situational considerations, but rather on whether they comply with the legal provisions of the General Principles of the Civil Law. Treating hindering factors as prerequisites due to legal logic errors would be a laughingstock.

Secondly, arguments against the validity of the “leave with a clean slate” agreements often revolve around the principles of marital freedom, personal rights, public order and good customs. However, these viewpoints are often difficult to justify. Firstly, the “leave with a clean slate” agreements do not violate the principle of marital freedom. Article 1041 of the “Civil Code” provides for the implementation of marital freedom, and the signing of the “leave with a clean slate” agreements does not prevent divorce. It only results in a corresponding cost or loss of joint marital property, which should not be confused with personal relationships. Confusing the two could lead to the belief that the hindrance of joint property is a necessary factor for breaking the marital relationship. However, according to both the “Marriage Law” before the “Civil Code” era and the current “Marriage and Family Code” era, the necessary factor for breaking the marital relationship is only when the “marital relationship has already broken down. Secondly, by analyzing the civil rights protected by Article 3 of the “Civil Code”, we can discuss human rights first and then property rights. Regardless of wheth-

er it is from the perspective of personality rights or tort liability, the path of the two codes must have a causal relationship between action and result. The harm caused by the agreement of “leave with a clean slate” is only a reduction of property, which will not result in a decrease in the status of human rights. Thirdly, the term “public order and good customs” has been extensively studied in academia, and this article will not further elaborate on it. However, regardless of any kind of public order and good customs, the agreement of leave with a clean slate” will not violate its essence. In the culture of the Chinese nation, which emphasizes the fundamental principles of ethics and morality, scholars of the Family Code mainly interpret whether it conforms to “public order and good customs” from the perspectives of “centrifugal force” and “centripetal force”. In this context, the agreement of “leave with a clean slate” can provide some hesitation for the civil subjects when breaking the marriage relationship and can provide a “centripetal force” for the harmonious family relationship, which is in line with the direction of public order and good customs.

Finally, Article 1043 of the “Civil Code” emphasizes the importance of establishing a good family tradition, promoting family virtues, and valuing the civilized construction of the family. It also requires spouses to be loyal, respectful, and loving towards each other. Under the “Civil Code”, the former concept of “disease marriage” is now replaced by the idea of a “revocable marriage,” with only three specific situations where a marriage is considered invalid according to Article 1051. Additionally, Article 1077 provides for a cooling-off period before a divorce can be finalized. These provisions serve to protect the harmony and stability of the family, which is essential for the well-being of the country and its people. Divorce not only causes problems within the family, but also creates social issues. From issues related to the upbringing and education of children, to concerns about social stability and development, divorce can contribute to the reasons behind these problems (Chen et al., 2016). The damage caused by divorce can be as significant as that caused by an abrupt change in policy. Therefore, the effectiveness of the “leave with a clean slate” as a deterrent to breaking up families is self-evident.

In conclusion, regardless of whether one examines the effectiveness of “leave with a clean slate” from the perspective of judicial practice or from a theoretical perspective, the conclusion reached is that such agreements are valid. The issue of legal application should not be viewed as a theoretical controversy. Only by looking through the phenomenon can we see the essence of the problem and reach the conclusion that “leave with a clean slate” agreements are effective.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Chen, W., Shi, L., & Zhang, X. (2016). The Divorce Damages System in China: Legislation and Practice. *International Journal of Law, Policy and the Family*, 30, 105-114.

<https://doi.org/10.1093/lawfam/ebv014>

Jinan Intermediate Court (2023). *The Nature and Effectiveness of the Promise to Leave with a Clean Slate*. (In Chinese)

<https://mp.weixin.qq.com/s/BUW3zrgaek0ilmoVGp2DFQ>

Jing, C. L., & Yuan, S. Y. (2018). A Study on the Validity and Judicial Strategies of the “Leave with a Clean Slate” Agreement. *Guangxi University for Nationalities (Philosophy and Social Science Edition)*, 5, 174. (In Chinese)

Leave with a Clean Slate (2023). (In Chinese)

<https://baike.baidu.com/item/%E5%87%80%E8%BA%AB%E5%87%BA%E6%88%B7/9656772?fr=aladdin>

Marx, K., & Engels, F. (1995). *Selected Works of Marx and Engels (Vol. 1)*. People’s Publishing House.

Qi, E. P., & Zhao, X. L. (2019). Analysis on the Validity of the “Leave with a Clean Slate” Agreement. *Tianjin Law Review*, 3, 11. (In Chinese)