



2

This presentation will cover

- Definition (including types)
- Purpose
- Utah law
- Where do we go from here?
- Issues needing further exploration

3

Definition

Alimony is a legal obligation on a person to provide financial support to his or her spouse before or after a marital separation or divorce.

4

Types of Alimony

- Temporary alimony
- Rehabilitative alimony
- Permanent alimony
- Reimbursement alimony

5

Purpose

support provided to a wife upon the breakdown of a marriage initially determined by ecclesiastical courts

when fault was a determining factor in divorce, a woman's misconduct could leave her destitute

"The purposes of alimony include enabling the receiving spouse to maintain, as nearly as possible, the standard of living enjoyed during the marriage, preventing the receiving spouse from becoming a public charge, and equalizing the parties' standards of living."
 Roberts v. Roberts, 835 P.2d 193, 198 (Utah Ct. App. 1992)

6

Utah Law – Subsection 30-3-5(8)

factors in determining alimony

- financial condition and needs of the recipient
- recipient's earning capacity or ability to produce income;
- payor spouse's ability to provide support
- length of the marriage
- custody of minor children
- whether the recipient spouse worked in a business owned or operated by the payor spouse
- the recipient spouse's contributions to any increase in the payor spouse's skill

Fault may be used in determining whether to award alimony and its terms.

7

Issues

- Determination
- Fault
- Termination/Modification/Reduction

8

Determination

As stated before, alimony traditionally went to the wife for historical reasons, however, since the 1970s alimony has become less gender-specific.

For many states, alimony is a vehicle to balance the economic interests of the parties or to assist in maintaining an equal standard of living for the parties.

Subsection 30-3-5(8)(f) states: The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

9

Determination

financial records
pay stubs
tax returns

education
lifestyle choices
children
contributions by both parties
the value of property and other possessions

10

Determination

1 household's current standard of living \neq 2 households

11

Fault

1987 - Irreconcilable differences

1995 - the Legislature added the following language to 30-3-5:

(7)(b) The court may consider the fault of the parties in determining alimony.

12

Fault

2008 - Utah Court of Appeals
...until the legislature clearly defines fault in the statute, it is inappropriate to attach any consequence to the consideration of fault when making an alimony award.
Mark v. Mark, 2009 UT App 374, ¶ 20, 223 P.3d 476, 482

2013 - Subsection 30-3-5(8)(c) enacted

13

Fault

30-3-5. Determination of alimony

(8)(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

- (i) engaging in sexual relations with a person other than the party's spouse;
- (ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or minor children;
- (iii) knowingly and intentionally causing the other party or minor children to reasonably fear life-threatening harm; or
- (iv) substantially undermining the financial stability of the other party or the minor children.

30-3-1. Grounds.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life;
- (e) habitual drunkenness of the respondent;
- (f) conviction of the respondent for a felony;
- (g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;
- (h) irreconcilable differences of the marriage;
- (i) incurable insanity; or
- (j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

14

Reduction/Modification/Termination

Alimony terminates automatically
death
remarriage
end of the time period

15

Reduction/Modification/Termination

Alimony may be terminated, reduced or modified by a court if

- the payor proves that the recipient is cohabitating with another person
- it finds extenuating circumstances that justify the continued payment of alimony

16

Issues

- Determination
- Fault
- Termination/Modification/Reduction

30-3-5. Disposition of property -- . . . -- Determination of alimony

(8) (a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;
- (vi) whether the recipient spouse worked in a business owned or operated by the payor

spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or enabling the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining whether to award alimony and the terms thereof.

(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

- (i) engaging in sexual relations with a person other than the party's spouse;
- (ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or minor children;
- (iii) knowingly and intentionally causing the other party or minor children to reasonably fear life-threatening harm; or
- (iv) substantially undermining the financial stability of the other party or the minor children.

(d) The court may, when fault is at issue, close the proceedings and seal the court records.

(e) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(g) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(h) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(i) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(j) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and the payor party's rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

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