

**CONTRACT DOCTRINE AND
MARITAL AGREEMENTS IN
NEW YORK**

THIRD EDITION

ELLIOTT SCHEINBERG, ESQ.

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ISBN: 978-1-57969-476-0
Product Number: 41596
SKU: 4104159001601

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INTRODUCTION

It is the law in New York that prenuptial and postnuptial agreements are governed by the same doctrines of contract law as are ordinary agreements. These volumes focus exclusively on marital agreements made in contemplation of marriage (prenuptial agreements) and during the course of the marriage (postnuptial agreements), such as settlement agreements and separation agreements. The topics address all phases and foundational principles of contract doctrine that implicate marital agreements, and tackle, head on, some of the thorniest, challenging, and most complex issues confronting the practitioner.

The text integrates an exegetical explication of contract doctrine with a hands on application to every aspect of marital agreements. The material does not simply set forth pithy rules of law. It breaks down and digests landmark decisional authority and other difficult case law in original and nuanced analyses. Cases are interwoven and blended into an analytic pattern with clear answers so that the reader is not simply left to retrieve isolated principles of law.

This treatise contemplates the needs of the most seasoned practitioner as well as those of newly admitted counsel. The complexity of many issues required painstaking analysis in monograph presentation where each component of the thesis has been developed in an easy to follow manner without compromising sophisticated and nuanced thinking demanded by the most proficient practitioners. Counsel, at any level, is comfortably introduced to and guided throughout via a preliminary discussion of the foundational tenets critical to a full satisfying comprehension of the subject area. This work functions as a reference text, whether seeking to uphold or to vacate an agreement. The clear grouping of the subject matters frees researchers from wasteful hunting for precedent authority. Hard-to-find quotes, “gems,” are consistently brought together topic by topic.

The intent is to present erudite and targeted discussions in a clear, easy-to-read manner thereby making mastery and assimilation of the many topics effortlessly digestible without compromising the high level of exacting and honed scholarship demanded by the most discriminating practitioners.

The rules governing retainer agreements under 22 N.Y.C.R.R. § 1400, et seq., are not discussed herein in detail (see Chapter 45, “How Courts Have Construed Contractual Language”).

ABOUT THE AUTHOR

Elliott Scheinberg is an attorney whose practice is limited to matrimonial appeals. Mr. Scheinberg consults with practitioners on appeals, memoranda, briefs, motion and trial practice related to matrimonial law.

Mr. Scheinberg has authored a variety of chapters for Matthew Bender's New York Civil Practice, Matrimonial Actions, and is the author of "Grandparental Visitation: Its Evolution in New York State," published in the Cardoza Public Law, Policy & Ethics Journal.

Mr. Scheinberg is also a contributing author to numerous articles in the New York Law Journal. and the New York State Bar Association's Family Law Review. His articles have been cited in McKinney's Consolidated Laws of New York Annotated and by courts. Mr. Scheinberg has written many amicus curiae briefs to the New York State Court of Appeals, having been cited in one decision, with others adopting arguments advanced in the brief. His many lectures include presentations at the Appellate Division, the Judicial Institute, and bar associations.

Mr. Scheinberg serves on the Board of Managers of the American Academy of Matrimonial Lawyers and co-chairs its Amicus Curiae and CLE Committees and is also a member of and lecturer for NYSBA's Committee on Court of Appellate Jurisdiction. He also serves on NYSBA's Executive Committee of the Family Law Section and is the co-chair of the section's Amicus Committee.

A graduate of the Benjamin N. Cardozo School of Law in New York City, Mr. Scheinberg, prior to entering law school, was a doctoral candidate in Romance Philology at the University of Chicago, and a teaching fellow in the French Department, Romance Linguistics Program, at the University of Michigan in Ann Arbor. He received his Bachelor of Science in Mathematics and French from Brooklyn College, Brooklyn, N.Y.