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Notes: Family Law — Lying About a Spouse's Adultery to Speed Up a Divorce Does Not Prevent a Suit to Enforce the Spouse's Promise to Pay Support. Schneider v. Schneider, 335 Md. 500, 644 A.2d 510 (1994)

Frank J. Mastro
University of Baltimore School of Law

FAMILY LAW—LYING ABOUT A SPOUSE'S ADULTERY TO SPEED UP A DIVORCE DOES NOT PREVENT A SUIT TO ENFORCE THE SPOUSE'S PROMISE TO PAY SUPPORT. *Schneider v. Schneider*, 335 Md. 500, 644 A.2d 510 (1994).

I. INTRODUCTION

This note examines "yet another case which has its genesis in the disintegration of the respective parties' marital relationship."[1] Marriage is an American institution—nearly all Americans will marry at some point in their lives.[2] Not surprisingly, the United States has consistently produced one of the highest marriage rates in the world.[3] However, statistics also show that the United States possesses the highest divorce rate of any industrialized nation.[4] Based on recent divorce rates in America, the chances of a first marriage ending in divorce are about one in two.[5]

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1. Schneider v. Schneider, 96 Md. App. 296, 298, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).
2. *Id.* at 43. For example, 95 percent of men born in 1945 have married at least once. *Id.*
3. Constance Sorrentino, *The Changing Family in International Perspective*, MONTHLY LAB. REV., Mar. 1990, at 43. In 1960, 14.1 out of every 1000 Americans between the ages of 15-64 married. *Id.* at 44. This was second only to Japan (14.5 marriages per 1000) and slightly ahead of Germany (13.9 marriages per 1000). *Id.* By 1970 the United States boasted a marriage rate of 17.0 per 1000, the world's highest. *Id.* The Netherlands was second at 15.2 per 1000. *Id.* Japan, meanwhile, had slipped to third (14.4 marriages per 1000). *Id.* By 1980 the U.S. marriage rate had declined to 15.9 per 1000; however, it was still the world leader, boasting a rate well ahead of Canada's (11.6 marriages per 1000) and the United Kingdom's (11.6 marriages per 1000). *Id.* Japan, in contrast, had plummeted to 9.8 marriages per 1000. *Id.* Statistics for 1986 showed the United States on top with a rate of 15.1 per 1000, easily outdistancing the United Kingdom (10.6 marriages per 1000), Canada (10.2 marriages per 1000) and Japan (8.6 marriages per 1000). *Id.*
4. *Id.* at 41. Looking at statistics for 1986, the divorce rate per 1000 married women in United States was 21.2. *Id.* at 44. Canada and the United Kingdom stood second among industrialized nations at 12.9 per 1000. *Id.* Denmark was next at 12.8 per 1000, followed by Sweden at 11.7 per 1000. *Id.* Japan's rate was only 5.4 per 1000. *Id.*
5. *Id.* In the United States in 1993, there were 2,334,000 marriages, and 1,187,000 divorces. Thus, the total number of divorces was slightly more than half the total number of marriages. *See* Sharman Stein, *Marriage in the '90s: Ties Seem a Bit Likelier to Bind*, CHI. TRIB., Jan. 8, 1995, at C1.

Mark Reynolds Schneider and Janet Marie Schneider were married for almost a quarter of a century when Mark abruptly moved out of their marital home in July of 1990.[6] For all intents and purposes, their marriage was over, and divorce was soon to follow.[7] For Mark, however, divorce could not come soon enough.[8] In order to obtain the quickest divorce possible,[9] Mark convinced Janet to lie about catching him in bed with another woman.[10]

Shortly after the divorce decree was entered,[11] Mark stopped making support payments to Janet and removed her as the beneficiary on his two life insurance policies.[12] Janet then sued to enforce Mark's promise to pay spousal support.[13] The Circuit Court for Frederick County dismissed Janet's complaint because her perjury in the divorce proceedings gave her "unclean hands."[14] The Court of Special Appeals of Maryland affirmed the dismissal.[15] The Court of Appeals of Maryland, however, in *Schneider v. Schneider*,[16] reversed the court of special appeals's decision and held that Janet should have been allowed to present evidence that she was not *in pari delicto*[17] with

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6. Schneider v. Schneider, 96 Md. App. 296, 298, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).
7. *Id.*
8. Mark told Janet that he "wanted a fast divorce because he did not want to waste another 18 months of his life . . . ." Schneider v. Schneider, 335 Md. 500, 504, 644 A.2d 510, 512 (1994).
9. Mark told Janet that "the only way to obtain a fast divorce would be on the ground of adultery." *Id.* Mark was correct in his assertion. In Maryland, adultery is the only grounds for an immediate absolute divorce. All other grounds require a waiting period of at least 12 months. MD. CODE ANN., FAM. LAW § 7-103(a) (1991).
10. *Schneider*, 355 Md. at 504, 644 A.2d at 512. In her Complaint for Absolute Divorce, Janet claimed that she had returned home from church to find Mark in bed with a blonde-haired woman. *Id.* The couple committed perjury when, under oath, Mark admitted to adultery and Janet corroborated his testimony. *Id.* at 505, 644 A.2d at 513; *see also infra* note 158 and accompanying text.
11. The divorce decree was entered on August 31, 1990, fewer than seven weeks after Mark moved out of the marital home. *Schneider*, 335 Md. at 505, 644 A.2d at 513.
12. *Id.*
13. *Id.* at 506, 644 A.2d at 513. Janet alleged that a letter Mark left her shortly after they separated constituted a contract to pay spousal support. *Id.* at 504, 644 A.2d at 512. The letter read in part: "I could send you $400.00 or $500.00 every two week[s] 24 times a year or $10,000.00+ per year as long as you need it or more." *Id.*
14. *Id.* at 502, 644 A.2d at 511; *see also infra* note 19 and accompanying text.
15. Schneider v. Schneider, 96 Md. App. 296, 298, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).
16. 335 Md. 500, 644 A.2d 510 (1994).
17. *Id.* at 503, 644 A.2d at 514. The Latin translation of "*in pari delicto*" means "in equal fault." BLACK'S LAW DICTIONARY 791 (6th ed. 1990). The term is taken from the Latin phrase, "*in pari delicto potior est conditio defendentis*,"

Mark when they perjured themselves for the purpose of obtaining a speedy divorce.[18]

II. BACKGROUND

"He who comes into equity must come with clean hands."[19] This maxim means that a court of equity will refuse to aid any plaintiff who is guilty of unlawful or inequitable conduct in the matter in which he seeks relief.[20] Thus, a plaintiff who comes into court with "unclean hands," that is, tarnished by his own unlawful or inequitable conduct in the subject matter of the complaint, will be denied relief. The doctrine of unclean hands is as equally applicable to family law litigation as it is to all other forms of equity litigation.[21]

Recently, in *Manown v. Adams*,[22] the Court of Special Appeals of Maryland summarized the state of the law regarding the unclean hands doctrine.[23] In *Manown*, appellant Stephen Adams had recently separated from his wife and was in difficult financial straits.[24] After the separation, but before the divorce was final, Adams commenced both a personal and a business relationship with Patricia Manown[25] and invested significant financial assets into their ventures.[26] Attempting to hide these assets from the court, Adams titled the transferred

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meaning that in the case of equal fault, the position of the party defending (or in possession) is the better one. *Id.* Put another way, where the fault is mutual, the law will leave the case as it finds it. *Id.*

18. *Schneider*, 335 Md. at 513, 644 A.2d at 517.
19. *See generally* 30A C.J.S. *Equity* § 102 (1992) (citing Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 U.S. 806 (1945)).
20. *Id.*
21. J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 23.21.1 (Supp. 1993); *see* Pratt v. Pratt, 245 Md. 716, 717, 228 A.2d 611, 612 (1967) (finding neither party entitled to a divorce under the "clean hands" doctrine); McClees v. McClees, 162 Md. 70, 80-81, 158 A. 349, 353 (1932) (denying relief to husband because deserting wife's offer to return was improperly conditioned); Childs v. Childs, 49 Md. 509, 513 (1878) (finding that husband could not successfully solicit relief through divorce when ill treatment which formed basis of his claim resulted from his own misconduct). *But see* Townsend v. Morgan, 192 Md. 168, 175, 63 A.2d 743, 746 (1949) (finding clean-hands maxim inapplicable in suit to annul a bigamous marriage).
22. 89 Md. App. 503, 598 A.2d 821 (1991), *vacated*, 328 Md. 463, 615 A.2d 611 (1992). See *infra* note 31 for an explanation of why the case was vacated.
23. *Id.* at 511-13, 598 A.2d at 824-26.
24. *Id.* at 506, 598 A.2d at 822.
25. *Id.* at 506-07, 598 A.2d at 822-23.
26. *Id.* at 507-08, 598 A.2d at 822-23. For example, Adams gave Manown $43,000 to use as a downpayment on a house they purchased together. *Id.* at 503, 598 A.2d at 323. According to Adams's amended complaint, he transferred no less than $97,307.29 to Manown and their business enterprise, North Star, a publishing company which produced for sale such items as post cards and calendars. *Id.* at 507-08, 598 A.2d at 822-23.

