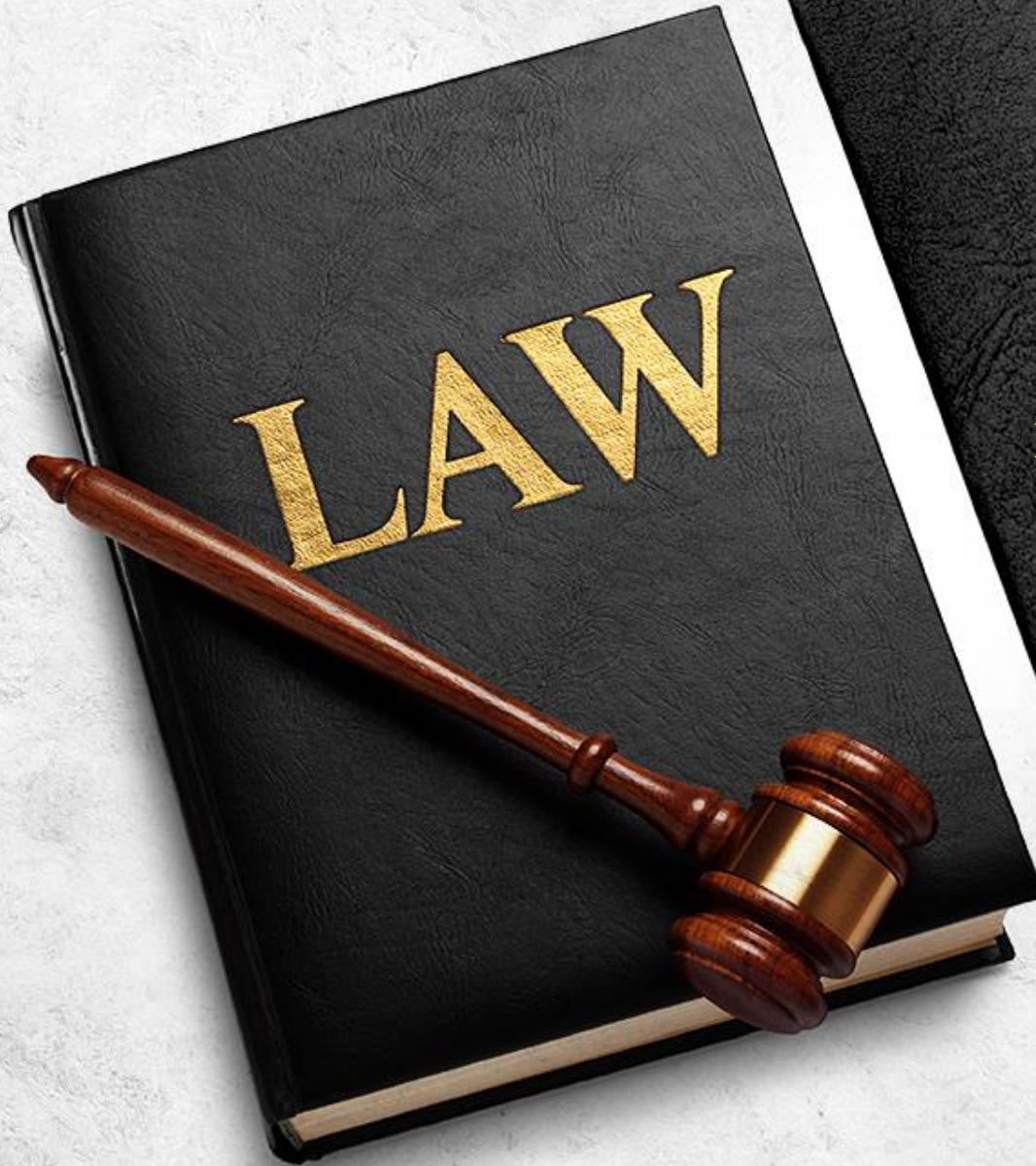


Domestic Law

Lecture 13

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Alimony – Spousal Support

- Spousal support is the court-ordered obligation of one divorced or legally separated spouse to provide monthly income payments to his former spouse.
- Spousal support, also referred to as alimony or spousal maintenance, has a rich history, dating back centuries to when a bride's family would pay her future husband a dowry to ensure for her continued support and protection.
- Nowadays, a court will only order spousal support payments to be made if the recipient spouse can prove that she is unable to adequately provide for herself without the help of support payments.
- Further, a court will not order a spouse to pay support if, in doing so, he himself would become impoverished.
- As such, it is estimated that some form of spousal support is only awarded in approximately 20 percent of divorces.



Spousal Support at Common Law

- At common law, it was the duty of a husband to financially provide for his wife and family because women could not contract for the provision of basic necessities, such as food, shelter, and medical services.
- Therefore, courts employed the “necessaries doctrine.”
- Under the necessaries doctrine, a husband was required to provide his wife with these life-sustaining necessities.
- If he refused or neglected to directly provide his wife with these necessities, he was legally obligated to pay third party merchants to do so.
- This gender-specific spousal support theory had its roots in the now-outdated societal belief that women should be confined to the home and only charged with child rearing and homemaking.



Spousal Support at Common Law

- As men were the only ones able to make a living outside of the home, courts at common law required them to support their wives financially, even if they later separated.
- Additionally, courts at common law paid special attention to spousal fault when determining spousal support awards.
- If a spouse could prove that the other was at fault for the dissolution of the marriage, say for adultery or abandonment, it was in the court's discretion to increase/decrease the spousal support award accordingly, or deny it all together.
- This early doctrine of gender-specific, fault-based spousal support is no longer employed by modern day courts.



