

# TO BE OR NOT TO BE: Postnuptial Agreements in New Hampshire

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## I. INTRODUCTION

Today, postnuptial agreements are popular in the United States, but they are not commonly used in New Hampshire. This begs the question: Can they be? This article focuses on the status of postnuptial agreements under current New Hampshire law and if it is possible for the postnup to be valid and enforceable. “To be, or not to be: that is the question.”<sup>1</sup>

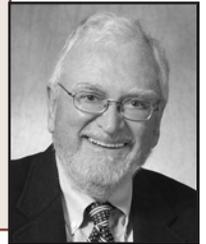
According to a recent survey conducted by the American Academy of Matrimonial Lawyers, forty-nine percent (49 percent) of family law attorneys have seen an increase in preparing postnuptial agreements since 2002.<sup>2</sup> The majority view across the nation favors postnuptial agreements, as demonstrated by the 35 states that currently validate some form of spousal contract.<sup>3</sup> The contributing factor to the rise in the use of postnuptial agreements may be that divorce and second marriages are common today.<sup>4</sup> The majority view is that postnuptial agreements are no longer contrary to public policy and do not encourage or facilitate divorce.<sup>5</sup> However, some states permit postnuptial agreements only upon the death of a spouse when it relates to the separate property of the parties, and when divorce or separation between the parties is not imminent.

To many, the concept of a postnuptial agreement may not make sense initially or may even sound absurd. The first reaction most often is . . . “Why would someone sign one?” The simplest reason is because *both* parties want to make the agreement for financial reasons and because under contract law principles, they can. The postnuptial agreement can be an effective tool in certain circumstances.

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This article explains the postnuptial agreement, a fairly new trend in the law, and discusses general requisites for a valid postnuptial agreement should New Hampshire join the majority view by a judicial determination or legislation. Importantly, this article closely examines New Hampshire case law regarding postnuptial agreements and argues that they are enforceable and valid contracts under contract law principles. Finally, for informative and illustrative purposes, secondary sources are discussed from jurisdictions where postnups are frequently utilized by wealth advisors, estate planning attorneys and family law practitioners, without hesitation.

## A. WHAT IS A POSTNUPTIAL AGREEMENT?

Simply put, a postnuptial agreement is a contract made between a husband and wife after marriage. The contract defines the marital rights and obligations in the event of separation, divorce and or death.<sup>6</sup> Some jurisdictions limit the scope of the postnup to a division of assets upon the death of the parties. Other jurisdictions do not limit the scope and allow the alteration of marital rights and obligations upon separation and divorce, and a division of assets upon death.<sup>7</sup>

A postnuptial agreement is very similar to a prenuptial agreement, except that it is signed after marriage, rather than before. These contracts may also be referred to as marital, interspousal, separation or property settlement agreements. For purposes of this article, a postnuptial agreement may be referred to as a “postnup.”

## B. WHEN TO USE A POSTNUP

There are various reasons to use a postnup. Because divorce is so common today,<sup>8</sup> the most likely scenario involves second marriages where one seeks to preserve their assets for children of previous relations upon death in an amount greater than allowed by statute. For example, in New Hampshire, if a decedent dies leaving a will, under RSA 560:10, the surviving spouse may elect to take one-third of the deceased spouse’s real estate and personalty, after waiving his or her interests under the will and homestead rights, if the decedent left any surviving children. The result is different when a decedent dies intestate in New Hampshire, leaving a surviving spouse and children

who are not issue of the surviving spouse. In the latter scenario, RSA 561:1, I (d) provides that the surviving spouse receives one-half of the deceased spouse's estate. Through marriage, a surviving spouse is automatically afforded substantial inheritance rights in the other spouse's estate simply by way of the marital relationship. By utilizing a postnup, one who failed to plan properly prior to marriage, can leave their children of previous relations more assets, altering the statutory default amount.