assets in Manown's name only.[27] After his divorce was final, Adams filed a petition for personal bankruptcy and received his discharge three months later.[28] None of the assets transferred from Adams to Manown were identified as property of Adams's estate in either the divorce or the bankruptcy proceedings.[29] The relationship between Adams and Manown turned sour shortly after the discharge in bankruptcy, and Adams filed suit to recover the transferred funds.[30] The court applied the unclean hands doctrine and barred Adams from recovering the funds in which he had denied any interest during the previous two proceedings.[31] In doing so, the court emphasized that the unclean hands doctrine "refuses recognition and relief from the courts to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought."[32]

The unclean hands doctrine was created to protect the courts, not the parties to a suit.[33] The theory is that "judicial integrity is endangered when judicial powers are interposed to aid persons whose very presence before a court is the result of some fraud or inequity."[34] Courts seek to deter such fraudulent conduct by leaving the parties without a remedy against each other.[35] Thus, a court that invokes the doctrine will "literally wash its hands of the affair, leaving the guilty party or parties to the consequences of their actions."[36] The decision to invoke the doctrine lies within the trial court's discretion.[37]

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27. Manown v. Adams, 89 Md. App. at 508, 598 A.2d at 823. Both the joint business venture and the house were titled solely in Manown's name. *Id.*
28. *Id.* at 507, 598 A.2d at 823.
29. *Id.* at 508, 598 A.2d at 823.
30. *Id.*
31. *Id.* at 516, 598 A.2d at 827. The court of appeals subsequently vacated the case "on a totally different issue, i.e., 'that the trustee in bankruptcy, and not [Adams, was] the real party in interest as plaintiff.'" Adams v. Manown, 328 Md. 463, 483, 615 A.2d 611, 621 (1992) (Chasanow, J., concurring and dissenting) (quoting *Adams*, 328 Md. at 465-66, 615 A.2d at 612).
32. *Manown,* 39 Md. App. at 511, 598 A.2d at 824 (citing Hlista v. Altevogt, 239 Md. 43, 48, 210 A.2d 153, 156 (1965)); *see also infra* notes 38-40 and accompanying text.
33. *Manown,* 89 Md. App. at 511, 593 A.2d at 824 (citing Niner v. Hanson, 217 Md. 298, 309, 142 A.2d 798, 803 (1958)).
34. *Id.*
35. *Id.* at 511, 598 A.2d at 825 (quoting Roman v. Mali, 42 Md. 513, 533-34 (1875)). "In the early 20th century, it was argued that, by refusing any affirmative judicial relief . . . there [would] be less of an incentive to engage in such socially reprehensible conduct." Note, *Illicit Cohabitation of Parties as Affecting Contracts Made Between Them,* 2 MD. L. REV. 291, 298 (1938).
36. *Manown*, 89 Md. App. at 511, 598 A.2d at 825.
37. *Id.* at 511-12, 598 A.2d at 825 (citing Space Aero Prods. Co. v. Darling, 238 Md. 93, 120, 208 A.2d 74, 88 (1965)). "The maxim gives wide range to [an] equity court's use of discretion in refusing to aid the unclean litigant. Any [willful] act concerning the cause of action which . . . transgress[es] equitable

Although it reversed *Manown* on other grounds,[38] the Court of Appeals of Maryland emphasized that the fraudulent conduct had to be linked somehow to the matter before the court.[39]

> It is only when the plaintiff's improper conduct is the source, or part of the source, of his equitable claim, that he is to be barred because of this conduct. What is material is not that the plaintiff's hands are dirty, but that he dirties them in acquiring the right he now asserts.[40]

Quite simply, a court will refuse to apply the unclean hands doctrine when the claim is not predicated upon the plaintiff's wrongdoing.[41]

Furthermore, "it is an accepted rule that if the alleged wrongful conduct of a complainant appears not to have injured the defendant, the maxim cannot be successfully invoked."[42] In *Thomas v. Klemm*,[43] appellant William Thomas agreed to purchase property from Dorothy Warren for $4,250.[44] Warren's father, Francis Klemm, acted as

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standards of conduct is sufficient cause for the application of the maxim . . . ." Thomas v. Klemm, 185 Md. 136, 142, 43 A.2d 193, 197 (1945) (citing Schaeffer v. Sterling, 176 Md. 553, 6 A.2d 254 (1939)).

38. *Adams*, 328 Md. at 483, 615 A.2d at 621.
39. *Id.* at 475, 615 A.2d at 617. Thus, there must be a "nexus" between the misconduct and the transaction at issue. Schneider v. Schneider, 96 Md. App. 296, 306, 624 A.2d 1319, 1324 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994); *see also* Bland v. Larsen, 97 Md. App. 125, 138, 627 A.2d 79, 85 (1993).
40. *Manown*, 328 Md. at 476, 615 A.2d at 617 (quoting D. Dobbs, *Remedies* § 2.4, at 46 (1973)).
41. Niner v. Hanson, 217 Md. 298, 310, 142 A.2d 798, 804 (1958). "While equity does not demand that its suitors shall have led blameless lives as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue." Thomas v. Klemm, 185 Md. 136, 142, 43 A.2d 193, 197 (1945); *see also* Pennington v. Pennington, 390 So. 2d 809, 810 (Fla. Dist. Ct. App. 1980) (finding unclean hands doctrine inapplicable because husband's failure to pay child support through the court did not justify wife's refusal to convey deed to marital home); Sparks v. Sparks, 353 S.E.2d 508, 510 (Ga. 1987) (finding that doctrine of unclean hands did not bar husband, who transferred title of residence to wife during marriage for alleged purpose of shielding residence from judgment creditor, from seeking equitable division of residence); Bland v. Larsen, 97 Md. App. 125, 138, 627 A.2d 79, 85 (1993) (finding the requisite nexus lacking between wife's alleged perjury and husband's duty to support his children); Goldberg v. Goldberg, 570 N.Y.S.2d 333, 334-35 (N.Y. App. Div. 1991) (concluding that defendant's claim that plaintiff embezzled funds did not bar plaintiff's right to partition); Agati v. Agati, 461 N.Y.S.2d 95, 96 (N.Y. App. Div. 1983) (holding unclean hands doctrine inapplicable to husband who sought to enforce divorce decree requiring ex-wife to deliver deed to former marital home because husband failed to comply with part of decree requiring him to provide health insurance).
42. Thomas v. Klemm, 185 Md. 136, 142, 43 A.2d 193, 197 (1945).
43. 185 Md. 136, 43 A.2d 193 (1945).
44. *Id.* at 138, 43 A.2d at 195.

Warren's attorney and agent.[45] Thomas, who was employed as a certified public accountant, told Klemm that he had no cash to deposit but that he expected to receive a $500 bonus from his firm.[46] Klemm promised to obtain a mortgage for $3,500 and to accept $500 in cash along with a note for the balance of the purchase price and settlement expenses.[47] When Warren delivered the deed, Thomas informed her that he did not receive a bonus but that he had executed a $3,500 mortgage with a bank.[48] Warren accepted a judgment note for the balance of the purchase price and settlement expenses.[49]

Thomas later sustained injuries in an automobile accident and lost his job.[50] Consequently, he was unable to make mortgage payments, and he reconveyed the property to Warren.[51] Thomas later filed suit both for an equitable accounting of Warren's interest in the property and to have the deed declared to be a mortgage.[52] Warren invoked an unclean hands defense and alleged that Thomas had deceived Klemm by giving greater assurance of the possibility of receiving the bonus than actually existed.[53] The Court of Appeals of Maryland, however, refused to conclude that Thomas defrauded Klemm merely because he expressed a belief that he would receive a bonus from his company.[54] Moreover, the court noted, Warren had been willing to accept the judgment note and did not suffer any loss as a result of Thomas's mistaken belief.[55] Thus, Warren could not successfully use the doctrine of unclean hands as her defense.

