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## Divorce - Liability of the Husband's Estate to Pay Alimony

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may be considered a *prisoner*<sup>21</sup> in one state and a *guest*<sup>22</sup> in another. The unsoundness of treating the unwilling rider as a guest within the meaning of the automobile guest statutes becomes apparent when the rider's freedom is viewed as being unlawfully restrained without his consent. Regardless of the possible alternate remedy of false imprisonment, a driver should not be allowed to negligently injure a passenger without incurring liability when the passenger is *riding against his will*.

Daniel H. James

### DIVORCE — LIABILITY OF THE HUSBAND'S ESTATE TO PAY ALIMONY

The plaintiff sought an order requiring the ancillary administrator of her deceased husband's estate to make alimony payments. The divorce decree and prior property settlement provided that payments "would cease upon her death or remarriage." *Held*, where the decree or property settlement expressly provides for the continuance of the payments "until the death of the wife or her remarriage" the husband's estate remains liable. *Johnson v. Every*, 93 So.2d 390 (Fla. 1957).

Under the common law, the obligation to pay alimony is regarded as a personal one which terminates upon the death of either spouse.<sup>1</sup> In the absence of a statute<sup>2</sup> or an agreement between the parties, the rule adopted by the majority of courts in the case of an absolute divorce is that the death of the husband terminates the right of the wife to receive alimony payments.<sup>3</sup>

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20. *Cieplinski v. Severn*, 269 Mass. 261, 168 N.E. 722 (1929) (driving past street where plaintiff demanded to be let out of automobile entitled plaintiff to at least nominal damages for false imprisonment); *Jacobson v. Sorenson*, 183 Minn. 425, 236 N.W. 922 (1931) (taking plaintiff for an involuntary ride for the purpose of "telling her off" constituted false imprisonment).

21. *Ibid.*

22. *Akins v. Hemphill*, 33 Wash.2d 735, 207 P.2d 195 (1949).

1. 19 C. J. *Divorce* § 633 (1920).

2. *Murphy v. Shelton*, 183 Wash. 180, 48 P.2d 247 (1935); *Hale v. Hale*, 108 W. Va. 337, 150 S.E. 748 (1929).

3. *Roberts v. Higgins*, 122 Cal. App. 170, 9 P.2d 517 (1932); *International Trust Co. v. Liebhardt*, 111 Colo. 208, 139 P.2d 264 (1943) (dictum); *Parsons v. Parsons' Estate*, 70 Colo. 333, 201 Pac. 559 (1921); *Underwood v. Underwood*, 64 So.2d 281 (Fla. 1953); *Berry v. Berry*, 208 Ga. 285, 66 S.E.2d 336 (1951); *Kramp v. Kramp*, 2 Ill. App. 2d 17, 117 N.E.2d 859 (1954); *Re Yoss Estate*, 237 Iowa 1092, 24 N.W.2d 399 (1946); *Succession of Carter*, 32 So.2d 44 (La. 1947); *Poor v. Poor*, 237 Mo. App. 744, 167 S.W.2d 471 (1942); *North v. North*, 339 Mo. 1226, 100 S.W.2d 582 (1936); *Robertson v. Brewer*, 88 N.H. 455, 190 Atl. 709 (1937); *Re Grimley's Estate*, 200 Misc. 901, 107 N.Y.S.2d 129 (Surr. Ct. 1951); *Platt v. Davies*, 82 Ohio App. 182, 77 N.E.2d 486 (1947); *Snouffer v. Snouffer*, 132 Ohio St. 617, 9 N.E.2d 621 (1937); *Prime v. Prime*, 172 Ore. 34, 139 P.2d 550 (1943); *Re Watrous's Estate*, 10 Pa. D. & C. 639 (1927), *aff'd*, 95 Pa. Super 11 (1927); *Brandon v. Brandon*, 175 Tenn. 463, 135 S.W.2d 929 (1940); *Wilson v. Wilson*, 195 Va. 1060, 81 S.E.2d 605 (1954).