A second marriage is not the only instance when a postnup may be useful. It may also be used to revise the terms of an existing prenuptial agreement, or to determine a course of action when one spouse receives a substantial gift, inheritance or windfall from another source. Postnups may also be appropriate to resolve financial issues in the marriage.<sup>9</sup>

### C. THE ESSENTIAL CRITERIA

There are no statutory provisions authorizing postnuptial agreements in New Hampshire, nor has the New Hampshire Supreme Court specifically stated that contract law principles apply to postnups. However, the court in *Narins v. Narins*<sup>10</sup> upheld an out-of-state postnup based on contract law principles, thus inferring that contract law principles are, in fact, applicable.

In New Hampshire, it is well-settled common law that “[a] valid, enforceable contract requires offer, acceptance, consideration, and a meeting of the minds.”<sup>11</sup> Further, “[t]he parties must have the same understanding of the terms of the contract and must manifest an intention, supported by adequate consideration, to be bound by the contract. . . .”<sup>12</sup> to satisfy the basic ‘meeting of the minds’ requirement. It is imperative that a postnup be supported by adequate consideration at the time the contract is made<sup>13</sup> and that particular attention is given to this aspect of the contract. A practitioner must view the circumstances of each case and the rights released by the parties and they should follow New Hampshire case law regarding prenuptial agreements when drafting a postnup or when attempting to enforce one.<sup>14</sup> A word of caution — computing the consideration of the contract may be tricky since the marriage cannot be the consideration.<sup>15</sup>

Due to the confidential nature of the marital relationship, spouses contracting with one another “must exercise the highest degree of good faith, candor and sincerity in all matters bearing on the terms and execution of the proposed agreement, with fairness being the ultimate measure.”<sup>16</sup> The doctrine of fairness mandates that, prior to executing an agreement, both parties have “an opportunity to seek independent advice and a reasonable time to reflect on the proposed terms.”<sup>17</sup>

In *MacFarlane v. Rich*,<sup>18</sup> the New Hampshire Supreme Court set forth the test to determine the validity of a prenuptial agreement based on contract law principles. The court held that standards of fairness apply and require that the contract is not made under “fraud, duress or mistake, or through misrepresentation or nondisclosure of a material fact.”<sup>19</sup> Further, the prenuptial agreement cannot be unconscionable and the facts and circumstances must not change since the execution of the agreement making the contract unenforceable.<sup>20</sup> The court explained that the party seeking invalidation of the contract may rebut the presumption of validity by proving one or more of the

above-enumerated standards of fairness.<sup>21</sup> These standards should apply to a postnup as well.

The court is the final authority that determines when the provisions of a marital contract are equitable, considering all circumstances.<sup>22</sup> For this reason, the parties to a postnup should be advised by the drafting practitioner that the agreement can ultimately be overridden by the court for equitable purposes.

### D. NEW HAMPSHIRE'S COMMON LAW

There are no statutory provisions specifically authorizing or prohibiting postnuptial agreements in New Hampshire. However, in *Foote v. Nickerson*<sup>23</sup> the New Hampshire Supreme Court directly addressed the validity of postnuptial agreements at the turn of the twentieth century in 1901. In *Foote*, the court held that a postnup “renouncing marital rights is void.”<sup>24</sup> However, the court very carefully and clearly stated that a “[postnuptial] agreement touching property rights may be valid.”<sup>25</sup> In *Foote*, the court grappled with the validity of postnups made by a married couple, when they contemplated immediate separation and at a time when the courts did not grant divorce.<sup>26</sup> The agreements between Mr. and Mrs. Foote renounced marital rights and provided for a division of their marital assets.<sup>27</sup> After separating and living apart from one another and after signing postnups, Mrs. Foote died. Her husband then sought to elect his statutory distributive share from her estate, disregarding their postnups.<sup>28</sup> Ultimately, the court held that the postnups were “regarded as against sound public policy, and consequently, illegal and void.”<sup>29</sup> However, the court carefully explained that their decision was based on Mr. and Mrs. Foote's covenant to live apart, which was not distinct from their agreement as to a division of their property: “there was no separate promise, upon separate consideration, as to the legal and illegal parts.”<sup>30</sup> The court determined that the main intent of Mr. and Mrs. Foote was to dissolve their marital relationship and by applying the doctrine of severability to the agreements, the court deemed the postnups entirely void.<sup>31</sup> The court explained that because the postnups sought to dissolve the marriage contract and “. . . put an end to the various duties and relations resulting from [the marriage] . . . [the postnuptial agreements] must be regarded as against sound public policy, and consequently, illegal and void.”<sup>32</sup> More importantly, the court stated that “[i]t [was] not necessary to now consider how far the statutory power of husband and wife to contract as to property matters extends, or whether their agreement to release prospective property rights in each other's estates could, in any event, be enforced.”<sup>33</sup> Hence, in *Foote* the New Hampshire Supreme Court left undecided the issue of whether a postnup can be a valid and enforceable contract when it provides for a division of separate assets upon death.