"*In pari delicto*" is a corollary to the unclean hands doctrine.[56] The term "*pari delicto*" is used to indicate a fraud committed by both parties to the transaction.[57] Thus, "equity will not relieve one party against another when both are *in pari delicto*."[58] In other

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45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 138-39, 43 A.2d at 195.
52. Id. at 138, 43 A.2d at 195.
53. *Id.* at 141-42, 43 A.2d at 196-97.
54. *Id.* at 142, 43 A.2d at 197.
55. *Id.*
56. *See* 30A C.J.S. *Equity* § 103 (1992). The unclean hands defense is invoked when the plaintiff has committed misconduct in relation to the transaction. *Id.* *In pari delicto*, in contrast, is invoked when both the plaintiff and the defendant have committed misconduct in relation to the transaction. *Id.*
57. *Id.*
58. *Id.*; *see, e.g.*, Matthews v. Matthews, 288 So. 2d 110, 119 (Ala. 1973) (holding that plaintiff who fraudulently obtained land with help of defendant was *in pari delicto* and was not entitled to relief); State v. Aamco Automotive Transmissions, Inc., 199 N.W.2d 444, 448 (Minn. 1972) (barring franchisee

words, when both parties are at fault, the law will not intervene.[59]

This concept was illustrated in *Baxter v. Wilburn*,[60] where the Court of Appeals of Maryland refused to enforce an agreement between a man and his mistress that promoted unlawful cohabitation.[61] Pursuant to their arrangement, William Baxter, a married man, purchased a home for Ruby Wilburn, his mistress.[62] Baxter conveyed the home to Wilburn in order to void his wife's marital rights to it.[63] At the same time, Baxter sought to secure his own interest in the property by having Wilburn execute a mortgage to him.[64] The mortgage was not to be recorded unless Wilburn predeceased Baxter.[65] Wilburn remained custodian of the mortgage[66] and tore it up when she became estranged from Baxter.[67] Baxter sued to have a lien imposed on the property in the amount of the mortgage.[68]

The trial court found that the transaction promoted their extramarital relationship and that, therefore, equity should not grant relief.[69] The Court of Appeals of Maryland unanimously affirmed, adding that the conveyance was not a gift to Wilburn completely separate from the extramarital relationship.[70] Rather, the transaction was an intimate part of the extramarital relationship and, in fact, was designed to further it.[71] Therefore, the "connection between the

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who knowingly and willingly used "bait and switch" techniques to maximize sales and defraud customers from recovering damages against franchiser under doctrine of *in pari delicto*, even though national franchiser forced franchisee to use and pay for deceptive advertising and trained franchisee in such techniques); Thigpen v. Kennedy, 238 So. 2d 744, 747 (Miss. 1970) (concluding that the fact that plaintiff and defendant were *in pari delicto* did not entitle plaintiff to have resulting trust imposed or to have defendant reconvey lots that plaintiff had transferred to defendant for purpose of defrauding his wife in divorce action); Sheridan v. Sheridan, 589 A.2d 1067, 1068 (N.J. Super. 1990) (holding that equity was an impermissible forum for division of marital property purchased with funds obtained from illegal activities).

59. 30A C.J.S. *Equity* § 103 (1992); *see also* BLACK'S LAW DICTIONARY 791 (6th ed. 1990) (citing the maxim "*in pari delicto potior est conditio defendentis*").
60. 172 Md. 160, 190 A. 773 (1937).
61. *Id.* at 164, 190 A. at 775.
62. *Id.* at 161, 190 A. at 774.
63. *Id.* at 161-62, 190 A. at 774.
64. *Id.* at 162, 190 A. at 774.
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 164, 190 A. at 775.
71. *Id.* The court assumed a direct connection between Baxter's purchase of the house and his occupation of it with Wilburn. *Id.* at 163-64, 190 A. at 775. The primary reason Baxter bought the house, in the court's eyes, was to continue his adulterous relationship with Wilburn. *Id.* at 164, 190 A. at 775. Thus, the court characterized the transaction as one in furtherance of the parties' "illicit cohabitation." *Id.*

immorality and the conveyance and agreement must . . . prevent the court's interference. Equity must, in the words of many decisions, leave the parties as they have left themselves.''[72] The court concluded that the guilt in the arrangement was equal beyond question.[73]

Where "the parties are not *in pari delicto*, equity may, on grounds of public policy and to prevent a greater wrong, extend relief to one who is comparatively innocent.''[74] In cases where there are different degrees of guilt between parties to a fraudulent or illegal transaction, a court will grant relief "if one party acts under circumstances of oppression, imposition, undue influence, or at a great disadvantage . . . so that it appears that his guilt is subordinate to that of the [other party].''[75]

The Court of Appeals of Maryland articulated this concept as far back as 1875, in the venerable case of *Roman v. Mali*.[76] In an attempt to avoid creditors after his coal company went bankrupt in 1854, Hippolyte Mali conveyed substantial assets to his attorney, Philip Roman.[77] Under oath, both Mali and Roman denied that they shared an attorney-client relationship and that Mali had any interest in the property.[78] Years later, after Roman had died, Mali sought to have a trust imposed on the assets that Mali then testified had been held by Roman for Mali's benefit.[79] Mali tried to avoid the *in pari delicto* defense presented by Roman's estate by claiming that the

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72. *Id.* at 164, 180 A. at 775.
73. *Id.*
74. *See* 30A C.J.S. *Equity* § 112 (1992); *see, e.g.*, Cooper v. Paris, 413 So. 2d 772, 773 (Fla. Dist. Ct. App. 1982) (holding investor who participated in making illegal contract for sale of land not *in pari delicto* with unlicensed real estate broker and, thus, entitled to refund of monies); McKinley v. Weidner, 698 P.2d 983, 986 (Ore. 1985) (holding that plaintiff was not *in pari delicto* with defendant attorney who advised plaintiff to tender and dishonor check in ploy to recover possession of boat from third party).
75. Roman v. Mali, 42 Md. 513, 532 (1875).
76. 42 Md. 513 (1875).
77. *Id.* at 541-42. Mali was a wealthy New York-based entrepreneur with personal worth estimated between $100,000 and $200,000. *Id.* at 541. Mali, president of Parker Vein Coal Company, was threatened with suits by certain stockholders seeking to recover damages for over-issue of stock. *Id.* Roman, an attorney in Allegany County, Maryland, was a director and attorney for Parker Vein Coal Company. *Id.* at 541-42. Mali subsequently sold a one-half interest in a tract of land he owned in Baltimore City and certain stock in the Parker Vein Steamship Company to Otis Jewett for $75,000. *Id.* at 542. Jewett then mortgaged the whole property to Mali, who, at the same time, assigned the mortgage to Roman. *Id.* Jewett, meanwhile, conveyed his interest to his brother, Clarence. *Id.* at 543. When the mortgage became due and was unpaid, Roman convinced Clarence Jewett to convey his interest to Roman. *Id.*
78. *Id.* at 544-45.
79. *Id.* at 514-15.

scheme to defraud creditors was Roman's creation[80] and that Mali perjured himself on the advice of counsel (Roman), in whom he placed complete confidence.[81]

The trial court ruled in favor of Mali,[82] but the Court of Appeals of Maryland reversed and held that Mali was not less guilty in intent and perpetration of the fraud than was Roman.[83] Because the parties were *in pari delicto*, the court withheld its aid.[84] Although the court was split 3-1-3, the three dissenters agreed with the majority that equity should not deny relief unless the parties were *in pari delicto*.[85]

> A plaintiff is not regarded as *in pari delicto* with the defendant if, even though he knew or had reason to know that the bargaining was illegal or immoral, he was induced to participate in it by fraud or duress or by the use of influence derived from superior knowledge, mental power, or economic position.[86]

In *Maskell v. Hill*,[87] the Court of Appeals of Maryland upheld this exception to the *in pari delicto* maxim.[88] Alexander Maskell, a married man, and Bertha Kidd, his unmarried mistress, held themselves out to the public as man and wife and lived together for approximately three years in a residence they acquired, under false names, in 1937 and titled as tenants by the entireties.[89] In 1941, about one year after the parties had separated, Maskell forged a deed conveying the falsely-titled property to himself under his real name.[90] Two years later, Maskell conveyed the property to a strawman who subsequently reconveyed the property to Maskell and his legal wife as tenants by the entireties.[91] When Kidd, who had since married another man,[92] learned of these transactions, she filed suit to remove the cloud on

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80. *Id.* at 526-27.
81. *Id.*
82. *Id.* at 514-15.
83. *Id.* at 531-32.
84. *Id.* at 532.
85. *Id.* at 554-55.
86. 6A ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 1537, at 826 (1962).
87. 189 Md. 327, 55 A.2d 842 (1947).
88. *Id.* at 337, 55 A.2d at 847.
89. *Id.* at 329-30, 55 A.2d at 843. Maskell and Kidd acquired title under the false names of Harry A. Hill and Bertha V. Hill. *Id.* at 330, 55 A.2d at 843. Kidd may have been induced to go along with this fraudulent transaction due to her "inferior" economic position as Maskell's "wife." *See id.* at 329, 55 A.2d at 843.
90. *Id.* at 330, 55 A.2d at 843.
91. *Id.* at 331, 55 A.2d at 843.
92. *Id.* at 330, 55 A.2d at 843. Kidd married William Hill in the interim between the end of her relationship with Maskell and the time she filed suit. *Id.* She filed suit under her married name. *Id.*

record title created by the forged deed and to obtain a sale in lieu of partition.[93] Maskell demurred to Kidd's complaint and alleged that public policy prevented the court from enforcing rights based on an illicit cohabitation and, therefore, that a court of equity should refuse to aid either party.[94] The trial court overruled Maskell's demurrer.[95]

