

Michigan Law Review

Volume 81 | Issue 4

1983

The Marriage Contract

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Michigan Law Review, *The Marriage Contract*, 81 MICH. L. REV. 1090 (1983).

Available at: <https://repository.law.umich.edu/mlr/vol81/iss4/46>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE MARRIAGE CONTRACT. By *Lenore J. Weitzman*. New York: The Free Press. 1981. Pp. xxiii, 536. \$17.95.

The Marriage Contract, by Lenore J. Weitzman, may be the first book to analyze comprehensively the implicit and explicit intimate contracts into which couples enter.¹ Weitzman examines the implicit obligations traditionally delegated to each spouse and challenges the rationale and the effects of imposing segregated roles by law. She contends that the roles are outdated, do not reflect reality, and have adverse social and psychological consequences. In place of the rigid roles imposed by law, Weitzman suggests that couples should make their own intimate contracts to define the roles and obligations each chooses to impose on itself.

The book is divided into four parts. Part I, "The Legal Tradition: Terms of the Traditional Marriage," may be helpful to a married or an engaged reader. It will alert the reader to the terms a court may impose upon the dissolution of marriage. For example, upon the dissolution of a marriage, one spouse may discover that the law gives the other spouse complete ownership of a jointly operated business.² If spouses were aware of the legal presumptions governing marriage, Weitzman argues, more spouses would act to protect their expectations.

In Part I, Weitzman also presents ideas that may be helpful in restructuring marriage law. For instance, she identifies four duties assigned by law and examines the social and economic effects of these rules. Weitzman suggests that today most couples expect marriage to be a partnership and that it is more appropriate to emphasize the mutual obligations that both partners owe to the family and to the home, rather than the traditional responsibilities of each spouse. Weitzman discusses possible conflicts in theories used by the courts and suggests that an intimate contract may provide a better solution.

Part II, "Legal Assumptions Versus Social Reality," analyzes the basic assumptions that underlie legal marriage. Although this section may not assist a reader desiring to construct an intimate contract, it may be helpful to one interested in restructuring family law. For example, Weitzman criticizes the courts for not recognizing the changing internal structure of marriage. She argues that certain assumptions, such as the existence of a lifelong commitment, may penalize a spouse whose experience, such as divorce, does not coincide with the assumption.³ Weitzman's main thesis

1. Marriage is referred to as the implicit legal marriage contract. Couples can supplement this contract with an explicit intimate contract. Others can forego legal marriage altogether and have an explicit intimate contract in lieu of marriage. Weitzman notes that she does not intend to limit the parties to the contract to one male and one female, but uses the labels for convenience.

2. See *Skaar v. Department of Revenue*, 61 Wis. 2d 93, 211 N.W.2d 642 (1973), discussed at p. 67 n.28.

3. See, e.g., *Chambers, The Coming Curtailment of Compulsory Child Support*, 80 MICH. L. REV. 1642 (1982).

here is that diverse people require diverse family forms and that the law should not force people into one pre-defined family form.

Part III, "The Alternative: Marital and Nonmarital Contracts," and the Appendix, "An Empirical Study of Sixty Intimate Contracts," may be the most helpful part of the book for the reader who is interested in constructing an intimate contract. Part III and the Appendix tie together the first two parts of the book and demonstrate ways in which a personalized intimate contract can help the parties set the terms of their own relationship. Weitzman devotes a chapter to ideas worth considering when drafting an intimate contract. She also presents examples of actual contracts made by married and by unmarried people.

In Part III, Weitzman presents and answers nonlegal complaints about intimate contracts.⁴ She makes a convincing argument that an intimate contract may be beneficial. For instance, Weitzman notes the advantages of clarifying the expectations and hopes of each party.

Part IV, "Contracts and the Evolving Law," surveys the traditional legal response to intimate contracts: ownership of property acquired during marriage can be defined by contract, but other terms are likely to be invalid. Weitzman discusses recent cases that depart from the traditional view and that uphold intimate contracts.⁵ She notes in passing that courts in other jurisdictions may follow either the new view or the traditional view, and that the reader should not automatically assume that an intimate contract will be completely enforceable in court.

Weitzman also discusses the desirability of applying contract law standards of review instead of family law standards of review to intimate contracts. Weitzman's analysis warrants consideration by judges; however, some of her specific examples may gloss over traditional contract principles.⁶

The Marriage Contract is directed to the person who is unfamiliar with the traditional consequences of legal marriage. The book is written in easy-to-understand language, with basic legal and sociological terms defined. Much of the other work on intimate contracts fails to convey to the reader the consequences of blind acceptance of the legal marriage contract, the effects of terms which may be inappropriate in a legal marriage contract, and the possible alternatives to the traditional arrangement.

The Marriage Contract is listed under the Library of Congress's new category, Antenuptial Contracts. Books under the related categories — Settlements (law), Marriage Articles, and Domestic Relations — do not analyze intimate contracts with the same depth and insight. A compilation of

4. Compare Weitzman with *The Marriage Experiments*, LIFE, Apr. 28, 1972, at 41 and *To Love, Honor and Share* Ms., June 1973, at 62.

5. See *Latham v. Latham*, 274 Or. 421, 547 P.2d 144 (1976); *Marvin v. Marvin*, 18 Cal. 3d 660, 134 Cal. Rptr. 815, 557 P.2d 106 (1976).

6. See the comparison between mutual mistake and change in circumstances. Pp. 356-57. Weitzman presents a case where a husband and wife signed a divorce agreement under the mistaken assumption that the wife was diabetic and would soon be incapable of self-support. She argues that the court wrongly applied the family law standard of changed circumstances to reform the contract. However, it is not clear whether traditional contract analysis would use mutual mistake or change in circumstances in this example.

papers on the subject is reprinted in another book,⁷ and should be consulted if the reader is interested in an international study of marriage contracts.

The Marriage Contract successfully advocates an idea whose time has come. It is not, however, a comprehensive legal guide to writing marital contracts. This limitation, though significant, is hardly the author's fault. In an area of law as confused as that surrounding contemporary living arrangements, the simple effort to clarify legal rights and responsibilities is a noteworthy endeavor.⁸

7. MARRIAGE AND COHABITATION IN CONTEMPORARY SOCIETIES (J. Ekelaar & S. Katz eds. 1980).

8. The first version of Weitzman's book is published in Weitzman, *Legal Regulation of Marriage: Tradition and Change*, 62 CALIF. L. REV. 1169 (1974).

Weitzman's book has also been reviewed by Kuklin, Book Review, LIBRARY J., Oct. 1, 1981, at 1941; Book Review, BOOKLIST, Feb. 1, 1982, at 688. It is mentioned in Begley and Clausen, *Does a Contract Help?*, NEWSWEEK, Jan. 10, 1983, at 46.