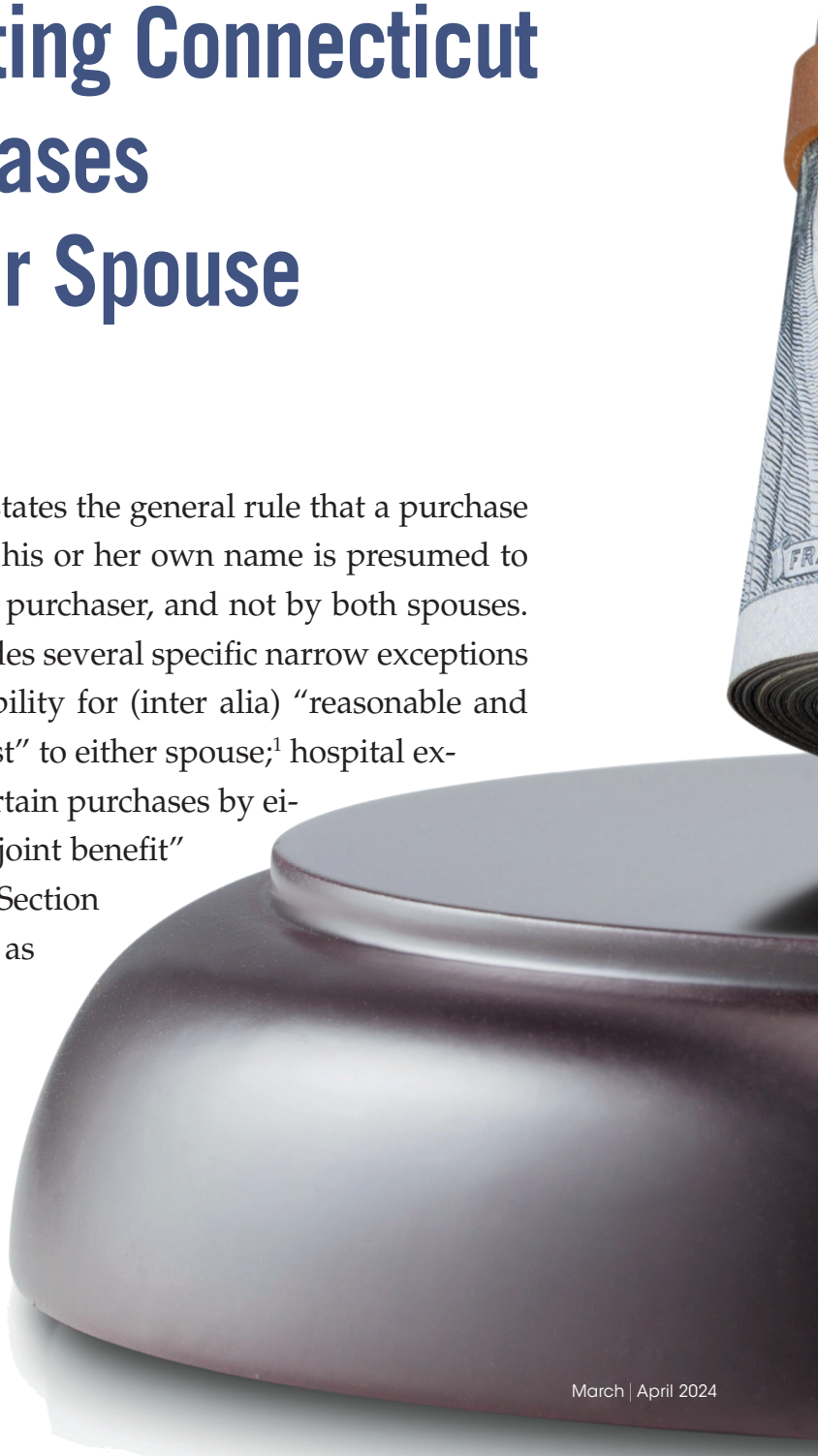
Statutory Liability

of a Non-Contracting Connecticut Spouse for Purchases Made by the Other Spouse

By Elizabeth C. Yen

Conn. Gen. Stat. Section 46b-37(a) states the general rule that a purchase made by a married individual in his or her own name is presumed to be made solely by the individual purchaser, and not by both spouses. However, Section 46b-37(b) includes several specific narrow exceptions to this rule, by creating joint spousal liability for (inter alia) "reasonable and necessary services of a physician or dentist" to either spouse;[1] hospital expenses rendered to either spouse;[2] and certain purchases by either spouse that have been used for the "joint benefit" of both spouses.[3] The exceptions listed in Section 46b-37(b) may be loosely characterized as falling into the general category of "necessaries," and also reflect longstanding public policy that spouses support each other and their family.[4]