The Court of Appeals of Maryland sustained the order overruling the demurrer.[96] The court reasoned that in either an action to remove the cloud on Kidd's title or an action for sale in lieu of partition, the illicit relations between Kidd and Maskell, as well as the immorality of Kidd's past life, had no relevance to the title she acquired in 1937.[97] The alleged forged deed was executed after the parties had separated.[98] According to the court, "[n]either law nor morals would be vindicated by permitting a man to steal his former mistress's property by forgery perpetrated after all personal or property transactions between them had come to an end."[99]

"Even when the parties have been found to be *in pari delicto*, relief is sometimes awarded if, in the particular case, public policy is found to be best conserved by that course."[100] Relief, therefore, would be awarded in a case where application of *in pari delicto* would leave property in controversy in the hands of a person who has no claim to it.[101] In order to "determine whether, in a particular case, the parties are equally at fault, it may be necessary to consider whether the policy of the law would be better promoted by denying recovery or by permitting recovery in whole or in part."[102]

Policy considerations formed the crux of the Court of Appeals of Maryland's decision in *Cronin v. Hebditch*.[103] In *Cronin*, the court nullified a separation agreement between newlyweds Louise and John Hebditch.[104] When the couple married in 1948, Louise was eighteen, and John was seventy-one.[105] Four months after the wedding, Louise

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93. *Id.* at 331, 55 A.2d at 843-44.
94. *Id.* at 331-32, 55 A.2d at 844.
95. *Id.* at 332, 55 A.2d at 844.
96. *Id.* at 337, 55 A.2d at 847.
97. *Id.* at 335, 55 A.2d at 845-46.
98. *Id.* at 335, 55 A.2d at 846.
99. *Id.* at 335-36, 55 A.2d at 846.
100. *See generally* 30A C.J.S. *Equity* § 112 (1992).
101. *Id.*; *see also* Bizuk v. Bizuk, 111 N.E.2d 823, 830, *reh'g denied*, 112 N.E.2d 760 (Ind. Ct. App. 1953) ("Even if . . . the parties were *in pari delicto* . . . it would be inequitable, unjust and contrary to public policy to permit appellee to use that doctrine as a sword to retain all of the property he received pursuant to an illegal agreement.").
102. Cronin v. Hebditch, 195 Md. 607, 619, 74 A.2d 50, 55 (1950).
103. 195 Md. 607, 74 A.2d 50 (1950).
104. *Id.* at 620, 74 A.2d at 55.
105. *Id.* at 610, 74 A.2d at 51.

returned to her parents' home and filed a bill for separate maintenance and alimony, alleging cruelty.[106] Prior to any decree, the couple executed a separation agreement under which John would pay Louise $1000 when the divorce decree was signed and $8000 thereafter in ten annual installments of $800.[107] In addition, Louise waived all her rights to her husband's property and estate.[108] When John died the following year, an absolute divorce had yet to be granted.[109] Louise brought suit to enforce her rights as his widow.[110] Representatives of John's estate argued that Louise should be denied relief because, even if the separation agreement were unlawful, Louise was a party to the contract, and was therefore *in pari delicto*.[111]

The Court of Appeals of Maryland called the contract "a palpably unlawful agreement to obtain a divorce and to pay $9,000 for it, $1,000 c.o.d., the balance in ten annual deferred payments."[112] Because the agreement mentioned no grounds for divorce and implied that none existed, the court held that "the divorce bargained for [was] therefore . . . a fraudulent divorce."[113]

The Court of Appeals of Maryland, however, would not deny Louise her marital rights because it found the agreement to be "an unjust device to deprive the wife of her marital rights without any consideration at all unless the divorce were obtained."[114] The court concluded that "the policy of the law would be better promoted by giving [Louise] her marital rights than by consummating the unjust purpose of the agreement by declaring her rights lost."[115]

Courts may also weigh competing policies against each other. In *Pratt v. Pratt*,[116] a divorce was denied to the parties because neither party had "clean hands."[117] The Court of Appeals of Maryland, however, did not disturb the trial court's child custody award to the wife,[118] despite the fact that she committed adultery and perjured

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106. *Id.* at 610-11, 74 A.2d at 51.
107. *Id.* at 611-12, 74 A.2d at 51-52.
108. *Id.* at 611, 74 A.2d at 51. From the time of his engagement to Louise until the time of his death, John Hebditch was worth over $700,000. *Id.* at 612, 74 A.2d at 52. Louise, on the other hand, held no property of her own at the time of the marriage, held no separate property at the time of John's death, and held no property jointly or by the entireties with John. *Id.* at 610, 74 A.2d at 51.
109. *Id.* at 610-12, 74 A.2d 51-52.
110. *Id.* at 614-15, 74 A.2d at 53.
111. *Id.* at 618-19, 74 A.2d at 55.
112. *Id.* at 618, 74 A.2d at 55.
113. *Id.*
114. *Id.* at 619, 74 A.2d at 55.
115. *Id.* at 619-20, 74 A.2d at 55.
116. 245 Md. 716, 228 A.2d 611 (1967) (per curiam).
117. *Id.* at 717, 228 A.2d at 612.
118. *Id.* at 719, 228 A.2d at 613.

herself on the witness stand.[119] In *Pratt*, the court apparently deemed the policy of awarding custody based on the best interest of the child a more important policy than denying equitable relief based on perjury.[120] Similarly, in *DuPont v. DuPont*,[121] a case in which a wife committed perjury during a trial for separate maintenance and support, the Delaware Supreme Court remarked: "While lying under oath is a matter of the very gravest importance . . . it appears to us to be extraneous to the issue as to how much money this husband should provide for the support of his wife."[122]

A guilty party who is granted relief, either because he is not *in pari delicto* or because public policy demands it, is often allowed restitution or rescission, rather than specific performance of a contract.[123] A court will permit a plaintiff to disregard the contract and will grant him either the right to take his property or money back (rescission) or the right to the reasonable value of a performance rendered by him and received by the defendant (restitution).[124] Thus, the usual remedy for a person not *in pari delicto* to an illegal contract is either restitution or rescission;[125] specific performance would allow a plaintiff to reap the full benefit of the illegal bargain.[126]

A court of equity will not require specific performance as a matter of course.[127] It will evaluate the conduct of the parties, the

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119. *Id.* at 718, 228 A.2d at 612.

120. *Id.* The court of appeals did not discuss the perjury issue in any detail. "In considering the custody of the infant son the court must consider . . . the policies of the courts in this State against divided custody and, therefore, the court feels that the best interest of this child will be served in granting custody to the [wife]." *Id.* at 718, 228 A.2d at 613 (quoting the trial judge).

121. 103 A.2d 234 (Del. 1954).

122. *Id.* at 239.

123. 14A SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1631A, at 46-47 (Walter H.E. Jaeger, ed., 3d ed. 1972).

124. 6A ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 1535, at 822 (1962).

125. *See, e.g.*, Messick v. Smith, 193 Md. 659, 69 A.2d 478 (1949) (holding builder entitled to restitution for work done but not to recovery of full price bargained for in illegal contract); Maskell v. Hill, 189 Md. 327, 55 A.2d 842 (1947) (holding mistress entitled to rescission of forged deed and to restitution of rents and profits from property); Lord v. Smith, 109 Md. 42, 71 A. 430 (1908) (holding plaintiff, who did not place bank account in name of defendant in order to defraud creditors, entitled to injunction prohibiting defendant from interfering with business); *see also* DuPont v. DuPont, 103 A.2d 234 (Del. 1954) (holding that chancellor improperly lowered wife's maintenance award due to unrelated misrepresentations).

126. The *Schneider* majority did not cite to a single case that permitted specific performance of an illegal contract in similar circumstances. Schneider v. Schneider, 335 Md. 500, 523, 644 A.2d 510, 521 (1994) (Chasanow, J., dissenting).

127. Zouck v. Zouck, 204 Md. 285, 296, 104 A.2d 573, 577 (1954); *see also* Lower v. Lower, 584 A.2d 1028, 1030 (Pa. Super. Ct. 1991) ("'[S]pecific performance

circumstances, and the equities of each particular case.[128] Furthermore, it will not use its discretion to grant the remedy unless its exercise will serve the ends of justice and the result of its assistance will be fair, just and reasonable.[129]

Equity will exercise jurisdiction over separation agreements between husbands and wives (as in *Schneider*), and in appropriate cases, it will specifically enforce payments of maintenance[130] from one spouse to another.[131] Courts favor the enforcement of such agreements as a matter of public policy.[132] If the support provisions of an agreement are described as alimony,[133] however, they will not be enforced in equity as a matter of course, except in those cases where the agreement is incorporated in a judgment for alimony.[134]

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is an equitable remedy not available as a matter of course but only in unique situations.'") (citing Pugh v. Holmes, 405 A.2d 897, 908 (Pa. 1979)); 11 SAMUEL WILLISTON, CONTRACTS § 1418A (3d ed. 1968); MURRAY, ON CONTRACTS-A REVISITATION OF GRISMORE ON CONTRACTS § 183 (1974)); Schiff v. Schiff, 283 A.2d 131, 138 (N.J. Super. Ct. App. Div. 1971) ("The remedy of specific performance is not an absolute one.").

