

2001

Jean Seeley (Park) v. Leo P. Park : Brief of Appellant

Utah Supreme Court

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BRIGHAM YOUNG UNIVERSITY
Reuben Clark Law School

IN THE SUPREME COURT
OF THE STATE OF UTAH

JEAN SEELEY (PARK),
Plaintiff-Respondent,

vs.

LEO P. PARK,

Defendant-Appellant.

Case No.

13643

CORRECTIONS AND ADDITIONS

to

APPELLANT'S BRIEF

Jean Seeley (Park) vs Leo P. Park, Case
Number 13643.

Corrections and Additions to Appellant's
Brief.

1a

TABLE OF CONTENTS

1. "TABEL" in heading should read "TABLE".
2. The word "CORTS", third line of POINT I
should read "COURT'S".
3. "PORTWAS" in last line of POINT I
should read "PORT WAS".
4. Add after POINT I the following:

POINT II

SECTION 78-12-44, Utah Code
Ann.(1953) DOES NOT APPLY TO
THE PAYMENT OF ALIMONY AND/OR
CHILD SUPPORT.3a,(13)

5. The page on which the SUMMARY AND
CONCLUSION appears should be . . .3a,(13)

AUTHORITIES CITED

6. Add after case Arndt v. Burghardt, the
case:

Attorney General v. Pomeroy, 93 U. 426,
73 P.2d 12773a,(13)

7. Case "Burnap v. Burap" should read
"Burnap v. Burnap".
8. Add following the case "Smith v. Smith"
the case:

Jean Seeley (Park) vs. Leo P. Park, Case
Number 13643.

Corrections and Additions to Appellant's
Brief.

2a

Yergensen v. Ford, 16 U.2d 397, 402
P.2d 696 3a, (13)

STATUTES CITED

9. Following Section 78-12-22, Add:

Section 78-12-44, Utah Code Ann.:
(Annotated) 3a, (13)

Jean Seeley (Park) vs Leo P. Berk, Case .
Number 13643.

Corrections and Additions to Appellant's
Brief.

3a

11. At page 13 insert following the end
of the first paragraph.

POINT II

SECTION 78-12-44, Utah Code Ann.
(1953) DOES NOT APPLY TO THE
PAYMENT OF ALIMONY AND/OR CHILD
SUPPORT.

Section 78-12-44, U.C.A.(1953) by its own terms applies only to cases "founded on contract." The question of application of this Code Section was considered in at least two Utah cases, and the conclusion was drawn in each that the section did not apply to a liability founded on a judgment, because a "judgment is not a 'contract'". Yergensen v. Ford, 16 U.2d 397, 402 P.2d 606, Attorney General v. Pomeroy, 93 U. 426, 73 P.2d 1277. The Court in Pomeroy makes a further observation applicable to the present case, ". . .in any event the acknowledgment must be made before statute has run and the same pleaded to show tolling of statute, or if made after statute has run, such acknowledgment must be pleaded as basis of action." Such did not happen in the present case.

12. At page 14 insert the following after
the first paragraph:

Section 78-12-44, U.C.A.(1953) does
not apply in the present case.

Jean Seeley (Park) vs Leo P. Park, Case
Number 13643.

Corrections and Additions to Appellant's
Brief.

4a

13. Delete the last paragraph on page 14
and add the following:

In the alternative, the Court should
declare which statute of limitations is
to be applied in cases similar to the
present case, reverse the judgment appealed
from and remand the case to the District
Court for the purpose of recomputation of
arrearages, taking into account the proper
statute of limitations, and directing a
judgment in the recomputed amount.

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