

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

FIFTH EDITION

ELLIOTT SCHEINBERG, ESQ.

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DEDICATIONS

To My Wife, Deborah

For your love and devotion. For your gentleness. For your goodness. For your warm smile and tender words that greet me every morning and inaugurate each new day with happiness and sunlight. For your integrity. For your extraordinary character. For your keen mind, striking intellect and quick wit which embrace and advance the love of scholarship and learning, the touchstone and the hallmark of every member of your family. You are a woman of valor who infuses these joys into my life every day, which inspire my deepest gratitude and devotion. Thank you for your family (well, most of 'em anyway 😊).

Every day is a blessing that is gifted to me through your happy smile, gentle kindness and soft spoken patience. May your blessing, our blessing, radiate and endure.

I dedicate this volume in Loving Honor and Memory of my wife, Angela Susan Scheinberg, who was murdered in the World Trade Center, on September 11, 2001. In addition to exemplifying class, elegance and grace, Angela was the most noble and ethical person I have ever met or will ever meet. Her life was a paradigm of kindness, virtue, and selflessness. Angela's moral compass and goodness were beacons of light. She displayed compassion for every living thing. Angela's unparalleled wisdom was wrenched from her daughters, Janine Ashley and Linda, whom she loved endlessly and unconditionally. There was still so much that I had and needed to learn from her. I could have been so much more with Angela in my life.

I further dedicate this volume in Memory and in Honor of all the victims and families of September 11th in the World Trade Center, the Pentagon, American Airlines Flight 77, and United Airlines Flight 93. The 9/11 victims were murdered by those professing a deity and pledged to an ideology that required the random wholesale murder of people who had proved an ability to coexist peacefully in a fully elected democratic Society. God Bless America.

I dedicate this volume in honor of the first responders who heroically gave their lives and sustained permanent debilitating illnesses and injuries, to enter the blazing inferno of death to save and rescue others without any consideration for their own safety.

To all victims of terror in England, Israel and Spain.

I honor the victims and the families of the Oklahoma City bombing, April 19, 1995. I am grateful for the friendship and love of the wonderful families from Oklahoma City who came to New York to stand beside us to shoulder our grief. It is with deep love that we are eternally united and bonded.

It is with the deepest love and gratitude that I honor my parents, Zev and Elisa Scheinberg. After having risen from the ashes of the concentration camps where their families perished, including parents and two children, my parents shepherded me along life's path with the three most important values that served as their North Star, and, thankfully, eventually mine: charity towards my fellow man, regardless of race, faith, or color—that no matter how little I might ever have many others would have still less; a love of and thirst for learning; and patriotic devotion to the United States. My mother was valedictorian at her university in Europe and spoke eight languages, as had her mother. She continued her

masterful education on these shores. Her studies in literature and the performing arts inspired my love of opera. My father spoke seven languages and was well-versed in the Talmud. It was impossible to find either of my parents without a book in hand. Even though we lived in slums when I was growing up, my father worked two jobs and my mother one to provide me with the best education available. They told me that they would always love me provided that I earned an honest living and lived a charitable life. They made so many sacrifices for me that I wish I had more than a razor-thin paragraph in which to capture their greatness. It is only because of their lifelong efforts that this treatise was possible.

To my daughter, Linda Tan. What an extraordinary woman you have grown into. The pride that I feel cannot be set in words. Linda is charismatic and extremely disciplined with a keen intellect. Her mother and father, Shao Xia and Keng Seng Tan, and her mom, Angela, are undoubtedly beaming with pride and nachat as they look down upon her as she matures professionally and personally. Linda adored Angela and looked up to her for guidance and wisdom. Linda eagerly absorbed all that Angela had to offer—and there was so much more. The challenges that have confronted Linda during her tender years have locked her moral compass in a flawless direction. Linda's distinctive intellectual prowess and curiosity are an inspiration and establish her as a formidable sparring partner. Her integrity at all levels is exemplary. I am proud to be her father because it has helped me become a better human being.