128. *Zouck*, 204 Md. at 285, 104 A.2d at 577; *see also* Schiff v. Schiff, 283 A.2d 131, 138 (N.J. Super. Ct. App. Div. 1971) (noting that specific performance is in large measure discretionary and rests on equitable principles to be applied upon a consideration of all the circumstances of a particular case).

129. *Zouck*, 204 Md. at 296, 104 A.2d at 577-78; *see also* Anderson v. Anderson, 563 S.W.2d 345, 346 (Tex. Civ. App. 1978) ("Specific performance is not a remedy of legal right but rests in the sound discretion of the court . . . .").

130. "Maintenance" is shorthand for "separate maintenance," which refers to money paid by one married person to the other for support if they are no longer living as husband and wife. BLACK'S LAW DICTIONARY 1365 (6th ed. 1990). If such money is paid under a court order, it is known as "alimony." For further discussion, see *infra* note 133 and text accompanying notes 137-39.

131. J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 16.11 (1990). A court will enforce those payments that are due and unpaid as well as those which are to be paid in the future. *Id.* Generally speaking, courts do not decree specific performance of agreements to pay money. However, an exception to this rule exists in agreements between husband and wife for payment of alimony or support. Williams v. Williams, 305 Md. 1, 8, 501 A.2d 432, 435 (1985) (citing Zouck v. Zouck, 204 Md. 285, 292, 104 A.2d 573, 576 (1954)).

132. *Williams*, 305 Md. at 8, 501 A.2d at 435 (citing Zouck v. Zouck, 204 Md. 285, 292-94, 104 A.2d 573, 577-78 (1954)).

133. The word "alimony" is derived from the Latin "*alimonia*," meaning sustenance and traditionally refers to the sustenance or support of the wife by her divorced husband. This stems from the common-law right of the husband to support his wife. BLACK'S LAW DICTIONARY 73 (6th ed. 1990). For additional discussion, see *infra* text accompanying notes 137-39.

134. *Williams*, 305 Md. at 8, 501 A.2d at 435. In Brown v. Brown, 278 Md. 672, 366 A.2d 18 (1976), a wife sought specific enforcement of a clause in the separation agreement which called for the husband to pay the wife $60.00 per week "as *alimony* during the joint lives of the parties hereto so long as they remain separate and apart, and the wife remains unmarried." *Id.* at 673-74,

Maryland courts have always recognized a distinction between alimony, which the court is empowered to award,[135] and contractual spousal support, which the court could not grant but for the agreement of the parties.[136] Historically, alimony was an award made by the court for maintenance of the wife.[137] Alimony was defined as "the payment of money at stated periods for [the wife's] support during the joint lives of the parties so long as they were separated."[138] Despite the label given by the parties to a money allowance for the support of a wife, such allowance "is not alimony unless it is payable under a judicial decree and terminates on the death of the husband, or the death or remarriage of the wife."[139] Contractual spousal support, on the other hand, may not be granted absent an enforceable

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366 A.2d at 19-20 (emphasis added). The court of appeals denied enforcement and stated: "No matter what the parties may call a money allowance for a wife's support, *it is not alimony unless it is payable under a judicial decree* and terminates on the death of the husband, or on the death or remarriage of the wife." *Id.* at 675, 366 A.2d at 20 (citing LaChance v. LaChance, 28 Md. App. 571, 575, 346 A.2d 676, 679-80 (1975)) (emphasis added).

135. MD. CODE ANN., FAM. LAW § 11-101 (1991 & Supp. 1994); *see also* J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 16.10, at 359 (1990).

136. MD. CODE ANN., FAM. LAW § 8-101(a) (1991); *see also* J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 16.10, at 359 (1990). The distinction between alimony (sometimes referred to as "technical alimony") and contractual spousal support has lost much of its legal significance. Mendelson v. Mendelson, 75 Md. App. 486, 497, 541 A.2d 1331, 1336 (1988). Before 1950, a spousal support agreement that was made part of the divorce decree but that did not qualify as technical alimony (an award the court would have had the power to make absent the agreement) could not be enforced by imprisonment for contempt. *Id.* The agreement could be enforced only by sequestration, execution, or attachment. *Id.* At that time contractual spousal support was viewed solely as a contractual debt rather than as an affirmative duty imposed by the court. *Id.* Furthermore, because the spousal support was not alimony, it could not be modified by the court. *Id.*

In 1950, an amendment to the Maryland Constitution (art. III, § 38) provided that an agreement for alimony was not considered a debt. *Id.* at 497, 541 A.2d at 1337. Later, the adoption of § 8-103 of the Family Law Article provided for court modification of contractual spousal support that was not technical alimony unless prohibited by the agreement itself. *Id.* Today, a spousal support agreement cannot be enforced by imprisonment for contempt unless the spousal support is ordered in the divorce decree. *Id.* at 497-98, 541 A.2d at 1337. If the divorce decree does not contain an order for spousal support, the failure to pay it will be regarded as a breach of contract. *Id.* at 498, 541 A.2d at 1337. In addition, if spousal support is not made part of the divorce decree it cannot be modified after the judgment is entered because the court will not retain jurisdiction over the matter. *Id.*

137. J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 16.10, at 359 (1990).

138. *Id.* (citing Dougherty v. Dougherty, 187 Md. 21, 32, 48 A.2d 451, 457 (1946)).

139. Brown v. Brown, 278 Md. 672, 675, 366 A.2d 18, 20 (1976).

contract between the parties.[140] Such agreements to pay spousal support require consideration to be valid.[141]

A valid separation agreement calling for spousal support may be either approved, incorporated or merged into a judgment of divorce.[142] In a "merger," the agreement is absorbed into the judgment and cannot be enforced separately.[143] An agreement that is "incorporated" is considered part of the judgment, although it may be separately enforced.[144] An "approved" agreement is one that has been endorsed by the court.[145] It is not part of the agreement, and it may be separately enforced.[146]

III. THE INSTANT CASE

Janet and Mark Schneider were married in 1966.[147] Mark "dominated [Janet] throughout their marriage [and] completely controlled the parties' finances."[148] He "not only dictated with respect to money matters—his was the final word on children issues and on the matter of what [Janet] did with her life."[149] On July 15, 1990, after almost a quarter-century of marriage, Mark moved out of the marital home.[150] Four days later, when Mark returned to pick up some of

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140. Mendelson v. Mendelson, 75 Md. App. 486, 496, 541 A.2d 1331, 1336 (1988); *see also* Bellofatto v. Bellofatto, 245 Md. 379, 226 A.2d 313 (1967); Bebermeyer v. Bebermeyer, 241 Md. 72, 215 A.2d 463 (1965); Schroeder v. Schroeder, 234 Md. 462, 200 A.2d 42 (1964); Dickey v. Dickey, 154 Md. 675, 141 A. 387 (1928).
141. *See* Frank v. Frank, 203 Md. 361, 101 A.2d 224 (1953).
142. J. FADER & R. GILBERT, MARYLAND FAMILY LAW § 16.10, at 357 (1990).
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. Schneider v. Schneider, 335 Md. 500, 503, 644 A.2d 510, 512 (1994). Janet gave birth to two children, "a daughter in 1967 and a son in 1972." Schneider v. Schneider, 96 Md. App. 296, 298, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994). The son was still a dependent minor at the time Mark moved out of the family home. *Schneider*, 335 Md. at 519, 644 A.2d at 520.
148. *Schneider*, 335 Md. at 503, 644 A.2d at 512.
149. *Id.* For example, after Mark was diagnosed as a diabetic, in March of 1990, he "insisted that [Janet] surrender her real estate license and her job selling real estate [with a broker in Hagerstown] so that she would be able to . . . better care for [him]." *Id.* Then, in May of 1990, Mark "suddenly decided that [Janet] needed to return to some job that would allow [her] to be home when [he] needed her." *Id.* Janet took a job at a local McDonald's which paid $5.00 per hour. *Id.* at 504-05, 644 A.2d at 512.
150. *Id.* at 504, 644 A.2d at 512. On that morning, according to Janet, Mark told her to use the truck for transportation to work at McDonald's. Schneider v. Schneider, 96 Md. App. 296, 301, 624 A.2d 1319, 1322 (1993). When Janet

his belongings, he left a four-page, longhand letter which read, in part: "I could send you $400.00 or $500.00 every two week[s] 24 times a year or $10,000.00+ per year as long as you need it or more[.]"[151] The theory of Janet's complaint for specific performance was that this portion of the note constituted a contract to pay spousal support.[152]