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Based on Section 46b-37(b)(3), which covers rent owed on a dwelling unit actually occupied by both spouses as a residence, provided "reasonably necessary to them for that purpose," the Appellate Court allowed a landlord to collect past due rent from a spouse who had not signed the lease agreement, because the spouses admitted in their answer to the landlord's complaint "that, at all relevant times, they were married and were occupying the premises as their primary residence."[5]

The application of Section 46b-37(b) to specific purchases is of necessity fact-specific, and the statute's imposition of liability on non-contracting spouses for certain purchases made by their spouses is generally construed narrowly by Connecticut courts. For example, because of the specific reference in Section 46b-37(b)(3) to the "rental" of a dwelling unit occupied by both spouses, the statute has been held inapplicable to residential mortgage loan payments.[6] As another example, prescription medication and other miscellaneous items (such as cigarettes) charged to one spouse's account at a pharmacy and consumed solely by that spouse have been held to fall outside the scope of Section 46b-37(b)(4), even if the other spouse was allowed to sign for and pick up the purchases.[7] Such purchased items, if consumed solely by one spouse, are not necessarily considered "for the joint benefit of both," even if the non-consuming spouse might derive indirect benefit from (for example) the other spouse's consumption of prescription medication.[8] Similarly, because Section 46b-37(b)(2) refers to "hospital expenses," the statute has been held inapplicable to the non-physician nursing home expenses of an institutionalized spouse.[9]

SECTION 46B-37 HAS ITS ORIGINS in Connecticut common law and in a statute previously codified as Section 5155 (applicable to purchases made by spouses in their own individual names if married on or after April 20, 1877). In *Cyclone Fence v. McAviney*, 121 Conn. 656, 662 (1936), the Court held that a husband's express refusal to involve his wife in negotiations concerning the purchase and installation of a fence on largely unimproved real property approximately three blocks away from the couple's residence, and his refusal to have his wife co-sign the purchase contract for the fence, made it clear that the husband's agreement to pay for the fence was personal to him, and that he was not acting as his wife's agent. In addition, the Court held that the fence did not provide a joint benefit to the married couple, even though the property in question had been quitclaimed by the husband to his wife for the consideration of love and affection before the fence was purchased and installed. The property was not being used by the couple, and "[t]he only tangible benefit to the wife which could result would be contingent upon some possible use of the land in the future from which she would derive an advantage or the equally indefinite possibility of her selling it." The Court concluded the fence was intended as a gift from the husband to his wife.

Mayflower Sales v. Tiffany, 124 Conn. 249 (1938) concerned the purchase by a husband of an oil burner on an installment payment basis from a seller, for installation and use in a leased residence occupied by the husband, his wife, and his mother-in-law as tenants. For reasons not explained in the Court's decision, the husband never made any installment payments to the seller, and his wife moved to New York approximately three months after the burner was purchased and installed (her husband and her mother continued to occupy the leased residence). Less than one month after the wife's move to New York, the husband asked the seller to repossess the burner and apply the then-fair market value of the burner against unpaid amounts due the seller. The husband died shortly thereafter, and the seller sought payment from the surviving wife. The Court held that the wife was not liable to the seller for the remaining unpaid amounts—the seller was seeking to enforce a deficiency liability post-repossession, after having repossessed the burner and thereby having made it impossible for the burner to be used for the joint benefit of both spouses (if the wife had chosen to move back to the leased residence before her husband's death) or the surviving wife's mother.