Types of Alimony

- Permanent Alimony
 - Despite the name, this is usually awarded only for a set period of time.
- Temporary Alimony
 - Awarded temporarily during the divorce proceeding to tide the spouse over until permanent alimony can be awarded.
- Rehabilitative Alimony
 - A form of alimony awarded to allow a spouse to get education or training to allow him/her to become self-sufficient.
 - Often, a key factor in an award of this type (particularly in community property states) is whether the paying spouse was educated or trained during the marriage and whether the expenses were paid by the parties
- “Palimony”?



Spousal Support Today

- Gender roles have changed dramatically in modern times and it is no longer assumed that women are incapable of making a living for themselves outside of the home.
- This shift prompted jurisdictions to abandon the gender-specific common law doctrine of spousal support in favor of adopting gender-neutral conventions.
- A few jurisdictions still employ a version of the necessities doctrine, albeit applying it in a gender-neutral fashion.
- However, the vast majority of jurisdictions have completely abandoned the necessities doctrine, and instead rely on Section 308 of the Uniform Marriage and Divorce Act (UMDA) for determining whether spousal support should be awarded and, if so, in what amount.
- Under Section 308 of the UMDA, a court may grant spousal maintenance only if it finds that the spouse seeking support (1) lacks sufficient property to provide for her reasonable needs; and (2) is unable to support herself through appropriate employment or has physical custody of a child whose needs prevent the parent from working outside the home.



Spousal Support Factors

- If the spouse seeking support meets these criteria, the court considers several factors in determining what amount of support should be awarded. These factors include:
 - the financial resources of the spouse seeking support; the time required for the spouse to acquire the education or training necessary for her to find appropriate employment;
 - the standard of living established during the marriage;
 - the duration of the marriage;
 - the age and physical and emotional condition of the spouse seeking support;
 - and the ability of the payor spouse to provide for his own needs while meeting those of the recipient spouse.
- Notably, the enactment of the UMDA marked a departure from fault-based spousal maintenance awarded at common law.
- Therefore, courts in jurisdictions that have adopted the UMDA do not take into account the misconduct of either spouse during the marriage.



Spousal Support - Enforcement

- When divorce statutes were fault-based, there were two additional factors courts considered: (1) degree of fault and (2) maintenance of status.
- Enforcement
 - All methods of civil enforcement are available PLUS
 - contempt of court.
 - imprisonment if willful and in bad faith.
 - ineligibility for all sorts of government benefits.
 - ineligibility for professional licenses and government jobs.



Duration of Spousal Support

- The determination of the duration of a spousal support award is extremely fact-specific.
- Typically, a court will only award spousal support for the duration of time it believes is necessary for the recipient spouse to seek the education and training necessary for her to find appropriate employment that will allow her to adequately support herself on her own.
- Short-term spousal support is most commonly awarded in the context of marriages that last only a few years, the rationale being that the recipient spouse has not lost out on opportunities to increase her earning potential.



Duration of Spousal Support

- However, in certain circumstances, a court will order permanent spousal support.
- Permanent spousal support is most commonly awarded at the end of a long-term marriage when there will be a dramatic disparity in income between the former spouses after the divorce.
- For example, a couple has been married for fifteen years, during which time the wife, who is now in her late-forties, has stayed at home and raised the couple's children while the husband has worked outside of the home.
- If the couple divorces, a permanent spousal support award will be appropriate if the recipient spouse can prove that, due to her lack of work experience and age, it will be impossible for her to receive the education and training necessary for her to maintain a standard of living that is anywhere near the one she was accustomed to during the marriage.



Financial Aspects of Divorce

- Property Division => community property laws
 - Separate property => acquired before/after marriage, gift, inheritance.
 - Community (marital) property => acquired during the marriage; each own 50/50 regardless of who provided the money or whose name assets in.
- Community Property States => [Nine states have community property laws]
 - Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.
 - In addition, Puerto Rico is a community property jurisdiction.



Financial Aspects of Divorce

- Property Division => **equitable** distribution
- Separate property => acquired before marriage, gift, inheritance—returned to owner
- Equitable distribution of marital property => based on factors
 - Age
 - Length of the marriage
 - Occupation and income
 - Needs and contributions of the party in acquiring property
 - Alimony awarded
 - Not considered (ostensibly) => child support for children of marriage/relationship
 - What about child support from other relationships?
- What about real estate purchased before marriage, but supported and maintained with community funds during marriage?



Quick Quiz



Intangible Property

- The principal areas of intangible property are:
 - professional degrees and licenses;
 - goodwill of a business; and
 - pension rights.
- Professional degrees
 - Majority view => should not be considered marital property and therefore not subject to equitable distribution.
 - Minority view (e.g., New York) => New York Court of Appeals classified a professional license (i.e. increased future earning potential) as marital property in 1985.
 - UMDA => a professional degree is not property and therefore not subject to equitable distribution upon divorce.
 - Courts, however, will often compensate for the inability to consider a professional degree as property by assessing earning capacity for alimony calculations with the degree or license in mind.
 - On the other hand, they will typically offset that value with the amount of student debt held by the “professional” spouse.



Intangible Property

- “Professional goodwill” => the enhanced earning capacity that comes from a professional’s reputation, and client or customer list.
- Pension rights: Marital property that can be divided.
 - Divided pro rata based on “time rule” – half of amount of time in the pension plan while married divided by total number of months in the pension plan
- Social Security Benefits
- Qualified domestic relations order (“QDRO”)
 - Document needed to distribute pension benefits until the beneficiary spouse actually begins receiving benefits (deferred distribution) vs. immediate distribution.



End Of Class Review Quiz

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**THE
BIG
QUIZ**



The End