Six years later, the New Hampshire Supreme Court reiterated its position on postnups in the decision of *Hill v. Hill*.<sup>34</sup> The court held that a married couple may

[M]ake a valid agreement between themselves touching their respective rights in each other's property — a question not considered [by this court] — [but] they cannot make a valid contract renouncing their marital rights; and if covenants of both kind should occur in the contract, their validity would depend upon whether they were

independent and their considerations distinct.<sup>35</sup>

As in *Footte*, the court in *Hill* found the entire postnup illegal and void due to the consideration aspect of the contract.<sup>36</sup> Also, it was not clear to the court that Mrs. Hill would have entered into the postnup releasing property rights in her husband's estate if he did not agree to allow her to live apart from him.<sup>37</sup> Thus, under New Hampshire common law a postnup may be valid and enforceable upon death when it relates to a division of separate assets and when the consideration of the contract is separate and distinct from covenants of the parties to separate or divorce.

However, from a public policy perspective, the New Hampshire Supreme Court's decisions in *Footte* and *Hill* were clear that a renunciation of marital rights between a husband and wife through use of a postnup, when made in contemplation of separation or divorce, is void because it does not promote or encourage marriage.<sup>38</sup>

Although New Hampshire courts will not validate and enforce a postnup renouncing marital rights when made in contemplation of separation or divorce, an exception was made in *Narins v. Narins*.<sup>39</sup> In *Narins*, the court enforced a postnup that was valid under New York law, and then later incorporated, into a Mexican divorce decree.<sup>40</sup> The New Hampshire Supreme Court held the agreement was fair and made in good faith.<sup>41</sup> In *Narins*, the husband and wife's agreement included provisions regarding the support and custody of the children, a division of the assets and covenants not to claim an interest in the other spouse's property, with divorce of the parties imminent.<sup>42</sup> After the divorce, the husband became a New Hampshire resident and then argued that the postnup was unenforceable under New Hampshire common law because it was against public policy.<sup>43</sup> The court rejected the public policy argument, and enforced the postnup explaining that:

So long as no public policy against the contract appears at the forum, and the contract seems to be a fair one, the effort will be to choose, from among the systems of law having a substantial connection with the contract, one which will permit a good faith effectuation of the parties' intent to have an effective contract.<sup>44</sup>

*Narins* creates an avenue for individuals to utilize a postnuptial agreement from another jurisdiction when it is fair, made in good faith and valid under the laws of the jurisdiction that originally governed it.

## E. STATUTORY LAW THAT INFERS ACCEPTANCE OF POSTNUPS

Under contract law principles in New Hampshire, it is well settled that a husband and wife may contract with one another regarding separate property. Specifically, RSA 460:2 provides:

Every married woman shall have the same rights and remedies, and shall be subject to the same liabilities in relation to property held by her in her own right, as if she were unmarried, and may convey, make contracts, and sue and be sued, in all matters in law and equity, and upon any contract by her made, or for any wrong by her done, as if she were unmarried. No damages shall be allowed

to either spouse in any action based on alienation of the affections of the other spouse.