It is with the greatest humility and reverence that I can ever marshal from the innermost recesses of my heart and soul with which I thank and bless St. Clare's Church, Staten Island, NY, for the extraordinary kindness that the parish bestowed, day after day, week after week, month after month, and year after year, upon the 9/11 families whose hearts, souls, and spirits had been mortally wounded. There can be no words to ever properly or sufficiently express the eternal gratitude that I will carry for St. Clare's in my heart. Were I to live many more lifetimes I could never sufficiently thank you or express my deepest appreciation and love for the warmth, love, and always ready shoulder that you provided to sustain us. Your selfless compassion, most noble friends, was our lifeline and is a true example of how you live and complete God's word. When daily living was a painful chore, you offered your hearts and spirits. I respectfully recognize those who stood at the helm of St. Clare's Outreach because you extended yourselves beyond all limits and measures during our darkest hour: Dennis Mckeeon, Chairman; Committee: Stephen Rynn, Jim

Mazzarella, Tony Cimaglia, Bernice Fischer, Maureen Atkinson, Jack Lamantia, and Jim Connors. God Bless You, St. Clare's.

I further dedicate this treatise to Voices of September 11th which was co-founded by 9/11 family members Mary Fetchet, LCSW and former educator. Mary's 24-year-old son, Brad, perished in the World Trade center on 9/11, and Beverly Eckert, whose husband, Sean Rooney, also perished that day, tragically lost her own life in a plane crash, in 2009. Voices of September 11th came to life immediately following the attacks on September 11th. The mission of VOICES is to commemorate the lives lost on 9/11, provide long term support services to members of the 9/11 community, advocate for reforms to make our country safer and provide ongoing assistance to those impacted by mass trauma. The organization provides information resources to over 14,000 registered members from around the world.

The groups and organizations that mobilized on behalf of the victims and their families.

I express my deep love for the once six strangers who on 9/11 became eternally bonded with me and with each other as the closest family imaginable. For the ensuing years we sustained each other throughout the excruciatingly painful seconds, minutes, hours, days, weeks, months, and years that followed that grim and fateful Tuesday. We "were there" for one another, no matter the hour, to cry together and to keep our shattered hearts from further crumbling so that we could, at least, put up a front, transparently feeble as it was, for our children and grandchildren. Together we grew and learned to walk again. My eternal family: Nick M. Chiarchiaro, Michelle Ludwig, Denise Matusa, Lenore Raimondi, Cheri Magnus Sparacio, and Roseann Stabile.

Jackie Yudelowitz, LCSW, is a woman of extraordinary depth, intelligence, and understanding with a much greater heart. I am honored to call Jackie one of my dearest and most precious long-time friends and family. Jackie and Angela were best friends who explored the intellectual and philosophical aspects of life to better themselves and the world around them. Jackie was critical in shepherding me through my grief, always there as a pillar of strength and loving support during my most painful hours. I could never have learned to stand up and walk again without her warm determined guidance. No time was ever inconvenient for Jackie. Her heart was an open door to me whenever my heart ached and cried, no matter how many times a day. No words can sufficiently fashion my heartfelt love.

Jonathon and Dina Leader are unique in their compassion. Jon and Dina opened their hearts and their home to many scores of 9/11 families. They collected us, broken emotional and spiritual shards, and united us under their roof. Jon and Dina built a haven where we marked holidays tearfully, when traditional holiday greetings were all but impossible to utter. Sighs, silent tears, and gazes etched in sorrow were all that we could marshal as initial means of communication. They have continued the tradition. The Leaders extended themselves to provide for individual families who were paralyzed in sorrow and could no longer help themselves. Jon and Dina went to extraordinary and unimaginable limits: on their own initiative, they crafted a bill on behalf of disabled 9/11 families, summoned congressional lawmakers in Washington, and ushered the new legislation into federal law. As for me, Jon and Dina embraced me as an enduring family member. I can never adequately express my deepest love, respect, and gratitude.

Robert Kelner, Esq., and Gail Kelner, Esq., preeminent attorneys whom I am fortunate to count as long-time friends. Bob and Gail extended themselves to my family as well as to other 9/11 victims with selfless readiness and dedication. I am grateful to Bob for his sensitivity in having introduced me to Bari Chase, Esq., Program Director of the New York County Lawyers Association, who welcomed me into the NYCLA family. I am very grateful to Bob, Bari, and NYCLA for appreciating the healing value of this grand step.

My respect to Bill Doyle, and his wife, Camille, who, despite the tragic loss of their son, Joseph, devoted themselves to helping others 9/11 families.

