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## Domestic Relations—Abandonment

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*Gambling*

Lotteries, pool-selling, book-making, and any other kind of gambling except pari-mutuel betting on horse races, is prohibited by the New York Constitution.<sup>42</sup> However, this provision is not self-executing, and a particular transaction is not a crime until made so by statute.<sup>43</sup> Pool-selling, book-making, and so forth, are specifically made misdemeanors by the Penal Law, §986.<sup>44</sup> In *People v. Farone*<sup>45</sup> the defendant was convicted of, *inter alia*, receiving and becoming the custodian of money bet and wagered in connection with roulette and dice games, in violation of §986. The prosecution maintained that the wording of §986 was broad enough to cover roulette and dice,<sup>46</sup> however, the Court rejected this contention and reversed the convictions.

It felt that such an interpretation of the statute would greatly extend the scope of our penal laws against gambling, and would result in their application to the non-professional gambler. The statute is aimed at the professional gambler, not the casual bettor.<sup>47</sup> Casual betting or gambling by individuals, as distinguished from professional gambling, is not a crime.<sup>48</sup> By extending this anti-booking statute to cover other professional gambling activities, there is danger that non-professional bettors will be included as well; therefore it is necessary to construe it strictly in favor of the accused.

DOMESTIC RELATIONS

*Abandonment*

After a hectic early period of marriage, a wife left her husband to go home to her mother, and shortly thereafter offered to return to him. This offer was refused, and the wife sued for separation on the ground of abandonment. The husband counterclaimed for separation on the same ground. Judgment was rendered for the wife.<sup>1</sup>

While the Civil Practice Act establishes abandonment as a ground for separation,<sup>2</sup> it does not define the exact requirements for such an abandonment.

42. Art. 1, § 9.

43. *People ex rel. Collins v. McLaughlin*, 128 App. Div. 599, 113 N. Y. Supp. 188 (1st Dep't 1908).

44. Formerly N. Y. PENAL CODE §351.

45. 308 N. Y. 305, 125 N. E. 2d 532 (1955).

46. ". . . any person who receives . . . any money . . . bet or wagered . . . by or for any other person . . . is guilty of a misdemeanor . . ."

47. See *People ex rel. Collins v. McLaughlin*, 128 App. Div. 599, 113 N. Y. Supp. 188 (1st Dep't 1908).

48. *Watts v. Malatesta*, 262 N. Y. 80, 82, 186 N. E. 210 (1933).

1. *Aghinides v. Aghinides*, 308 N. Y. 530, 127 N. E. 2d 323 (1955).

2. N. Y. CIV. PRAC. ACT § 1161.

Courts have generally held that abandonment must be persistent and stubborn, rather than an isolated act.<sup>3</sup> An offer to return, if made in good faith within a reasonable time after the original act, will relieve the abandoner.<sup>4</sup> As a consequence, when a wife makes an offer to return, the husband must accept the offer or thereby abandon her.<sup>5</sup>

Although the trial court had rendered judgment for the husband in the instant case, the Appellate Division found that the wife's offer was made in good faith and within a reasonable time (two weeks) after leaving, so her actions did not constitute an abandonment, since they had not "frozen into a permanent attitude"; the judgment of the trial court was therefore reversed,<sup>6</sup> leaving the parties in their original position.

The Court of Appeals accepted the findings of the Appellate Division, and determined that since the wife's actions did not constitute an abandonment the husband was bound to accept her offer to return, and his failure to do so constituted an abandonment on his part.

A dissent voted to affirm the judgment of the Appellate Division. Although neither the opinion of the Court of Appeals nor the memorandum decision of the Appellate Division gives a full account of the facts, the dissent would seem to be unfounded, since the facts as given leave no doubt that an abandonment did take place and the question would seem to be only which party was at fault.

#### *Support and Remarriage*

Plaintiff wife had been married to defendant; a divorce was granted her with provisions for support as previously arranged in a separation agreement, until she should die or remarry. Five years later she did remarry, and so advised defendant. Subsequently her second marriage was annulled, on the grounds that her husband was still legally married, and after a short time she brought this suit to renew her support from her first husband. Judgment was rendered for the husband.<sup>7</sup>

The basic problem before the Court was whether a marriage declared a "nullity" could still constitute a remarriage for purposes of the support provisions. The Court was faced with their decision in *Sleicher v. Sleicher*,<sup>8</sup> which had decided

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3. *Silberstein v. Silberstein*, 218 N. Y. 525, 113 N. E. 495 (1916).

4. *Bohmert v. Bohmert*, 241 N. Y. 446, 150 N. E. 511 (1926).

5. *Ibid.*

6. 283 App. Div. 1054, 131 N. Y. S. 2d 886 (1st Dep't 1954).

7. *Gaines v. Jacobsen*, 308 N. Y. 218, 124 N. E. 2d 290 (1954).

8. 251 N. Y. 366, 167 N. E. 501 (1929).