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Contracts -- Antenuptial Agreements -- Public Policy

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CONTRACTS—ANTENUPTIAL AGREEMENTS—PUBLIC POLICY

Defendants agreed to indemnify plaintiff for amounts spent in support of defendants' pregnant sister as consideration for plaintiff's promise to marry her. Subsequent to a divorce, which was anticipated in the agreement, plaintiff sued to recover on the agreement. *Held*, the agreement was valid, and plaintiff could recover. *Kovler v. Vagenheim*, ___Mass.___, 130 N.E.2d 557 (1955).

The majority of jurisdictions do not favor antenuptial agreements which have for their purpose or effect the facilitation of a future separation or divorce.[1] Such agreements are against public policy[2] and therefore void.[3] These decisions reflect the interest of the public in the maintenance of the family institution and relationship.[4]

Public policy demands that a husband be obliged to support his wife and child.[5] This obligation is considered an integral part of the marriage contract, and the courts will not allow the obligation to be modified or released by consent of the parties.[6] The courts strictly interpret and declare void agreements in which the wife agrees to support herself, even when limited to temporary periods.[7] Generally, it makes no difference if the agreement is to be effective during the marriage or to become effective upon separation or divorce. On this basis, agreements between husband and wife which attempt to limit or relieve the husband's liability during marriage to support his wife[8] or step-children,[9] and agreements which

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1. Potter v. Potter, 101 Fla. 1199, 133 So. 94 (1931); Neddo v. Neddo, 56 Kan. 507, 44 Pac. 1 (1896); Cumming v. Cumming, 127 Va. 16, 102 S.E. 572 (1920); see also RESTATEMENT, CONTRACTS § 1743 (1932); WILLISTON, CONTRACTS § 586 (rev. ed. 1936).

2. Oliver v. Wilder, 27 Colo. App. 337, 339, 149 Pac. 275, 277 (1915):
> '. . . Public policy' being that rule of law which declares that no one can lawfully do that which tends to injure the public or is detrimental to the public good.

3. *Cf.* Bituminous Cas. Corp. v. Williams, 154 Fla. 191, 17 So.2d 98 (1944); Billingsley v. Cleveland, 41 W.Va. 234, 244, 23 S.E. 812, 815 (1895).

4. Evans v. Harley, 57 Ga. App. 598, 196 S.E. (1938); Osborne v. Osborne, 197 S.W.2d 234 (Tenn. 1946).

5. *In re* Moser, 145 F.2d 523 (7th Cir. 1945); Berge v. Berge, 366 Ill. 228, 8 N.E.2d 623 (1937); *In re* Rhinelander's Estate, 290 N.Y. 31, 47 N.E. 2d 681 (1943).

6. Osborne v. Osborne, 197 S.W.2d 234 (Tenn. 1946).

7. Warner v. Warner, 235 Ill. 448, 85 N.E. 630 (1908); Kerschner v. Kerschner, 244 App. Div. 34, 278 N.Y.S. 501 (1st Dep't 1935), *aff'd*, 269 N.Y. 655, 200 N.E. 43 (1936) (only while husband was in medical school).

8. Warner v. Warner, *supra note* 7; Benjamin v. Benjamin, 197 Misc. 380, 95 N.Y.S.2d 167 (Sup. Ct. 1950); Hillman v. Hillman, 69 N.Y.S.2d 134 (Sup. Ct. 1947); Gregg v. Gregg, 133 Misc. 109, 231 N.Y.S. 211 (Sup. Ct. 1928).

9. Mengal v. Mengal, 201 Misc. 104, 103 N.Y.S.2d 992 (N.Y. Dom. Rel. Ct. 1951).

attempt to limit or relieve his liability in anticipation of divorce or separaton are void.[10] In Florida the same result is achieved by virtue of statute.[11]

Even if legitimazation of the child is the underlying motive, agreements between husband and wife to allow the husband to obtain a divorce[12] or to negate his requirement to support the wife and child are invalid.[13] The same result is reached where the agreement between the husband and the girl's father makes the girl's father liable for support.[14] A favorable view is taken towards agreements in which the unmarried mother attempts to have the husband,[15] his father,[16] his relatives,[17] or his friends[18] guarantee her support. The rationale is that if the husband fails to carry out his obligation, such an agreement relieves the girl's family from support by rendering another liable.

In the instant case the court relies upon *Specht v. Richter*[19] and *Wright v Wright*.[20] In the *Specht* case, the paternity of the child could not be ascertained. A blameless gentleman stepped forward to marry the girl, and the court concluded that the magnanimity of the girl's father's agreement to reimburse the husband for the support of his daughter and her child was valid and not against public policy. These facts are distinguishable from the present case where paternity was not in issue. In the *Wright* case, the husband's father guaranteed to support the wife and child if the husband failed to do so. This case can be classified with the cases mentioned above wherein the wife contracts with someone to guarantee the husband's support, and is questionable authority for validating an agreement by the wife's relatives to alleviate the husband's obligation.

An analysis of the *Kovler* case indicates the girl's family will still be supporting the girl and her child, as if the marriage never took place, and

10. Williams v. Williams, 243 Pac. 402 (Ariz. 1926); Stefonick v. Stefonick, 167 P.2d 848 (Mont. 1946); Fricke v. Fricke, 257 Wis. 124, 42 N.W.2d 500 (1950); Ryan v. Dockery, 134 Wis. 431, 114 N.W. 820 (1908). *But see* Atkins v. Atkins' Adm'r, 203 Ky. 291, 262 S.W. 268 (1924) (antenuptial agreement providing that wife be liable for her necessaries held valid).