In 1949, legislation revised RSA 460:2, deleting language that provided "all laws now in force as to contracts and conveyances between husband and wife, and as to rights of the husband in her property or estate, shall not be affected. . ." <sup>45</sup> In *Adams v. Adams*,<sup>46</sup> the New Hampshire Supreme Court interpreted this 'exception' language to relate to contracts only with third parties, and held that it was not "intended to include within its operation contracts made directly with, nor conveyances made directly to, the husband by the wife."<sup>47</sup> The court held that "the unity of person which at common law rendered void all contracts . . . between husband and wife in [New Hampshire] no longer exist[ed]."<sup>48</sup> The court explained that in 1876 there was a "general understanding that the power of a married woman to contract with her husband in relation to her separate estate was not abridged"<sup>49</sup> by RSA 460:2. Hence, under contract law principles, a husband and wife may contract with one another regarding separate property. As a cautionary note, separate property rights most likely will not include the homestead, property acquired during the marriage and property co-mingled during the marriage.

During the twentieth century, legislation was enacted and subsequently abolished, inferring the court's willingness to validate and enforce postnups. In 1971, RSA 458:7-a was enacted authorizing no fault divorce when irreconcilable differences cause an irremediable breakdown of the marriage;<sup>50</sup> RSA 560:3, regarding dower and curtesy rights, was abolished;<sup>51</sup> and RSA 560:15 and RSA 560:16 were enacted in 1971, authorizing the enforcement of antenuptial agreements.<sup>52</sup> In 1976, the New Hampshire Supreme Court upheld a postnuptial agreement from another jurisdiction based on contract law principles in the decision of *Narins v. Narins*,<sup>53</sup> discussed above. In 1981, RSA 460:2-a, enacted under the Domestic Relations section of the New Hampshire Revised Statutes Annotated, authorized antenuptial agreements made in contemplation of marriage.<sup>54</sup>

The legislation and common law 'shifts' suggest a willingness to embrace postnups in New Hampshire. In addition, the fact that postnups are utilized by the majority in the United States<sup>55</sup> today demonstrates they are now "thoroughly developed, definite, persistent and [the] united state of the public mind."<sup>56</sup>

## F. SO WHAT'S ALL THE FUSS ABOUT ANYWAY?

Those against postnuptial agreements typically argue they promote or facilitate divorce when separation or divorce of the parties is imminent or contemplated by the parties, and hence are against public policy.<sup>57</sup> For this reason, some states only allow postnups to take effect upon the death of a spouse, but not upon divorce or separation. Other opponents argue that postnups cannot alter spousal statutory rights so long as the marital relationship exists, including rights and interests under intestacy, homestead and the forced elective or distributive share statutes.<sup>58</sup> Lastly, there is an argument that the nature of the marital relationship is 'special,' creating a duty that prohibits a husband and wife from contracting with one another under ordinary contract law principles.<sup>59</sup>

## G. THE PUBLIC POLICY CONSIDERATION

It is unclear whether New Hampshire must pass legislation to validate a postnup, or if a judicial determination will be sufficient. The New Hampshire Supreme Court in the decision of *Heath v. Heath*<sup>60</sup> said “the marital status may be changed in its conditions and obligations only in the exercise of police power vested in legislative tribunals.”<sup>61</sup> Further, the *Heath* court explained that “[t]he power may not be exercised by the courts through a declaration of a change of public policy.”<sup>62</sup> The court conceded that, to declare public policy, unsupported by legislation, the policy must be “thoroughly developed, definite, persistent and [the] united state of the public mind.”<sup>63</sup> The court explained there are exceptions, but they are made only when it can be justified due to “a pressure of public opinion showing a policy too authentic and insistent to be disregarded.”<sup>64</sup> *Heath* involved a wife who unsuccessfully sought an annulment based on a theory of fraud by her husband, involving misrepresentations he made about his conduct and character prior to the marriage.<sup>65</sup> At the time of the *Heath* decision in 1932, the court did not have the statutory power to annul a marriage. In *Heath*, although the court sympathized with the wife, it would not annul the marriage absent legislation.<sup>66</sup>

Although postnuptial agreements are valid and enforceable contracts in the majority of the United States,<sup>67</sup> and gaining popularity possibly due to the rising divorce rates,<sup>68</sup> it is not clear that public opinion in New Hampshire has reached this threshold requirement.<sup>69</sup> Hence, legislation may be necessary to validate a postnup in New Hampshire.

