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ANTENUPTIAL CONTRACTS CONCERNING PROPERTY SETTLEMENTS

Antenuptial contracts concerning property are agreements between parties who are contemplating marriage, marriage being the consideration whereby the respective rights of each in the other’s property are settled for the present and future. The validity of such contracts is determined by the law of contracts and according to public policy. Although it may be believed that antenuptial contracts are contrary to public policy, they are, in fact, favored by the courts if they contain certain essential elements.

First and foremost, the agreement must be made in contemplation that the marriage relation shall subsist until the parties are separated by death. Contracts which facilitate divorce or separation by providing for a settlement only in case of such occurrence, are void as against public policy. However, in cases where the contract does not facilitate divorce, and the death of one party is not by the terms of the contract made a prerequisite to its performance, a property settlement by the court in connection with an absolute divorce, will not be controlled by the contract, although the court may permit it to be introduced as evidence.

If the agreement provides for a settlement in case of either separation or death, and a separation does not take place, the invalid provision as to the separation will not void the valid provisions.

1 Collins v. Phillips, 259 Ill. 405, 102 N. E. 796 (1913); Cummings v. Wood, 197 Iowa 1356, 199 N. W. 369 (1924); Key v. Collins, 145 Tenn. 106, 236 S. W. 3 (1921).
2 Bohanan v. Maxwell, 190 Iowa 1308, 181 N. W. 683, 14 A. L. R. 1004 (1921); Ryan v. Dockery, 134 Wis. 431, 114 N. W. 820 (1908).
4 Oliphant v. Oliphant, 177 Ark. 613, 7 S. W. (2d) 783 (1928).
6 White v. White, 112 Neb. 850, 201 N. W. 662 (1924); See Best v. Best, 218 Ky. 648, 291 S. W. 1032 (1927).
7 Kalsem v. Froland, 207 Iowa 994, 222 N. W. 3 (1923); Stratton v. Wilson, 170 Ky. 61, 185 S. W. 522 (1916).
Second, the wife must have some knowledge as to the nature and extent of the prospective husband's property. The courts are not in accord as to how such knowledge must be attained or what amount of knowledge is required, in order for the contract to be binding. The court in *In re Flannery's Estate*² considered it to be incumbent upon the husband to disclose the full extent, value and nature of his wealth without a request by the prospective wife, even though the wife had been his neighbor for several years and had a general knowledge of his property. However, the court in *Pollock v. Jameson*⁹ said that the husband was under no obligation to disclose the extent of his property, in the absence of a request by the prospective wife, who had a reasonable opportunity to know of his financial condition. The Illinois courts have consistently held that the agreement is valid if the prospective wife knew, or reasonably should have known, the nature and extent of the husband's estate.¹⁰ The Wisconsin court, in *In re Koeffler’s Estate*,¹¹ discussed the above rules and held that they did not apply in that state. The court then set out a new rule based on the relationship of the parties. The court held that in cases where the wife depends upon the husband’s statements, because of love or ignorance, the husband is under a duty to fully disclose all the facts as to his wealth. However, if the marriage is between older people and the motive of marriage is convenience and not young love, there is normally no confidential relationship. Therefore, there is no duty on the husband to disclose his wealth in the absence of a request by the wife. This seems to be the better view. There is certainly little justification for voiding a contract for mere non-disclosure where the parties are in fact dealing at arm’s length. The chief objection to the Wisconsin rule is the difficulty in determining the motive for the marriage or whether the wife was in fact depending on the husband for disclosure and advice. However, there is usually evidence before the court which will aid in establishing these facts, such as age, wealth and the intelligence of the prospective wife.

¹ 315 Pa. 576, 173 Atl. 303 (1934).
² 70 F. (2d) 756, 63 App. D. C. 152 (1934).
⁴ 215 Wis. 115, 254 N. W. 363 (1934).
The courts have been in accord in holding that if the wife had adequate knowledge of her husband's property, she can not avoid the contract because she did not know her legal rights concerning it.12