Wendy Pellegrino, our Earth Angel, who, thankfully, was not directly impacted by the events of 9/11, toiled with no respite to fight New York City officials to convert an area of land into a magnificent memorial for the victims of 9/11, known as Angels' Circle. Wendy makes every effort to adorn the Circle with seasonal decorations for the families. Angels' Circle blossomed in Wendy's heart and she worked exhaustively until it came into full bloom. It is under her gentle watch that its beauty continues.

Fred Ariemma is a man who selflessly honors the victims by adorning and maintaining the memorial created by Wendy Pelligrino and the Staten Island Memorial, Postcards, at St. George, with splendorous seasonal flowers and plants. Wendy's and Fred's humility are exemplary. Fred, Michael and Anthony also paved a cement walkway so that the families

would not walk in mud. They have also installed benches to facilitate visits by the elderly.

Brian Hall, of Hall Monuments, donated a touchingly beautiful 20-foot Angel Statute as a loving reminder of our loved ones' special place in heaven and as notice to all who approach or pass by of the appropriate reverence due at this hallowed ground.

The three Staten Island fence companies that joined together to build a magnificent gate to enclose the circle and give it an aura of solitude: Thomas Iron Works, Fence Depot, and Boro Fence.

St. Joseph Hill academy for the "eternal flames" placed in front of each Angel.

Kevin Walsh, Walsh Electric, Staten Island, NY.

The Teddy Atlas Foundation.

The Steph Seil Foundation.

The Staten Island Bags and Pipes 9/11 Ceremonies.

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Sam and Rose Esposito. Solonge, Joe, and Julie Berte. Elmer Bochen.

Also to Borough President James P. Molinaro; now District Attorney (then Deputy Borough President) Dan Donovan; now State Senator (then City Councilmen) Andrew Lanza, now Congressman (then City Councilman) Michael McMahon, City Councilman James Oddo; Community Board Chairmen John Antoniello, George Caputo, Lou Caravone; for their efforts to develop a permanent government sponsored memorial which captures our loved ones with dignity and grace. Also to State Senator Andrew Lanza and Congressman Michael McMahon who spearheaded the tribute to our loved ones by renaming our streets in their honor.

To Masayuki Sono, who with grace, sensitivity, and simple elegance designed the memorial in Staten Island, NY, known as "Postcards," which honors our loved ones.

It is with great pride that I honor Aaron Weitz, Esq., and his wife, Joyce. Aaron is my best friend who began as my mentor and evolved into my “older brother” and I his “kid brother.” Aaron possesses extraordinary Talmudic scholarship, a keen exegetical mind, and a sharp wit able to draw from many sources. He is impressively multilingual and is musically gifted. I have learned from him about any and every imaginable subject area. I am honored that he allowed me to evolve into his intellectual sparring partner.

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It is with great respect that I express my deepest gratitude to the following leaders in the practice of Matrimonial Law for selflessly giving of their time to review the manuscript.

Hon. Justice Sondra Miller (ret. Associate Justice, Appellate Division, Second Department).

Allan Mayefsky, Esq.

Patrick O'Reilley, Esq.

INTRODUCTION

It is the law of the State of New York that prenuptial and postnuptial agreements are subject to the principles of contract construction and interpretation. This erudite two-volume, forty-five chapter reference studies all doctrinal nuances applicable to the enforcement and invalidation of marital agreements in unparalleled depth. Exegetical explication is the touchstone of this work; a complete analytical immersion into the abyss of the thorniest and most complex issues confronting the practitioner with no issue left unexamined.

The treatise anticipates every need of even the most seasoned practitioner by painstakingly examining the elements and thesis of each subject area. Counsel, at any level of experience, is comfortably introduced to and guided throughout each topic via a preliminary easy to read explication of its foundational tenets, thereby making mastery and assimilation of the many topics effortless without compromising the highest level of exacting, honed scholarship demanded by the most discriminating practitioners.

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, including litigation strategy involving the enforceability of marital agreements.

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Mr. Scheinberg is a graduate of the Benjamin N. Cardozo School of Law. Prior to entering law school, he was a doctoral candidate in Romance Philology at the University of Chicago, and, before that, a Teaching Fellow in the French Department, and graduate student in the Romance Linguistics Program at the University of Michigan. He received his Bachelor of Science in Mathematics and French with honors from Brooklyn College, Brooklyn, N.Y.