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Domestic Relations—Separation Agreements

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one year after accrual. The executor was not appointed until sixteen months had elapsed but he filed his notice of intention within two months and commenced the action within five months of his appointment. His claim was also filed within the two year limit afforded by Decedent Estate Law Section 130.

The court in the instant case said:

> The Syracuse statute required the filing of a claim within six months 'after the cause of action shall have *accrued*' whereas our section 50-e requires filing within 'ninety days after the *claim arises*'. In the *Crapo* case, the claim which the statute demanded had to contain not only a statement of the facts of the accident, but notice also of intention to bring a suit, and it was held that, since only an administratrix could bring the suit, only an administratrix could give notice of intention to sue, and so the time for filing the claim did not start to run until the administratrix was appointed. The present claim, however, was preliminary to suit under section 130 of the Decedent Estate Law, as to which it has been specifically held that the time runs from death, and we have, also, section 50-e itself, which requires filing of the claim within ninety days 'after the claim arises'. The *Crapo* decision is no authority against our holding here . . . . [Emphasis added.]

It is the opinion of this writer that the holding of the instant case will be strictly confined to its facts and will not be applicable to the filing of wrongful death claims in general.

VII. Domestic Relations

Separation Agreements

The Court of Appeals this term has, in two cases,[1] ruled that a wife is entitled to the full amount stated in a separation agreement for the support of herself and her children where the amount stated is unitary and unallocated between herself and the children and, through no fault of hers, she is no longer supporting the children.

The fundamental rule of contracts that a court, as a matter of law, will look only to the agreement to find intent in an unambiguous contract,[2] has always been applied to separation agreements.[3] Courts have refused to apportion the total amount allocated for the support of the wife and the children where the

1. *Nichols v. Nichols*, 306 N.Y. 490, 119 N.E. 2d 351 (1953); *Rehill v. Rehill*, 306 N.Y. 126, 116 N.E. 2d 281 (1953).

2. *Brainard v. New York Cent. R. Co.*, 242 N. Y. 125, 133 N.E. 152 (1926).

3. *Galusha v. Galusha*, 116 N.Y. 635, 22 N.E. 1114 (1889); *Goldman v. Goldman*, 282 N.Y. 296, 26 N.E. 2d 265 (1940).

agreement fails to do so and the agreement itself remains unimpeached.[4]

In addition, when the separation agreement is incorporated in a divorce decree of a sister state, it becomes part of the decree[5] as in the instant cases, and therefore it becomes entitled to full faith and credit.[6] Consequently an allocation can not be made by a New York court as it would substantially impair the rights established in the prior decree.[7]

VIII. Insurance

Airline Trip Insurance

An often noted aspect of modern commercial distribution is the increased use of automatic vending machines as purveyors of myriad goods and services. Not the least imaginative use of these devices is in the sale of short-term policies of specific-risk life insurance. The attendant consequences of possibly misleading advertising, and its effect on construction of the insurance policy, together with the difficulty of applying proverbial doctrines of contract law where the offeror is a mechanical agent, were the subject of decision in *Lachs v. Fidelity & Casualty Co. of New York.*[1]

Decedent had purchased an insurance policy from such a machine located in front of the ticket counter at Newark Airport. In letters ten times larger than any other words on the machine, prominently lighted, were the words: "Airline Trip Insurance." This legend was repeated several times in smaller print on the machine and in the application. Across the face of the policy, which consisted of twenty-two inches of printed matter, in large type, appeared the words: "This Policy Is Limited To Aircraft Accidents Read It Carefully." But the policy was accompanied by an envelope, presumably to permit the purchaser to mail it immediately.

The coverage clause in the policy provided that the insurance would apply only to injuries sustained by reason of a flight on a "Scheduled Airline", defined in the clause as "a Civilian Scheduled Airline maintaining regular, published schedules and licensed for . . . transportation of passengers . . ."

4. *Harwood v. Harwood,* 182 Misc. 130, 49 N.Y.S. 2d 727, (Sup. Ct.), aff'd, 268 App. Div. 974, 52 N.Y.S. 2d 573 (1st Dep't 1944); *Cogswell v. Cogswell,* 130 Misc. 541, 224 N.Y. Supp. 59 (Sup. Ct. 1927).

5. 1 Nelson, Divorce and Annulment § 13.51 (2d ed. 1945).

6. 3 Nelson, Divorce and Annulment §§ 33.20, 33.24 (2d ed. 1945).

7. *Schacht v. Schacht,* 295 N.Y. 439, 68 N.E. 2d 433 (1946).

1. 306 N.Y. 357, 118 N.E. 2d 555 (1954).