Mark telephoned Janet two days later, on July 21, and told her that he "wanted a fast divorce because he did not want to waste another 18 months of his life [and] that the only way to obtain a fast divorce would be on the ground of adultery."[153] Later that month, Mark met with Janet. He reaffirmed his promise to pay spousal support and also told her that she would remain the primary beneficiary on his two life insurance policies.[154] In return, Janet abstained from seeking alimony or other relief.[155]

On August 7, 1990, Janet filed a Complaint for Absolute Divorce, which described Mark's adultery.[156] In her Complaint, Janet

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asked why, Mark replied that he was using the car to go find another place to live. *Id.* At approximately noon that day, Mark appeared at the McDonald's where Janet was working and told her that he had found a place to move into. *Id.*

151. Schneider v. Schneider, 335 Md. 500, 504, 644 A.2d 510, 512 (1994).

152. *Id.*

153. *Id.* Adultery is grounds for an immediate absolute divorce. All other grounds for absolute divorce require a waiting period of at least 12 months. MD. CODE ANN., FAM. LAW § 7-103(a) (1991). Desertion must continue for 12 months without interruption before the filing of an application for divorce. *Id.* § 7-103(a)(2). Voluntary separation requires that the parties live separate and apart, without cohabitation, for 12 months without interruption before filing an application for divorce. *Id.* § 7-103(a)(3). Conviction for a felony or misdemeanor in any state court is also grounds for an immediate absolute divorce if the defendant has been sentenced to serve at least three years, or an indeterminate length, in a penal institution and has served 12 months of the sentence prior to the filing of an application for divorce. *Id.* § 7-103(a)(4). A two-year separation where the parties have lived separate and apart, without cohabitation, without interruption before the filing of an application for divorce is also grounds for an immediate absolute divorce. *Id.* § 7-103(a)(5). The final ground for an immediate absolute divorce is insanity, which requires that the insane spouse be confined in a mental institution for at least three years prior to the filing of an application for divorce. *Id.* § 7-103(a)(6).

154. *Schneider*, 335 Md. at 504-05, 644 A.2d at 512-13. Mark told Janet: "I've already told you what I will do. You have it in writing." *Id.* at 505, 644 A.2d at 512-13. The benefit under one life insurance policy was $100,000. *Id.* Under the other policy, the benefit was twice Mark's salary. *Id.*

155. *Id.* at 505, 644 A.2d at 513.

156. *Id.* The complaint described the adulterous incident as follows:

> On July 15, 1990, [Janet] went by herself to church as she ordinarily does every Sunday. She left at the normal time, 8:00 AM, but returned home somewhat early because there was a visiting priest. At approximately 9:45 AM, she entered the bedroom she shared with [Mark].

claimed that she had returned home from church to find Mark in bed with a blonde-haired woman.[157] Mark admitted to adultery and Janet corroborated his testimony.[158] When the divorce decree was entered, on August 31, 1990, the couple had been separated for less than seven weeks.[159]

Mark made two payments of $400 each to Janet in October 1990 and one payment of $400 the following month.[160] Thereafter, Mark refused to make any further payments to Janet.[161] He also removed Janet as beneficiary on each life insurance policy.[162]

On or about August 27, 1991, Janet, attempting to enforce Mark's promises, filed two separate suits.[163] In her Motion to Revise Judgment, Janet requested that the circuit court reopen the divorce proceedings and award alimony.[164] In her Complaint for Specific Performance, Janet sought specific performance of Mark's financial promises.[165] Both complaints were dismissed by the trial court under the unclean hands doctrine,[166] but Janet appealed only the dismissal of her Complaint for Specific Performance.[167]

> She had in mind changing into her McDonald's uniform as she was scheduled to begin work at McDonald's that morning at 11:00 AM. She found [Mark] in bed with a blonde-haired woman. [Janet] was flabbergasted, managed to say something like "[g]et out of the house," and went downstairs. [Mark] came downstairs and stated that he would be moving out. [Mark] left that day and never slept under the roof of the marital home again.

Schneider v. Schneider, 96 Md. App. 296, 299, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).

157. *Schneider*, 335 Md. at 502, 644 A.2d at 511.

158. *Id.* at 505, 644 A.2d at 513. In Maryland, corroboration of a plaintiff's testimony is required in order to obtain a judgment of divorce. MD. CODE ANN., FAM. LAW § 7-101(b) (1991). A court may not enter a decree of divorce on the uncorroborated testimony of the party who is seeking the divorce. *Id.*

159. *Schneider*, 335 Md. at 504-05, 644 A.2d at 512-13. Mark moved out of the marital home on July 15, 1990. *Id.* at 504, 644 A.2d at 512. The divorce decree was entered on August 31, 1990. *Id.* at 505, 644 A.2d at 513.

160. *Id.*

161. *Id.*

162. *Id.*

163. Schneider v. Schneider, 96 Md. App. 296, 300, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).

164. *Id.*

165. *Id.* at 300, 624 A.2d at 1321-22.

166. *Id.* at 302-03, 624 A.2d at 1322-23. With respect to Janet's Motion to Revise Judgment, the trial judge remarked: I think the motion to dismiss properly lies. . . . I think if there is any fraud that it's intrinsic fraud and in addition to the intrinsic fraud, quite frankly, unclean hands is so applicable. . . . [T]he basis for her getting that divorce was her perjured testimony, which she admits. *Id.* at 302, 644 A.2d at 1322. In dismissing Janet's Complaint for Specific Performance, the trial judge noted:

> Janet Marie Schneider has admitted . . . that the divorce was granted

On appeal to the Court of Special Appeals of Maryland, Janet contended, *inter alia*, that there was an insufficient nexus between her perjury and her action for specific performance.[168] The court held otherwise and found that Janet had admitted the nexus when she described her Complaint as "matrimonial" litigation.[169] More importantly to the court, Janet admitted that the consideration given in exchange for Mark's promise of payment was the act of perjury itself—the prosecution of the divorce action.[170]

Explaining that "the whole transaction (i.e., the perjury) from beginning to end, appear[ed] to be the joint scheme of the two, the one co-operating with the other, and both being equally guilty,"[171] the court held that the unclean hands doctrine was properly invoked because Janet's fraud was perpetrated exclusively against the court and not against Mark.[172]

The Court of Appeals of Maryland, however, reversed the lower court's decision and concluded that it was not necessary to reach the issue of whether the doctrine of unclean hands applied. Instead, the court of appeals considered the policies underlying both the *in pari delicto* rule and the enforcement of agreements for spousal support.[173]

While acknowledging that an *in pari delicto* dismissal could be avoided in cases of "oppression" or by "great disadvantage," the

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> to her on the grounds of adultery as a result of perjured testimony by her. . . . In this case, the matters which the Plaintiff [Janet] attempts to litigate in this matter could and should have been disposed of in the divorce action. Where the Plaintiff obtained her divorce on admittedly perjured testimony, this Court refuses to recognize her action in this case under the doctrine of unclean hands.

Id. at 302-03, 624 A.2d at 1323.

167. *Id.* at 303 n.1, 624 A.2d at 1323 n.1.

168. Schneider v. Schneider, 335 Md. 500, 506-07, 644 A.2d 510, 513 (1994). Janet also argued that: (1) dismissing a case at the pleadings stage due to unclean hands was inappropriate, especially in "matrimonial" litigation; and (2) although both she and Mark committed perjury, her perjury would not have occurred but for Mark's oppressive will. *Id.*

169. *Id.* at 507, 644 A.2d at 514. Janet's counsel claimed: "Dismissing an action on preliminary motion on the basis of the unclean hands is rarely appropriate. This is particularly true in matrimonial litigation." *Schneider*, 96 Md. App. at 307-08, 624 A.2d at 1325. Janet's brief cited several law review articles as support for this proposition. *Id.* However, the court of special appeals believed that the cases cited were not on point. *Id.* Nevertheless, the court observed that by citing to these articles, Janet acknowledged the obvious nexus between her divorce and her complaint. *Id.* "[B]y describing her Complaint for Specific Performance as part of a 'matrimonial action,' we believe that she is admitting the undeniable nexus between the divorce proceeding (and, therefore her perjury) and her Complaint for Specific Performance." *Id.*

170. *Schneider*, 335 Md. at 507-08, 644 A.2d at 514.

171. *Schneider*, 96 Md. App. at 312, 624 A.2d at 1327.

172. *Id.* at 312, 624 A.2d at 1328.