11. FLA. STAT. § 708.10 (1) (1955). In allowing married women to contract in their own name, this section provides that the statute shall not be construed so as to allow the wife to contract with her husband to relieve him from his duty of support.

12. Safranski v. Safranski, 24 N.W.2d 834 (Minn. 1946); McLean v. McLean, 237 N.C. 122, 74 S.E.2d 320 (1953).

13. State v. Ransell, 41 Conn. 433 (1874); Campbell v. Moore, 189 S.C. 497, 1 S.E.2d 784 (1939); Cumming v. Cumming, 127 Va. 16, 102 S.E. 572 (1920).

14. Smith v. Smith, 154 Ga. 702, 115 S.E. 73 (1922).

15. Wyant v. Lesher, 23 Pa. 338 (1854) (husband placed bond with girl's father).

16. Bader v. Hiscox, 188 Iowa 986, 174 N.W. 567 (1919) (husband's father conveyed land to wife as guarantee); Wright v. Wright, 114 Iowa 748, 87 N.W. 709 (1901) (husband's father agreed to support wife and child should husband fail to do so.)

17. Armstrong v. Lesher, 43 Iowa 159 (1876) (A bond placed with wife, husband's relatives being sureties).

18. Jangraw v. Perkins, 77 Vt. 375, 60 Atl. 385 (1905) (husband's friend executes a mortgage in favor of wife).

19. 258 Ill. App. 22 (1930).

20. 114 Iowa 748, 87 N.W. 709 (1901).

the father-husband will be free to divorce the girl at any time without being absolutely liable for her support. This is true despite the court's statement that easing the financial burden of support does not facilitate divorce.[21] Neither should the court declare valid a void agreement because the agreement was motivated by a desire to make the child legitimate. With the post-war rise of the divorce rate,[22] the best interests of society are not served by a ruling which validates an agreement requiring the girl's family to indemnify the husband for support of the girl.

ROBERT J. FRIEDMAN

CRIMINAL LAW—DEATH OF A CO-FELON—FELONY-MURDER DOCTRINE

Defendant participated with the deceased in the commission of an armed robbery. The victim of the robbery justifiably killed one of the felons. Defendant was indicted for first degree murder for the death of his co-felon. *Held*, a co-felon is guilty of murder where the victim of an armed robbery justifiably kills the other felon. *Commonwealth v. Thomas*, 382 Pa. 639, 117 A.2d 205 (1955).

An involuntary killing occurring in consequence of an unlawful act constitutes either murder or manslaughter, depending on the nature of such act.[1] Under the common law, a homicide committed in the perpetration or attempted perpetration of a felony is murder, though the killing may have been involuntary or unintentional.[2] Today, all but three states have by statute adopted the common law doctrine of felony-murder.[3] Both at common law and under statute, a necessary element in all murder cases is malice, or intent to kill.[4] Where a homicide is committed in the perpetration of a violent felony, the turpitude of the act supplies the element of deliberate and premeditated malice.[5] In order to apply the felony-murder

21. See note 10 *supra* which indicates that better reasoned opinions consider that easing the financial burden of support *does* facilitate divorce.

22. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1955 (Seventy-sixth edition) 76 (1955).

1. Baker v. Commonwealth, 204 Ky. 420, 264 S.W. 1069 (1924); State v. Werner, 144 La. 380, 80 So. 596 (1919); Commonwealth v. Chance, 174 Mass. 245, 54 N.E. 551 (1899); State v. Schaeffer, 96 Ohio St. 215, 117 N.E. 220 (1917).

2. State v. Serna, 69 Ariz. 181, 211 P.2d 455 (1950); Turnage v. State, 182 Ark. 74, 30 S.W.2d 865 (1930); People v. Gilbert, 22 Cal.2d 522, P.2d 9 (1943); State v. Rossi, 132 Conn. 39, 42 A.2d 354 (1945); Lynch v. State, 207 Ga. 325, 61 S.E.2d 495 (1950); People v. Weber, 401 Ill. 584, 83 N.E.2d 297 (1948); People v. Wright, 315 Mich. 81, 23 N.W.2d 213 (1946); Commonwealth v. Guida, 341 Pa. 305, 19 A.2d 98 (1941); State v. Best, 44 Wyo. 382, 12 P.2d 1110 (1932).

3. Kentucky, South Carolina, and Maine are the only jurisdictions not having Felony-Murder Statutes.

4. Leavine v. State, 109 Fla. 447, 147 So. 897 (1933); State v. Rogers, 141 Neb. 6, 2 N.W.2d 529 (1942); State v. Barton, 5 Wash. 2d 234, 105 P.2d 63 (1940).

5. People v. Watson, 132 Cal. App.2d 70, 281 P.2d 564 (1955); State v. Garcia, 159 Neb. 571, 68 N.W.2d 151 (1955); 4 BLACKSTONE, COMMENTARIES *1599, "If one shoots at A. and misses him, but kills B., this is murder, because of the previous felonious intent, which the law transfers from one to the other."