Where the court has the power to extend alimony payments beyond the life of the husband, the court generally will exercise such power *only* where there is an intention to so bind the estate.<sup>4</sup> It is well settled that if the parties by consent or property settlement agreement specifically state alimony is to be binding on the heirs, executors or administrators, such an intention will prevail.<sup>5</sup> The broader view determines whether alimony continues after the death of the husband by reference to the language<sup>6</sup> of the divorce decree and the surrounding circumstances.<sup>7</sup>

The difficulty arises where the divorce decree provides for the payment of alimony to the wife *during the remainder of her life or until her death or remarriage* or similar expressions.<sup>8</sup> In *Foster v. Foster*,<sup>9</sup> the Supreme Court of Virginia held that the words "until her death or remarriage" embodied in a divorce decree did not, expressly or by fair implication, show an intent to extend the payment of alimony beyond the husband's death. Cases in other jurisdictions involving the same or similar expressions have reached the same result,<sup>10</sup> or the courts have construed the expressions by themselves to mean the contrary.<sup>11</sup> In Illinois the clauses "for so long as she may be and remain sole and unmarried"<sup>12</sup> and "during the remainder

4. *Garber v. Robitshek*, 226 Minn. 398, 33 N.W.2d 30 (1948); *Masters v. Masters*, 155 Neb. 569, 52 N.W.2d 802 (1952); *Snouffer v. Snouffer*, 132 Ohio St. 617, 9 N.E.2d 621 (1937); *Brandon v. Brandon*, 175 Tenn. 463, 135 S.W.2d 929 (1940). *Contra*, *Farrington v. Boston Safe Deposit & Trust Co.*, 280 Mass. 121, 181 N.E.779 (1932).

5. *Daggett v. Commissioner*, 128 F.2d 568 (9th Cir. 1942), *cert. denied*, 317 U.S. 673 (1942); *Roberts v. Higgins*, 122 Cal. App. 170, 9 P.2d 517 (1932); *Parsons v. Parsons' Estate*, 70 Colo. 333, 201 Pac. 559 (1921); *Allen v. Allen*, 111 Fla. 733, 150 So.237 (1933); *Southard v. Southard*, 262 Mass. 278, 159 N.E.512 (1928); *Re Grimley's Estate*, 200 Misc. 901, 107 N.Y.S.2d 129 (Surr. Ct. 1951); *Babcock v. Babcock*, 147 Misc. 900, 265 N.Y. Supp. 470 (Sup. Ct. 1933), *aff'd*, 239 App. Div. 884, 265 N.Y. Supp. 474 (4th Dep't. 1933), *motion granted*, 263 N.Y. 665, 189 N.E. 747 (1934); *Johns v. Johns*, 44 App. Div. 533, 60 N.Y. Supp. 865 (2nd Dep't 1899), *aff'd*, 166 N.Y. 613, 59 N.E.1124 (1901).

6. *Re Mesmer's Estate*, 94 Cal. App. 97, 270 Pac. 732 (1928) ("during her lifetime or until she remarries"); *Parker v. Parker*, 193 Cal. 478, 225 Pac. 447 (1924) ("during the remainder of her natural life"); *Ramsay v. Sims*, 209 Ga. 228, 71 S.E.2d 639 (1952) ("for her natural life or until she remarries").

7. *Re Mesmer's Estate*, 94 Cal. App. 97, 270 Pac. 732 (1928); *Mullen v. Mullen*, 246 Iowa 1255, 69 N.W.2d 420 (1955); *Masters v. Masters*, 155 Neb. 569, 52 N.W.2d 802 (1952); *Billow v. Billow*, 97 Ohio App. 277, 125 N.E.2d 558 (1953); *Cooke v. Cooke*, 208 Misc. 591, 144 N.Y.S.2d 386 (Sup. Ct. 1955); *Re Seton Porter's Estate*, 208 Misc. 611, 137 N.Y.S.2d 271 (Surr. Ct. 1954); *Re Baratta's Estate*, 199 Misc. 246, 102 N.Y.S.2d 776 (Surr. Ct. 1951); *aff'd*, 112 N.Y.S.2d 493 (Sup. Ct. 1952); *Lepsch v. Lepsch*, 275 App. Div. 412, 90 N.Y.S.2d 157 (1949); *White v. White*, 210 S.C. 336, 42 S.E.2d 537 (1947).