## H. OTHER JURISDICTIONS: WHAT THEY ARE DOING

As of 2007, the following 35 states allow postnups, authorized by either statute or under common law: AL, AR, AZ, CA, CO, FL, HI, ID, IN, IL, KS, KY, LA, MD, ME, MI, MS, MT, NC, ND, NM, NJ, NV, NY, OH, OR, PA, SC, SD, TN, UT, VA, VT, WI, WV.<sup>70</sup> Some of these states validate and enforce postnups only when the contract releases property rights upon death, while others permit a release of marital obligations and property rights upon death, divorce and separation.

An excellent illustration of the majority view is found in the decision of *Posner v. Posner*.<sup>71</sup> In *Posner*, the Florida Supreme Court explained a change in Florida’s public policy relating to marital agreements, both prenuptial and postnuptial. The court said that it is not “blinded . . . to the fact that the concept of the ‘sanctity’ of a marriage as being practically indissoluble, once entered into . . . has been greatly eroded in the last several decades.”<sup>72</sup> The *Posner* court concluded that when a postnup is made in good faith and meets certain other requirements,<sup>73</sup> the contract cannot be said to facilitate or promote the procurement of a divorce. Further, the court explained the postnup should be valid as to conditions existing at the time the contract was made, subject to increase or decrease by the court upon divorce of the parties and based on equitable measures.<sup>74</sup>

A different approach is illustrated in the decision of *Marsbick v. Marsbick*.<sup>75</sup> In *Marsbick*, an Arizona appellate court reviewed a postnup that was an independent contract and did not merge into the parties’ divorce decree because of a provision in the postnup requiring the contract remain self-sustaining.<sup>76</sup> The postnup provided for

a division of the parties’ assets, custody of their children and support for the wife and children.<sup>77</sup> The court held that the contract may be enforced by an independent action for breach of contract.<sup>78</sup> The court approved, ratified and confirmed the postnup, but did not incorporate its provisions into the final divorce decree.<sup>79</sup> The court explained that the contract was enforceable, surviving separately from the divorce decree, because the parties’ intentions were clear.<sup>80</sup>

## II. CONCLUSION

Postnups are fairly new, but have developed substantially over the last decade. Many individuals and attorneys utilize them as a tool in various estate and financial planning matters. The postnup is not beneficial for everyone and a family law or estate planning attorney should be consulted prior to drafting, executing or enforcing one.

Although New Hampshire’s position on the postnup is unclear at this time, it appears that the New Hampshire Supreme Court could enforce a postnup which meets the criteria enumerated above, so long as it is not effective upon divorce or separation and so long as the scope pertains to only the division of the separate property of the parties upon death. However, absent a clear judicial decision, legislation may be necessary to authorize and validate the postnup.

As an alternative, one may execute a postnup in another jurisdiction and under common law, the New Hampshire courts most likely would uphold the agreement under the circumstances discussed in *Narins*. Florida, Arizona and New York are jurisdictions that have been utilizing postnups for some time.

Even though the postnup might not be suitable for everyone, it would be beneficial for New Hampshire to adopt the majority view for those who could benefit from, and utilize them as a financial and estate planning tool.

In answer to the question posed in this article’s first paragraph, we say: “to be;” rather than “not to be.”