Third, if the agreement on its face shows that the provision for the wife is inadequate and greatly disproportionate to the wealth of the husband, there is a presumption that the agreement was not made in good faith.13 This presumption puts the burden of proving that the contract is valid on the husband or those claiming through him. From a practical point of view this presumption, although rebuttable, is likely to cause the contract to be void, due to the fact that in the majority of these cases the husband is dead and normally there are no other witnesses to refute the wife's allegation that she did not know the nature and extent of the husband's wealth. Therefore, it is very important to determine what the provision in the agreement must be in order to be adequate. In the light of the cases it is difficult if not impossible to say what test the court will apply to determine the adequacy of the provision in a particular case. For example, would the court consider the provision adequate in the following case:

An antenuptial contract provides that the wife will accept $1,000 in lieu of all her rights to the husband's property, including dower, etc. The evidence shows that the husband's estate was valued at $3,000 at the time of the contract. At the time of his death the husband was worth $20,000.

The courts have uniformly held that the husband's wealth, when compared to the provision for the wife, is to be judged at the time of the contract and not at the time of his death.14 But does it necessarily follow that the agreement will be upheld, even though the provision was proportionate to his wealth at the time the contract was made? The wealth of the husband is only one of many circumstances to be considered by the court in determining adequacy. Some courts make a test by saying that the provision in the agreement must allow the wife to live as comfortably after the death of her husband, as she had previously

14 Rolfe v. Rolfe, 125 Me. 82, 130 Atl. 877 (1925).
lived. Other courts compare the provision of the agreement to the amount the wife would receive under the statute of descent and distribution. Under either of these tests the court would not enforce the agreement in the hypothetical case above. The majority of the courts do not bind themselves to any test for adequacy but decide each case on its own particular circumstances. These courts take into consideration the wealth of the husband, the premarital wealth of the wife, the life expectancies of both parties, and all other circumstances of the case.

In cases where it is shown that the wife had substantial property before marriage, the courts will not void a contract whereby each party disclaims any interest in the other's property. Nor will the courts void a contract whereby a wife without means relinquishes all her rights to the husband's property, if the presumption of fraud is sufficiently rebutted.

There are certain other limitations on antenuptial contracts. There are some legal rights which a spouse cannot relinquish by agreement. In *French v. McAnarney,* the agreement stated that the husband would not be responsible for the support of the wife. The court held that such an agreement was void. The law imposes a duty on the husband to support his wife and the wife cannot waive the right by an agreement before marriage. There are also state statutes which prohibit the waiver of certain interests by a wife by antenuptial contract. For example, North Dakota has a statute which prevents homestead rights from being waived. Also, a statute in Texas prevents an antenuptial contract from changing the order of property descent from that provided by the statute of descent and distribution. Ordinarily, however, the common law governs antenuptial contracts.

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15 In Re Groff's Estate, 341 Pa. 105, 19 A. (2d) 107 (1941); In re Clark's Estate, 303 Pa. 538, 154 Atl. 919 (1931).
20 In Re Groff's Estate, 341 Pa. 105, 19 A. (2d) 107 (1941); In re Clark's Estate, 303 Pa. 538, 154 Atl. 919 (1931).
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As can be seen from the cases cited, antenuptial contracts are generally valid if they are made in good faith and in contemplation of a permanent marriage.

The majority of the reported cases are contracts between older persons or between an elderly man and a young girl, in which the real purpose of the contract is to prevent the wife from claiming her part of the husband’s estate, which she would normally receive through the statute of descent and distribution. It may be argued that this is not consistent with public policy. The legislature has seen fit to prescribe the manner in which the property of a deceased husband shall descend, even to the extent of allowing a wife to renounce the will of her husband and claim her rights under the descent and distribution statute. If the husband cannot will his property entirely away from the wife after marriage, should he be allowed to contract her rights away from her prior to marriage? In cases where the contracting parties are older persons with separate estates, such agreements provide a sound and convenient method for settling property rights between the parties. However, in cases where the wife has no separate estate, the court should carefully scrutinize the contract, even when there is considerable evidence that the wife knew the value of her husband’s estate at the time the contract was made. It is not a sound policy to allow a husband to disinherit his wife by contract prior to marriage, especially when she has no other means of support.

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25 The writer has used cases where the wife endeavors to avoid the contract, but the law is the same where the husband is bringing action. If the terms of the contract would be invalid as to the wife, similar considerations are apt to make them invalid as to the husband. Appleby v. Appleby, 100 Minn. 408, 111 N. W. 305, 10 Ann. Cas. 563 (1907).