

Separation Agreements and Ante-Nuptial Contracts (Book Review)

Harold F. McNiece

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hardly space for them here. It can be said, however, that it is a sign of our coming of age that books like this are being made available to American readers. The editor, the translator, and the publisher have done an exacting job in a very meritorious way. If the book is digested critically, it can stimulate much valuable thought, but if it is swallowed too hastily, the after-effects may require surgery to save the patient's life. In Europe, where the scholastic tradition is more or less well understood, even by those who are not Catholic, a book like this may be taken in stride without too many ill effects, but in this country, where every footnote to Aquinas' writings is assumed to express the mind of Saint Thomas, the effects could be rather appalling. For the purpose of coping adequately with books as profound and pregnant as this, nothing less than competence in philosophical criticism will suffice. This is an accomplishment which more American jurists need to possess.

MIRIAM THERESA ROONEY.*



SEPARATION AGREEMENTS AND ANTE-NUPTIAL CONTRACTS. By Alexander Lindey. New York: Matthew Bender & Company, 1953. Pp. xii, 920. \$23.50.

This volume is a revised and very substantially rewritten edition of the author's earlier work in the same field. Changes in tax statutes and alterations in the viewpoints of the Supreme Court and numerous state courts on divorce, separation and tax questions have, the author believes, made necessary a drastic modernization of the earlier book.

As is well known, there has been a staggering and dismaying increase in the divorce rate in this country. Less known are the actual figures on the increase. Mr. Lindey points out in his foreword that the United States has the highest divorce rate in the world with nearly 400,000 divorces, affecting 200,000 children, being granted each year. Since the turn of the century, the American divorce rate has trebled, and during the last twenty-five years, divorce has broken up seven and one-half million families. Under such circumstances, Mr. Lindey is indeed justified in referring to divorce as "a grave national ill" which is "getting worse all the time."

The efforts of lawyers and judges, inadequate though they have been, to cope with the mounting problems of divorce and separation have produced many changes in the law since Mr. Lindey's initial publication appeared in 1937. The revised edition is an admirable and successful attempt to keep pace with these changes.

* Visiting Professor of Jurisprudence, St. John's University School of Law; Dean of Studies, Seton Hall University School of Law.

The book is divided into four parts. Part One, only about fifteen pages in length, contains two typical forms of separation agreement, one brief and the other detailed. The short form is intended for use in simple cases where there are no children and the longer form is to be employed where there are children and complicated provisions are to be inserted as to insurance and the like.

Part Two, six hundred pages which form the bulk of the book, deals with some forty individual clauses which may be incorporated into separation agreements where appropriate. Several variations are given for each clause, and practical suggestions and voluminous commentary on the law applicable to the subject matter of each clause are included. The effect, then, is that of a treatise with forms interspersed, or, to look at it the other way, a form book with extensive annotations.

Part Three, approximately one hundred and thirty pages, contains a miscellaneous group of forms incidental to separation agreements and other related forms, including forms of guaranty, assignment, waiver of estate claim, indemnity, escrow agreement, trust agreement, reconciliation agreement, attorney's retainer, and numerous others. Again, some suggestions and legal commentary accompany the forms though not to such a great extent as in Part Two.

Part Four, comprising seventy-five pages, deals with ante-nuptial agreements and marriage settlements. Complete forms of agreement are included, although most of the Part is taken up with commentary on the law.

In addition to these four basic parts, Mr. Lindey has also set forth convenient tables of "Information to be Obtained for the Preparation of a Separation Agreement" and "Suggestions for the Preparation of a Separation Agreement," as well as a brief note on legal style and two appendices, the first containing the Rules of the American Arbitration Association and the second, a Selected Bibliography. The note on legal style makes interesting reading though some might question the propriety of inserting it in a book of this type. The suggestions therein contained, while doubtless good ones, are equally applicable to draftsmanship of all agreements and have no special applicability to domestic relations problems. A somewhat similar comment might be made as to the reprinting of the Rules of the American Arbitration Association. Moreover, these Rules are readily available to the practicing lawyer elsewhere.

My overall impression of the volume is very good. It is likely to have a great deal of appeal for the practicing lawyer. Mr. Lindey recognizes that forms are a valuable tool in the hands of the lawyer who knows how to use them, but at the same time he wisely counsels against undue reliance upon them. This is as it should be. Legal situations, like human beings, seldom come in the same shapes and sizes. A legal form, like a suit of clothes, must be altered and shaped before it fits perfectly. If this inherent limitation of all forms is borne in mind, the busy practicing lawyer will find Mr. Lindey's work a handy weapon for his intellectual arsenal.

I think it safe to say that the best things about the book are the forms and the practical suggestions. This is not to depreciate the legal commentary. Mr. Lindey is no mere draftsman of forms. On the contrary, he is obviously well versed in the substantive law applicable to the problems with which the forms deal. Nevertheless, within the confines of a one volume work of this sort it is not, in my judgment, possible to produce both a treatise and a form

book. As a result, the substantive law analysis, while keen and searching in places and always up-to-date, cannot be regarded as of quite the high quality as the other portions of the book.

Generally, the physical appearance of the volume is excellent. Large size type is used for the text, and the footnotes are also easy to read. One slightly disturbing practice in the footnoting is to cite a case in the form "Conroy v. Conroy, supra" without indicating the previous footnote to which the "supra" refers.¹ This requires the reader to do unnecessary searching. Some typographical errors have, of course, crept in. One, particularly amusing to me, is the wrong initial in my collaborator's name in the citation of an article.² The accuracy of case citations also leaves something to be desired. While I made no large scale effort to examine these citations which are very voluminous, a spot check of ten or twenty footnotes in one area of the book revealed several errors.³

HAROLD F. MCNIECE.*

¹ P. 267. Other examples are at pp. 251-252.

² Pp. 263, 264, 861.

³ The citation of *Patino v. Patino* at p. 269 n.80 is erroneous, and the affirmances in that case by the Appellate Division and the Court of Appeals are not noted. The citation given for *Patino v. Patino* is, in fact, that of the lower court decision in *Reed v. Robertson* cited to the Court of Appeals in that same footnote. The citation of *Yates v. Yates* at p. 261 n.48 is erroneous, although the case is correctly cited two pages earlier.

* Professor of Law, St. John's University School of Law.