173. *Schneider*, 335 Md. at 509, 644 A.2d at 514.

court held that Janet should be permitted to introduce evidence that she was not *in pari delicto*.[174] For support, the court noted that the allegations in Janet's Complaint raised a factual question as to whether the degree of Janet's guilt for the perjury in the divorce case was as great as Mark's.[175] According to the court, the Complaint showed a marriage in which Janet was economically dependent on Mark, who made significant personal decisions for her and who unilaterally made the pivotal decisions affecting their children.[176] Janet also alleged that Mark conceived of and insisted on using perjured grounds for divorce and that she initially resisted, but later acquiesced, in the perjury.[177] The majority, therefore, allowed Janet an opportunity, on remand, to prove that she was not *in pari delicto*.[178] If Janet were to succeed, she could demand specific performance of the contract for spousal support and obtain the full benefit of her bargain.[179]

The majority also concluded that the dismissal of Janet's Complaint would do little to discourage perjury in divorce actions.[180] In the court's opinion, "any deterrence of perjury that might be effected by refusing relief to Janet" was outweighed by the policy favoring the enforcement of agreements for spousal support.[181] Under the facts alleged, dismissal would be contrary to public policy because "dismissal would reward the perjury of economically superior spouses by neutering their contractual obligations of support to economically dependent spouses."[182]

Judge Chasanow, the sole dissenter, argued that there was not an enforceable contract for post-divorce spousal support.[183] First, he noted that there was no indication of how much of Mark's payments were to be allocated for child support.[184] Therefore, Mark's $400 or $500 every two weeks could not be a contract to pay a specific sum for spousal support.[185] Second, Mark's letter made no mention of a

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174. *Id.* at 513, 644 A.2d at 517.
175. *Id.* at 517, 644 A.2d at 519.
176. *Id.* at 513, 644 A.2d at 516.
177. *Id.* at 513, 644 A.2d at 516-17.
178. *Id.* at 513, 644 A.2d at 517.
179. *Id.* at 522, 644 A.2d at 521 (Chasanow, J., dissenting).
180. *Id.* at 518, 644 A.2d at 519.
181. *Id.* at 516, 644 A.2d at 518.
182. *Id.* at 518, 644 A.2d at 519.
183. *Id.* at 519, 644 A.2d at 520.
184. *Id.* (Chasanow, J., dissenting). The offer was apparently intended by Mark, and assumed by Janet, also to include support for their son, who was still a dependent minor. *Id.*
185. *Id.* at 519-20, 644 A.2d at 520. The letter mentioned support only in a generic way ("$400 or $500 every two weeks"), with no specific amounts allocated either to Janet or to their minor son. *See id.* at 519, 644 A.2d at 520. Janet

divorce, and there was no clear indication that the pre-divorce support payments were intended to continue after the divorce and to be converted to permanent spousal support.[186] Finally, Judge Chasanow explained that the letter was merely a unilateral indication of what Mark intended to do.[187] There was no consideration or mutual promise by Janet which would, in Judge Chasanow's opinion, have made this letter a contract.[188]

Judge Chasanow conceded that if Janet were not *in pari delicto*, she would have been entitled to restitution of what she gave up—the right to present her claim for alimony.[189] Nevertheless, because Janet did not appeal the dismissal of her Motion to Revise Judgment, which would have reopened the divorce proceedings, Judge Chasanow concluded that she had abandoned that option.[190]

IV. ALTERNATIVE APPROACHES

The majority of the Court of Appeals of Maryland, in *Schneider v. Schneider*, noted that because the perjury was an accomplished fact and was limited to the grounds for a divorce which had already been granted,[191] the case was "somewhat analogous to *Maskell [v. Hill].*"[192] By making this analogy, the *Schneider* court reasoned that

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assumed that *at least some* of the money was allocated for child support, but she could not establish with precision how much money was reserved for spousal support. *See id.* at 520, 644 A.2d at 520. Because the letter did not specify how much money was to be allocated for spousal support, it could have been Mark's intention to devote the entire sum to child support. If that were true, Janet would have had no claim. However, Mark could have intended that some of the money (say $100 or $200) was to go to Janet and that the rest was to be used for child support. There was no way of knowing. Thus, according to Judge Chasanow, Janet could not seek enforcement under the aegis of "spousal support" but had to do so under ordinary principles of contract law. *Id.* at 519-24, 644 A.2d at 519-22.

186. *Id.* at 520, 644 A.2d at 520.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 517, 644 A.2d at 519. The perjury was committed for the limited purpose of establishing adultery, which was the ground for divorce. *Id.* Once the absolute divorce was granted, the perjury ceased to have any effect. *Id.* There was no need for Mark and Janet to commit perjury in order to reach an agreement on spousal support. *Id.* Further, the perjury had no effect on Mark's unilateral decision to stop making support payments. *Id.*

192. *Id.* The suggestion was that, in *Maskell*, the falsely titled deed was also an "accomplished fact" and was done for the "limited purpose" of providing a residence for Maskell and his mistress. For further discussion of *Maskell v. Hill*, see *supra* text accompanying notes 87-99. Thus, the act of falsely titling the original deed did not affect Maskell's unilateral decision to execute a

because Mark's unilateral decision to stop support payments occurred after all transactions between the couple had terminated, Janet would be left without relief absent judicial intervention.

The court also took pains to distinguish *Schneider v. Schneider* and *Maskell v. Hill* from *Baxter v. Wilburn*.[193] The court claimed that in *Baxter*, "the taint of the transaction . . . carried over after [the couple] had separated and prevented equity from recognizing the lien on the mortgage."[194] As a result, the mistress in *Baxter*, who had destroyed the mortgage, kept the property free and clear because the court refused to intervene.[195] In *Schneider*, the court reasoned that once the absolute divorce was granted, the perjury ceased to have any further effects.[196] The benefit of the perjury was merely to allow the parties to obtain an expedited divorce.[197] The "taint" of the perjury did not "carry over" into the parties' spousal support agreement.[198]

By taking affirmative action, the court was convinced that it would deter economically superior spouses from shirking their spousal support obligations.[199] The court was correct in holding that this concern outweighed the need to discourage perjury.[200] Non-payment of spousal support can have long-term, adverse economic effects on the forsaken spouse.[201] Perjury, solely to obtain a quick divorce, does

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fraudulent conveyance some years later. Because "[n]either law nor morals would be vindicated by permitting a man to steal his former mistress's property by forgery perpetrated after all personal or property transactions between them had come to an end," the court in *Maskell* granted relief to the former mistress. *Schneider*, 335 Md. at 510, 644 A.2d at 515. "[I]f the Court literally were to leave the parties where they found them . . . the former mistress would be given no relief." *Id.* (quoting Maskell v. Hill, 189 Md. 327, 335-36, 55 A.2d 842, 845-46 (1947)).

193. *Schneider*, 335 Md. at 509-10, 644 A.2d at 515.

194. *Id.*

195. For a discussion of *Baxter v. Wilburn*, see *supra* text accompanying notes 60-73.

196. *See supra* note 191 and accompanying text.

197. *See supra* note 191 and accompanying text.

198. *See supra* note 191 and accompanying text.

199. *Schneider*, 335 Md. at 518, 644 A.2d at 519. The court concluded

> that the dismissal of Janet's complaint would do little to discourage perjury in divorce actions. Rather, under the facts alleged, dismissal would be contrary to strong public policy, because dismissal would reward the perjury of economically superior spouses by neutering their contractual obligations of support to economically dependent spouses.

Id.

200. *Id.* at 516, 644 A.2d at 518.

201. Recently, a Boynton Beach, Florida man was ordered to pay $132,718 in back child and spousal support. Trevor Jensen, *Deadbeat Gets Stiff Judgment; Judge Issues Largest Levy Ever Against Dad*, SUN-SENTINEL, June 16, 1995, at 7B. It was the largest judgment ever levied against a "deadbeat" parent in a federal

not adversely affect the other spouse; rather, it affects the judicial integrity of the courts.[202]

Implicit in the majority's decision to award specific performance of the spousal support contract was the assumption that the contract itself was valid.[203] As the dissent pointed out, "there can be no question but that a contract based on the consideration that the promisee will obtain a divorce, to which the parties are not entitled, and will do so by committing and suborning perjury, is an illegal contract."[204] The dissent added that "[p]romising not to include a claim for alimony in an improperly obtained divorce is a part of the illegality. A bargain conditional, even in part, on obtaining a perjured divorce is not a bargain that ought to be enforced by a court of equity."[205]

Under the dissent's view, Janet would have been left in a precarious position because her perjury was seen as the primary consideration given in exchange for Mark's promise to pay "$400 or $500 every two weeks."[206] There would be no way for Janet to enforce Mark's promise because it was given in exchange for illegal consideration and was, thus, unenforceable.[207] Perhaps the dissent

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case. *Id.* Similarly, a Sacramento, California man who owed $237,261 in spousal and child support was finally captured after 10 years on the lam. *Deadbeat Dad Pleads Guilty*, SACRAMENTO BEE, Mar. 3, 1995, at B3. Since 1985, the man had avoided making required monthly spousal and child support payments. *Id.* Furthermore, a sweep of "deadbeat" parents on Long Island, New York uncovered a dentist who owed $176,000 in spousal support payments. Alexander C. Kafka, *53 Accused as Support Deadbeats*, NEWSDAY, Feb. 8, 1995, at A21. There are an estimated 30,000 to 40,000 families in Nassau County, N.Y. who are owed support payments of some kind. *Id.*

202. Both parties benefit from the perjury because they are granted an absolute divorce. The court is the only loser. Having granted a divorce on fraudulent grounds, the court's integrity is called into question. "Judicial integrity is endangered when judicial powers are interposed to aid persons whose very presence before a court is the result of some fraud or inequity." Manown v. Adams, 89 Md. App. 503, 511, 598 A.2d 821, 825 (1991), *rev'd*, 328 Md. 463, 615 A.2d 611 (1992). For additional discussion, see *supra* text accompanying notes 33-37.