Craft v. Rolland, 37 Conn. 491 (1871) includes a brief historical discussion of the common law that eventually led to Section 46b-37. Under Connecticut common law applicable to marriages before April 20, 1877,[10] a married woman generally could not enter into a binding contract—her husband generally had to do so (and also had the legal obligation to support her). However, "a wife may bind her husband for necessaries against his consent" in order to "save her from suffering, and starvation in certain cases."[11] Outside of this exception for "necessaries," if "goods are purchased by the wife, the liability of the husband depends upon agency, either express, or implied from his acts." *Craft* also noted one additional exception to the general rule that a married woman could not enter into a binding contract: She could do so if her intent was to have "her separate property liable in equity for the payment."[12] However, in such a case, although the wife may have had "a moral and equitable obligation to pay" from her separate nonmarital property, the obligation would not be enforceable against her at law unless she reaffirmed the payment obligation after the marriage ended or (as occurred in *Craft*) after she was abandoned by her husband.[13]

UNDER CURRENT CONNECTICUT LAW, if an exception in Section 46b-37(b) is properly asserted against a non-contracting spouse, Section 46b-37(e) permits the non-contracting spouse to avoid liability by proving the purchase occurred after the contracting spouse had abandoned the non-contracting spouse without cause.[14] Conversely, if during a period of spousal separation, "the spouse who is liable for support of the other spouse has provided the other spouse with reasonable support," Section 46b-37(d) precludes a spouse who has received such reasonable support

during the period of separation (the "recipient spouse") from using Section 46b-37(b) to shift responsibility for a purchase made by the recipient spouse to the non-contracting spouse who provided reasonable support (the "provider spouse"). (Without this exception, the provider spouse could be effectively liable twice for the recipient spouse's living expenses during their period of separation.[15]) If a defense is not available to a non-contracting spouse under Section 46b-37(d) or (e), the general rules in Section 46b-37(a) and (b) should apply. ■

This article has been printed posthumously. ***Elizabeth C. Yen*** *was a partner in the Connecticut office of Hudson Cook LLP. Attorney Yen served as a fellow and regent of the American College of Consumer Financial Services Lawyers, a past chair of the Truth in Lending Subcommittee of the Consumer Financial Services Committee of the American Bar Association's Business Law Section, a past chair of the CBA Consumer Law Section, and a past treasurer of the CBA. The views expressed herein are personal and not necessarily those of any employer, client, constituent, or affiliate of the author.*

NOTES

1 *See, e.g., Ematrudo v. Gordon*, 100 Conn. 163 (1923) (upholding a trial court's decision that a wife was not responsible for the costs of her husband's plastic surgery to address "a scar extending from the angle of the mouth across the face to the left ear, which marred and impaired his personal appearance" even though the scar was "extremely unsightly, and tend[ing] to be repellent to persons with whom Gordon might seek to do business, whether as a salesman or in some other capacity;" the Court noted that whether such a medical expense is reasonable and necessary may depend on "the station in life, style of living, and pecuniary situation of this family" and "the extent to which both husband and wife contributed to the family support, the existence of any invested property, and in general the pecuniary situation of the parties and their social surroundings and general course of life;" however, there was no evidence the trial court found facts in this case sufficient to support making the wife liable for the cost of her husband's plastic surgery).

2 Conn. Gen. Stat. Section 46b-37(b) also addresses spouses' joint duty to support their minor unemancipated children (intentionally not discussed in this article).

3 *See, e.g., Wilton Meadows v. Coratolo*, 299 Conn. 819 (2011) (declining to apply Section 46b-37(b) to non-physician expenses incurred by a spouse at a licensed chronic care and convalescent facility, and holding that such expenses are not purchases used for the "joint benefit" of both spouses for purposes of Section 46b-37(b)(4)) and Dubow v. Gottinello, 111 Conn. 306 (1930) (articles purchased for one spouse's business or professional reasons are not for the immediate joint benefit of both spouses).

4 Under Conn. Gen. Stat. Section 46b-37(c), "a spouse who abandons his or her spouse without cause shall be liable for the reasonable support of such other spouse while abandoned."

5 *Lawrence v. Gude*, 216 Conn. App. 624, 631 (2022) (footnote omitted). *Cf. Young v. Kerslake*, 2021 WL 3913920 (Super. Ct. 2021) (discussing a permitted occupant's potential liability to a landlord for use and occupancy payments under Conn. Gen. Stat. Section 47a-26b for continuing occupancy of rented premises after the occupant's spouse moved out, where the permitted occupant did not sign the lease agreement but was expressly authorized to occupy the premises provided that the landlord received rent payments required by the lease agreement).

