

Penalty Clauses in Prenuptial Agreements: Lessons from the Reported “Cocaine Clause”

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Prenuptial agreements have long evolved beyond simple asset division roadmaps. Modern prenups address conduct during marriage, incorporating so-called “penalty” or “incentive” provisions that attach financial consequences to specific behaviors. While these clauses can be powerful planning tools, they also sit at the intersection of contract law, family law, and public policy — an intersection that courts carefully scrutinize.

Frequently, penalty or incentive clauses find their way into celebrity prenuptial agreement. Keith Urban is an Australian-American country music performer who has won four Grammys and 15 Academy of Country Music Awards. Nicole Kidman is an Australian-American actress and producer. The couple was married on 25 June 2006 at Cardinal Cerretti Memorial Chapel on the grounds of St Patrick’s Estate, Manly, in Sydney. They have two daughters.

Various news outlets are reporting that Keith and Nicole negotiated an extensive, detailed prenuptial agreement before getting married. Interestingly, it appears that one clause of the prenuptial agreement provided a monetary reward to Keith if he maintained his sobriety. Per sources, Keith was to abstain from alcohol and other drugs, including cocaine, and would earn \$600,000 per year for doing so. Considering Keith has reportedly been sober since 2006, he could be in line to receive more than \$11 million as a result of the alleged prenuptial agreement clause.

Penalty clauses in prenuptial agreements generally impose financial consequences if one spouse engages in specified conduct during the marriage. These provisions may be framed negatively (a reduction or forfeiture of benefits upon breach) or positively (financial incentives for compliance.) Common subjects include infidelity, substance abuse, gambling, or other addictive behaviors, and failure to pursue agreed-upon education or employment goals. Other not so common subjects include weight gain, boundaries on family visits— even going so far as to ban specific relatives from making appearances—regulating social media behaviors, clauses protecting pets and money available for their support. A creative mind can find a penalty for the gambit of behaviors. In theory, these clauses allow parties to align financial outcomes with shared values or risk management goals. However, in practice, enforceability is far from guaranteed.

Courts typically analyze prenuptial agreements under contract principles, tempered by heightened scrutiny due to the marital context. Penalty clauses raise particular concerns:

Public Policy

Courts are reluctant to enforce provisions that appear to regulate personal behavior in a way that undermines the marital relationship or encourages divorce. A clause that functions as a punishment rather than a reasonable allocation of risk may be deemed void as against public policy.

Fault-Based Restrictions

Many jurisdictions have moved away from fault-based divorce regimes. Provisions that effectively reintroduce fault — by attaching severe financial penalties to personal misconduct — may be disfavored.

Vagueness and Proof Problems

Behavioral clauses often hinge on subjective or difficult-to-prove conduct. What constitutes “use,” “relapse,” or “impairment”? Who bears the burden of proof? Ambiguity can render a clause unenforceable.

Unconscionability at Enforcement

Even if a clause was reasonable at the time of signing, courts may examine whether enforcement at divorce would be unconscionable given the parties’ circumstances at that time.

Whether or not the reported clause would ultimately be enforced, it serves as a useful illustration of how parties attempt to balance compassion, risk allocation, and financial certainty.

For practitioners and clients considering penalty clauses in prenups, several best practices emerge:

- Frame provisions as incentives or risk allocation, not punishment
- Define conduct precisely and address evidentiary standards
- Ensure proportionality between the conduct and the financial consequence
- Confirm full disclosure and independent counsel for both parties
- Revisit public policy considerations in the relevant jurisdiction

Penalty clauses in prenuptial agreements occupy legally sensitive territory. While high-profile examples like the reported Urban–Kidman provision capture public attention, their real value lies in what they teach about careful drafting and realistic expectations. Prenuptial agreements are strongest when they anticipate future uncertainty without attempting to police the marriage itself — a balance that remains as delicate as it is essential. Stay tuned for what interesting penalties may find their way into the potential and highly probable Taylor Swift and Travis Kelce prenuptial agreement.