## ENDNOTES

1. William Shakespeare, *Hamlet*, Act III, Scene I.
2. Reni Gertner, *Postnuptial Agreements on the Rise*, Lawyers USA (July 16, 2007).
3. Richard A. Lord, *Agreements Between Husbands and Wives*, 5 Williston on Contracts § 11:7 (4<sup>th</sup> ed. 2006); see also 49 A.L.R. 116 (1927 & Supp. 2007).
4. See Division of Vital Statistics, National Center for Health Statistics, CDC (2005), [www.cdc.gov/nchs/data/nvss/divorce90\\_04.pdf](http://www.cdc.gov/nchs/data/nvss/divorce90_04.pdf) (statistical information).
5. See *Posner v. Posner*, 233 So.2d 381 (Fla. 1970).
6. Elaine M. Bucher, Esq., *Relationship Dissolution Planning Part I: Nuptial Agreements*, 80 Fla. B.J. 43 (2006).
7. *Id.*
8. See Division of Vital Statistics, National Center for Health Statistics, CDC (2005), [www.cdc.gov/nchs/data/nvss/divorce90\\_04.pdf](http://www.cdc.gov/nchs/data/nvss/divorce90_04.pdf) (statistical information).
9. Jillian Mincer, *New to Marriage: the Postnup*, *The Wall Street Journal*, February 24, 2007.
10. *Narins v. Narins*, 116 N.H. 200, 356 A.2d 665 (1976).
11. *Durgin v. Pillsbury Lake Water Dist.*, 153 N.H. 818, 821, 903 A.2d 1003, 1006 (2006), citing *Tsiatsios v. Tsiatsios*, 140 N.H. 173, 178, 663 A.2d 1335 (1995).
12. *Id.* at 821, 903 A.2d at 1006, citing *Fleet Bank-NH v. Christy’s Table*, 141 N.H. 285, 287-88, 681 A.2d 646 (1996).
13. *Id.* at 821, 903 A.2d at 1006.
14. 3 C. Douglas, N.H. Practice: Family Law § 3.12 (3d ed. 2002 & Supp. 2006).