6 *Caruso v. Caruso,* 62 Conn. L. Rptr. 531 (Super. Ct. 2016) (father-in-law unsuccessfully sought reimbursement from his daughter-in-law for mortgage payments he made directly to a mortgage lender on behalf of his son and daughter-in-law, based on an alleged oral agreement among all 3 individuals; the daughter-in-law denied the existence of any such agreement).

7 *Bunker Hill Pharmacy v. Pepice*, 63 Conn. L. Rptr. 240 (Super. Ct. 2016). See also *Wilton Meadows v. Coratolo*, n.3 *supra*.

8 *See also Connecticut Light and Power v. Matava*, 2012 WL 386590 (electric utility service is not an "article" purchased by a spouse for purposes of Section 46b-37(b)(4)).

9 *See, e.g., Jewish Home for the Aged v. Nuterangelo*, 2004 WL 3130225 (Super. Ct. 2004) (narrowly construing Section 46b-37(b)(2)'s reference to "hospital expenses"; the portion of this Superior Court decision discussing Section 46b-37(b)(4) has been effectively overruled by *Wilton Meadows v. Coratolo*, n.3 *supra*); *see also Medstar v. DiCarlo*, 17 Conn. L. Rptr. 638 (Super. Ct. 1996) (wife not liable under Section 46b-37(b) for ambulance services rendered to her husband).

10 *See also Mathewson v. Mathewson*, 79 Conn. 23 (1906) (discussing the Connecticut common law distinction between enforcing certain contracts entered into by married women in courts of chancery or equity, where the contracts pertained to separately owned nonmarital property of married women, and nonenforceability of such contracts in courts of law for marriages entered into before April 20, 1877).

11 *Craft v. Rolland*, 37 Conn. at 498.

12 *See id.*, citing *Wells v. Thorman*, 37 Conn. 318, 319 (1870). (In Wells, the wife's contract was entered into by her husband acting on her behalf as her authorized agent (consistent with the common law in effect at that time); the purchase was for the benefit of her separately owned nonmarital property. The Court ordered payment of the outstanding balance from the wife's personal property, not her real property (because under common law her husband had a life estate in her separately owned real property and the husband was required to join with the wife in any conveyance of her separately owned real property).)

13 Such a contract reaffirmation after the termination of marriage or after abandonment by the wife's husband is somewhat similar to a minor's right to ratify or avoid a contract entered into before having reached the age of majority. *See also, e.g., Yale Diagnostic Radiology v. Estate of Fountain*, 267 Conn. 351, 356 (2004) (discussing an exception under "the doctrine of necessaries … that a minor may not avoid a contract for goods or services necessary for his health and sustenance"). However, under Connecticut common law, a husband could not avoid a contract for goods or services necessary for the health and sustenance of his wife entered into by either the husband or wife during their marriage (it being the husband's legal obligation to provide for her health and sustenance unless she abandoned the marriage without cause).

14 *See also* n.4 *supra* and *Yale University School of Medicine v. Collier*, 206 Conn. 31 (1988) (husband left wife "to take up a relationship with another woman;" over 2 years later the husband died as the result of a serious one-car accident; the jury properly determined that the wife was not responsible for the husband's medical bills relating to the car accident due to her husband's abandonment of her).

15 *See Churchward v. Churchward*, 132 Conn. 72 (1945) for discussion of the history behind this exception for a spouse who has received reasonable support from the other spouse during a period of separation. *See also John Dempsey Hospital v. Lawson*, 19 Conn. L. Rptr. 536 (Super. Ct. 1997) (during a temporary separation of less than two years caused by a difference of opinion about the wife's health and medical condition, husband's failure to pay for wife's hospitalization expenses was a failure to provide reasonable support, making the Section 46b-37(d) defense inapplicable to the husband) and *Manor Health Care v. Fisher*, 2000 WL 226439 (Super. Ct. 2000) (wife's separation from husband was for cause, and husband's failure to pay for wife's assisted living facility expenses after the separation made Section 46b-37(d) inapplicable).