8. *Johnson v. Every*, 93 So.2d 390 (Fla. 1957) (dissenting opinion).

9. 195 Va. 102, 77 S.E.2d 471 (1953).

10. *Mullen v. Mullen*, 246 Iowa 1255, 69 N.W.2d 420 (1955) ("so long as she shall live"); *Re Seton Porter's Estate*, 208 Misc. 611, 137 N.Y.S.2d 271 (Surr. Ct. 1954) ("during her lifetime"); *Billow v. Billow*, 97 Ohio App. 277, 125 N.E.2d 558 (1953) ("until her death or remarriage").

11. *Wise Estate*, 99 Cal. 562, 64 P.2d 594 (1937); *Wides v. Wides*, 300 Ky. 344, 188 S.W.2d 471 (1945); *Farrington v. Boston Safe Deposit & Trust Co.*, 280 Mass. 121, 181 N.E. 779 (1932); *Durland v. Syracuse Trust Co.*, 230 App. Div. 786, 244 N.Y. Supp. 653 (2nd Dep't 1930); *Jennings v. First Nat. Bank of Williamson*, 116 W. Va. 409, 180 S.E.772 (1935).

12. *Storey v. Storey*, 125 Ill. 608, 18 N.E.329 (1888).

of her natural life or until she remarries"<sup>13</sup> embodied within a divorce decree were held to bind the husband's estate. In neither of the above Illinois cases was there any express language that the alimony was to be a charge against the deceased husband's estate.

In both Florida cases cited as being applicable in the instant case, *Allen v. Allen*<sup>14</sup> and *Underwood v. Underwood*,<sup>15</sup> there was a clear agreement on the part of the husband to bind his personal representatives after his death. In the instant case, however, it was held that the expression "until her death or remarriage" in and of itself bound the husband's estate. The majority of the court was not without support in their decision,<sup>16</sup> but the dissent indicated that the stated expression could not bind the estate of the husband unless the intent was expressly stated in the divorce decree or could be implied from the surrounding circumstances.

Both the majority and dissenting opinions seem to agree on the law involved. The difficulty arises in interpreting the intent of the parties as expressed by the clause "until her death or remarriage" embodied within the decree. The majority opinion implied an obligation upon the husband's estate from the clause itself, rather than looking to the true intent of the parties. It is submitted that the expression "until the death of the wife or her remarriage" *does not* warrant such an interpretation. In order to bind the husband's estate there should be an express written agreement between the parties. Although this may prove harsh at times, it will eliminate future litigation by compelling the parties to reduce their agreement to writing where there is an actual intent to bind the husband's estate.

MAX SPIEGELMAN

## CRIMINAL LAW — CONSPIRACY — PARTICIPATION OF STATE AGENT

The defendants were convicted of conspiring to violate gambling statutes with one who was an agent of the County Solicitor and acting in his official capacity to obtain evidence of such violations. *Held*, where an essential part of a criminal act is to be performed by a government agent acting in the line of duty, persons conspiring with such agent and

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13. In re Estate Kuchenbecker, 4 Ill. App.2d 314, 124 N.E.2d 52 (1955).

14. 111 Fla. 733, 150 So. 237 (1933) (where the agreement provided that in the event the death of the husband before the death of his ex-wife, his heirs, executors, and administrators should pay said alimony).

15. 64 So.2d 281 (Fla. 1953) (where it was provided in the decree that alimony payments should continue during the life of the wife without any diminution or cessation).

16. Cases cited note 11: *supra*.