15. 3 C. Douglas, N.H. Practice: Family Law § 3.12 (3d ed. 2002 & Supp. 2006).
16. *Estate of Hollett*, 150 N.H. 39, 42, 834 A.2d 348, 351 (2003).
17. *Id.* at 43, 834 A.2d at 352, citing *Lutgert v. Lutgert*, 338 So.2d 1111, 1116 (Fla. App. 1976).
18. *MacFarlane v. Rich*, 132 N.H. 608, 567 A.2d 585 (1989).
19. *Id.* at 614, 567 A.2d at 589.
20. *Id.* at 614, 567 A.2d at 589.
21. *Id.* at 614, 567 A.2d at 589.
22. Douglas and Garvey, *Division of Pre-Marital Trust or Inheritance*, 45 N.H.B.J. 58 (2004).
23. Foote v. Nickerson, 70 N.H. 496, 48 A. 1088 (1901).
24. *Id.* at 518, 48 A. at 1099.
25. *Id.* at 518, 48 A. at 1099.
26. *Id.* at 518, 48 A. at 1099.
27. *Id.* at 518, 48 A. at 1098.
28. Foote, 70 N.H. at 518, 48 A. at 1098.
29. *Id.* at 516, 48 A. at 1099.
30. *Id.* at 518, 48 A. at 1099.
31. *Id.* at 518, 48 A. at 1099.
32. *Id.* at 516, 48 A. at 1099.
33. *Id.*, comparing *Shute v. Sargent*, 67 N.H. 305, 36 A. 282 (1893) with *Reed v. Blaisdell*, 16 N.H. 194, 1844 WL 4163 (1844), *Cutter v. Butler*, 25 N.H. 343, 1852 WL 4501 (1852); and *Hayes v. Seavey*, 69 N.H. 308, 46 A. 189 (1898).
34. Hill v. Hill, 74 N.H. 288, 67 A. 406 (1907).
35. *Id.* at 290, 67 A. at 407, citing Foote, 70 N.H. at 496.
36. *Id.* at 291, 67 A. at 407.
37. *Id.* at 291, 67 A. at 407.
38. Foote, 70 N.H. at 496, 48 A. at 1099.
39. Narins, 116 N.H. at 202, 356 A.2d at 665.
40. *Id.* at 201, 356 A.2d at 666.
41. *Id.* at 202, 356 A.2d at 667.
42. *Id.* at 202, 356 A.2d at 667.
43. *Id.* at 202, 356 A.2d at 667.
44. *Id.* at 202, 356 A.2d at 667.
45. 1876 N.H. Laws Ch. 32; G.L. c. 183, §12.
46. *Adams v. Adams*, 80 N.H. 80, 113 A. 279 (1921).
47. *Id.* at 84, 113 A. at 281.
48. *Id.* at 86, 113 A. at 282, citing *Hodgman v. Kittredge*, 67 N.H. 254, 256, 32 A. 158 (1892).
49. *Id.* at 84, 113 A. at 282 (1921), citing *People's Trust Co. v. Merrill*, 78 N.H. 540, 102 A. 827 (1918).
50. 1971 N.H. Laws Ch. 445:1.
51. See 1971 N.H. Laws Ch. 179:20 and 1991 N.H. Laws Ch. 141:1, effective July 19, 1991.
52. 1971 N.H. Laws Ch. 179:25, effective August 10, 1971.
53. Narins, 116 N.H. at 202, 356 A.2d at 667.
54. 1981 N.H. Laws Ch. 369:1, effective August 22, 1981.
55. Richard A. Lord, *Agreements Between Husbands and Wives*, 5 Williston on Contracts § 11:7 (4<sup>th</sup> ed. 2006); see also 49 A.L.R. 116 (1927 & Supp. 2007).
56. *Heath v. Heath*, 85 N.H. 419, 159 A. 418 (1932).
57. See Foote, 70 N.H. at 509, 48 A. at 1099.
58. See *Pinkham v. Pinkham*, 95 M.E. 71, 49 A. 48 (1901). See also *McCrary v. Biggers*, 46 Or. 465, 81 Pac. 356 (1905); *Chance v. Weston*, 96 Or. 390, 190 Pac. 155 (1920); *Linton v. Crosby*, 54 Iowa 478, 6 N.W. 726 (1880).
59. See *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990) (explaining and limiting Geyer); *Estate of Geyer*, 516 Pa. 492, 533 A.2d 423 (1987) (implied overruling recognized by *Hamilton v. Hamilton*, 404 Pa. Super. 533, 591 A.2d 720 (1991)).
60. *Heath*, 85 N.H. at 431, 159 A. at 418.
61. *Id.* at 431, 159 A. at 424.
62. *Id.* at 431, 159 A. at 424.
63. *Id.* at 433, 159 A. at 425.
64. *Id.* at 433, 159 A. at 425.
65. *Heath*, 85 N.H. at 420, 159 A. at 418-19.
66. *Id.* at 433, 159 A. at 425.
67. Richard A. Lord, *Agreements Between Husbands and Wives*, 5 Williston on Contracts § 11:7 (4<sup>th</sup> ed. 2006); see also 49 A.L.R. 116 (1927 & Supp. 2007).
68. See *The Wall Street Journal* (New England Edition), July 21, 1999, page B1; *New York Times*, July 7, 2001, page 1, and see Division of Vital Statistics, National Center for Health Statistics, CDC (2005), [www.cdc.gov/nchs/data/nvss/divorce90\\_04.pdf](http://www.cdc.gov/nchs/data/nvss/divorce90_04.pdf) (statistical information).
69. 11 DeGrandpre & Zorn, NH Practice: Probate and Administration of Estates, Trusts & Guardianships § 54 (forthcoming 4<sup>th</sup> ed.).
70. Richard A. Lord, *Agreements Between Husbands and Wives*, 5 Williston on Contracts § 11:7 (4<sup>th</sup> ed. 2006); see also 49 A.L.R. 116 (1927 & Supp. 2007).
71. *Posner v. Posner*, 233 So.2d 381, 384 (Fla. 1970).
72. *Id.*
73. See *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla. 1962) (setting forth rules by which the validity of antenuptial and postnuptial agreements are to be tested).
74. *Posner*, 233 So.2d at 385-86.
75. *Marshick v. Marshick*, 25 Ariz.App. 588, 545 P.2d 436 (1976).
76. *Id.* at 588-89, 545 P.2d at 436-37.
77. *Id.* at 588-89, 545 P.2d at 436-37.
78. *Id.* at 589, 545 P.2d at 437. (citation omitted).
79. *Id.* at 590, 545 P.2d at 438.
80. *Id.* at 590, 545 P.2d at 438.