203. The majority opinion never discussed whether Mark's letter to Janet constituted a valid contract for spousal support.

204. Schneider v. Schneider, 335 Md. 500, 521, 644 A.2d 510, 521 (1994).

205. *Id.* at 524, 644 A.2d at 522.

206. The dissent noted that "[t]he trial judge quite properly recognized that seeking a fraudulent divorce through perjured testimony constituted part of the consideration for the alleged spousal support agreement. The other part of the consideration was foregoing any claim for alimony in the fraudulent divorce action." *Id.* at 521, 644 A.2d at 520 (Chasanow, J., dissenting).

207. Because the initial spousal support agreement was illegal, subsequent events were immaterial; the support agreement was not enforceable. The court never resolved the unclean hands issue and whether or not Janet's guilt for the

assumed that Janet could have separated from Mark and could have waited the required twelve months[208] before filing for a legitimate absolute divorce. This assumption would have been unfounded, however, if one accepted Janet's contention that she was pressured and intimidated by Mark to get a "quick divorce."[209] Moreover, had Janet testified truthfully, then the divorce would have been denied,[210] and Janet might have been left without spousal support.[211] Assuming that Janet, due to Mark's influence, had no choice but to seek a quick divorce through perjured testimony (if she wanted to be sure of receiving any kind of spousal support),[212] her predicament became something of a Catch-22: If she committed perjury, she got the absolute divorce, but she could not enforce the spousal support agreement; if she did not commit perjury, she could not get an absolute divorce, and she ran the risk that Mark would not provide any spousal support.[213]

Judge Chasanow's dissenting opinion is unconvincing for two reasons. First, it advocates a position contrary to public policy. Courts favor the enforcement of spousal support payments as a matter of public policy, to insure that economically superior spouses do not breach their duty of support and to provide dependent spouses with the means to "get back on their feet."[214] Otherwise, one spouse

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perjury was as great as Mark's guilt. *Id.* at 508, 517, 644 A.2d at 514, 519. Even if Janet argued that she was pressured into accepting the support agreement, all she could have asked for was rescission of the contract, which would have left her without spousal support.

208. MD. CODE ANN., FAM. LAW § 7-103(a)(3) (1991). Voluntary separation requires that the parties live separate and apart, without cohabitation, before filing an application for divorce. *Id.*

209. *See supra* text accompanying note 8.

210. Mark's uncorroborated testimony would not have sufficed. *See supra* note 158.

211. A court may still order alimony even if a divorce is not granted. MD. CODE ANN., FAM. LAW § 11-101 (1991). Maryland law requires that a party requesting alimony show grounds for a divorce although it does not compel a party to actually obtain a divorce or to prove that he could have obtained a divorce if he had so desired. Wallace v. Wallace, 290 Md. 265, 272, 429 A.2d 232, 236 (1981). If Janet had testified truthfully, there would have been no grounds for a divorce. Adultery was the sole ground alleged in the complaint. Schneider v. Schneider, 335 Md. 500, 505, 644 A.2d 510, 513 (1994). Thus, the court would have been precluded from awarding alimony, and Janet would have been left to rely only on Mark's promise of support.

212. Because Janet's perjury also contaminated the spousal support agreement, she could not seek to enforce it. Schneider v. Schneider, 335 Md. 500, 524, 644 A.2d 510, 522 (1994) (Chasanow, J., dissenting) ("A bargain conditional, even in part, on obtaining a perjured divorce is not a bargain that ought to be enforced by a court of equity.")

213. Given that Mark stopped making spousal support payments after the divorce was granted, it appears unlikely that he would have made timely payments in the absence of a divorce decree.

214. *See supra* text accompanying notes 137-39.

could unduly pressure the other into securing a quick divorce through perjury knowing that a court would not enforce any prior spousal support agreement. Second, the consideration given for Mark's promise to pay "$400 or $500 every two weeks" was not Janet's perjured testimony but, rather, was Janet's return promise not to seek alimony from the court in a future divorce proceeding.[215] Mark did not tell Janet that he desired a quick divorce until two days after he left the letter, so perjury was not an issue when Janet received the letter.[216] Therefore, Janet was justified in relying on Mark's letter promising spousal support.[217]

Under this view, Janet's subsequent perjury was completely separate from the agreement to pay spousal support.[218] Janet and Mark did not "dirty their hands" in procuring the separation agreement;[219] their fraudulent conduct occurred during the divorce proceeding—a completely different transaction.[220] Thus, if Mark had raised the unclean hands defense, Janet could have rebutted the defense by asserting that the unclean hands doctrine should not have applied because there was no nexus between the transaction at issue and the misconduct.[221] Both the majority and the dissent agreed that Janet would have been entitled to relief under this scenario.[222] Furthermore, the question of whether or not Janet was *in pari delicto* was not reached.[223]

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215. In her complaint, Janet alleged that she relied on Mark's assurances of financial support. In so relying, she abstained from seeking alimony or other monetary relief from Mark. Schneider v. Schneider, 96 Md. App. 296, 299, 624 A.2d 1319, 1321 (1993), *rev'd*, 335 Md. 500, 644 A.2d 510 (1994).
216. *Schneider*, 335 Md. at 504, 644 A.2d at 512; *see also supra* text accompanying notes 151-53.
217. Furthermore, when Janet asked about the settlement of their property, Mark replied that they would handle it themselves, adding: "I've already told you what I will do. You have it in writing." *Schneider*, 335 Md. at 505, 644 A.2d at 512-13. This statement indicated that Mark viewed Janet's promise not to seek alimony as the primary consideration for his promise to pay spousal support.
218. The majority alluded to this proposition when it stated: "*Even if* Janet's claim to support rests on an agreement that also contemplated perjured grounds for divorce, her claim for support is not [largely] dependent on the perjury . . . ." *Id.* at 517, 644 A.2d at 519 (emphasis added).
219. *See supra* notes 41-42 and accompanying text.
220. *See supra* text accompanying notes 156-59.
221. *See supra* notes 38-41 and accompanying text.
222. *See id.* at 518, 522, 644 A.2d at 519, 521. "Janet's fall back position—which I would agree with—is that if she can prove 'oppression' or 'great disadvantage,' she ought to get restitution . . . ." *Id.* at 522, 644 A.2d at 521. (Chasanow, J., dissenting); *see also supra* text accompanying notes 178-79, 189.
223. The *in pari delicto* issue is raised only when the unclean hands doctrine is applicable. Because the unclean hands doctrine was not applicable, it was not necessary to decide whether Janet's guilt was equivalent to her husband's.

Even if the perjury was in some way connected to the spousal support agreement,[224] Janet, for policy reasons, should have the opportunity on remand to prove that she was not *in pari delicto*.[225] If she can do so, she will be entitled to relief.[226]

V. CONCLUSION

In *Schneider v. Schneider*, the Court of Appeals of Maryland highlighted the policy of rigorously enforcing spousal support agreements between husbands and wives.[227] Under *Schneider*, a wife, who admits to perjury in a prior divorce action will have a chance to specifically enforce a contract against her husband for spousal support if she can prove that her degree of guilt is lower than her husband's.[228] *Schneider's* emphasis on public policy concerns, through its resort to the equitable doctrines of unclean hands and *in pari delicto*, sets a wise precedent for other jurisdictions which may be confronted with similar cases in the future.[229]

Frank J. Mastro

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224. Perhaps, on remand, a court will say that Mark made a subsequent, additional promise to keep Janet as the primary beneficiary on his two life insurance policies in exchange for Janet's subsequent, additional promise to lie under oath.
225. *See supra* text accompanying notes 178-79.
226. *See supra* text accompanying notes 178-79.
227. *Schneider*, 335 Md. at 518, 664 A.2d at 519.
228. *See supra* text accompanying notes 178-79.
229. No other jurisdiction has reported a case with facts similar to this one.