

Alimony

Alimony (also called **aliment** (Scotland), **maintenance** (England, Ireland, Northern Ireland, Wales, Canada), **spousal support** (U.S., Canada) and **spouse maintenance** (Australia)^[1]) is a legal obligation on a person to provide financial support to their spouse before or after marital separation or divorce. The obligation arises from the divorce law or family law of each country.

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Etymology

The term alimony comes from the Latin word *alimōnia* ("nourishment, sustenance", from *alere*, "to nourish"), from which the terms alimentary (of, or relating to food, nutrition, or digestion), and aliment (a Scots Law rule regarding sustenance to assure the wife's lodging, food, clothing, and other necessities after divorce) are also derived.^[2]

History

The Code of Hammurabi (1754 BC) declares that a man must provide sustenance to a woman who has borne him children, so that she can raise them:

137. If a man wish to separate from a woman who has borne him children, or from his wife who has borne him children: then he shall give that wife her dowry, and a part of the usufruct of field, garden, and property, so that she can rear her children. When she has brought up her children, a portion of all that is given to the children, equal as that of one son, shall be given to her. She may then marry the man of her heart.^[3]

Alimony is also discussed in the Code of Justinian.^[4]

The modern concept of alimony is derived from English ecclesiastical courts that awarded alimony in cases of separation and divorce. *Alimony pendente lite* was given until the divorce decree, based on the husband's duty to support the wife during a marriage that still continued. *Post-divorce* or *permanent alimony* was also based on the notion that the marriage continued, as ecclesiastical courts could only award a *divorce a mensa et thoro*, similar to a legal separation today. As divorce did not end the marriage, the husband's duty to support his wife remained intact.^[5]

Liberalization of divorce laws occurred in the 19th century, but divorce was only possible in cases of marital misconduct. As a result, the requirement to pay alimony became linked to the concept of fault in the divorce.^[6] Alimony to wives was paid because it was assumed that the marriage, and the wife's right to support, would have continued but for the misbehavior of the husband. Ending alimony on divorce would have permitted a guilty husband to profit from his own misconduct. In contrast, if the wife committed the misconduct, she was considered to have forfeited any claim to ongoing support. However, during the period, parties could rarely afford alimony, and so it was rarely awarded by courts.^[5] As husbands' incomes increased, and with it the possibility of paying alimony, the awarding of alimony increased, generally because a wife could show a need for ongoing financial support, and the husband had the ability to pay.^{[5][7]} No-fault divorce led to changes in alimony. Whereas spousal support was considered a right under the fault-based system,^[8] it became conditional under the no-fault approach.^[7] According to the American Bar Association, marital fault is a "factor" in awarding alimony in 25 states and the District of Columbia.^[9] Permanent alimony began to fall out of favor, as it prevented former spouses from beginning new lives,^[7] though in some states (e.g., Massachusetts, Mississippi, and Tennessee), permanent alimony awards continued, but with some limitations.^{[10][11][12][13]} Alimony moved beyond support to permitting the more dependent spouse to become financially independent or to have the same standard of living as during the marriage or common law marriage, though this was not possible in most cases.^{[5][14]}

In the 1970s, the United States Supreme Court ruled against gender bias in alimony awards and, according to the U.S. Census Bureau, the percentage of alimony recipients who are male rose from 2.4% in 2001 to 3.6% in 2006.^[15] In states like Massachusetts and Louisiana, the salaries of new spouses may be used in determining the alimony paid to the previous partners.^{[12][16]} Most recently, in several high-profile divorces, women such as Britney Spears, Victoria Principal, and Jessica Simpson have paid multimillion-dollar settlements in lieu of alimony to ex-husbands.^{[17][18]} According to divorce lawyers, aggressive pursuit of spousal support by men is becoming more common, as the stigma associated with asking for alimony fades.^{[17][18]}

Reckoning

Once dissolution proceedings commence, either party may seek interim or pendente lite support during the course of the litigation.

Where a divorce or dissolution of marriage (civil union) is granted, either party may ask for post-marital alimony. It is not an absolute right, but may be granted, the amount and terms varying with the circumstances. If one party is already receiving support at the time of the divorce, the previous order is not automatically continued (although this can be requested), as the arguments for support during and after the marriage can be different.

Unless the parties agree on the terms of their divorce in a binding written instrument, the court will make a determination based on the legal argument and the testimony submitted by both parties. This can be modified at any future date based on a change of circumstances by either party on proper notice to the other party and application to the court. The courts are generally reluctant to modify an existing agreement unless the reasons are compelling. In some jurisdictions the court always has jurisdiction to grant maintenance should one of the former spouses become a public charge.

Child support

Alimony is not child support, where, after divorce, one parent is required to contribute to the support of their children by paying money to the child's other parent or guardian.

United States

Child support is considered a payment that a parent is making for the support of their offspring, and the parent who pays it pays the taxes.^[19] However, alimony is treated as taxable income, in most countries, to the receiving spouse, and, in most cases, deducted from the gross income of the paying spouse (the United States IRS does not allow for child support to be deducted *from* adjusted gross income).

The Tax Cuts and Jobs Act of 2017 has changed the federal tax treatment of alimony for divorces and separation agreements signed on or after January 1, 2019, making it identical to that for child support—non-deductible for the payer, and non-taxable for the recipient.^[20]

United States

In the U.S. state law establishes requirements regarding alimony (and child support) payments, recovery and penalties. A spouse trying to recover back alimony sometimes may use only the collection procedures that are available to all other creditors, such as reporting the amount due to a collection agency.

One who allows his or her alimony obligations to go into arrears, where there is an ability to pay, may be found in contempt of court and be sent to jail.^[21] Alimony obligations are not discharged as a result of the obligee's filing bankruptcy.^[22] Ex-spouses who allow **child-support obligations** to go into arrears may have certain licenses seized, be found in contempt of court, and/or be sent to jail.^[23] Like alimony, child-support obligations are not discharged as a result of the obligee's filing bankruptcy.^[22]

Factors affecting alimony

The determination of alimony varies greatly from state to state within the U.S.^[6] Some state statutes, including those of Texas, Montana, Kansas, Utah, Kentucky and Maine, give explicit guidelines to judges on the amount and/or duration of alimony. In Texas, Mississippi and Tennessee, for example, alimony is awarded only in cases of marriage or civil union of ten years or longer and the payments are limited to three years unless there are special, extenuating circumstances. Furthermore, the amount of spousal support is limited to the lesser of \$2,500 per month or 40% of the payee's gross income.^{[24][25][26]} In Delaware, spousal support is usually not awarded in marriages of less than 10 years.^[24] In Kansas, alimony awards cannot exceed 121 months.^[24] In Utah, the duration of alimony cannot exceed the length of the marriage.^[24] In Maine, Mississippi, and Tennessee alimony is awarded in marriages or civil union of 10 to 20 years and the duration is half the length of the marriage barring extenuating circumstances.^[24] Other states, including California, Nevada and New York, have relatively vague statutes which simply list the "factors" a judge should consider when determining alimony (see list of factors below).^{[24][27][28][29]} In these states, the determination of duration and amount of alimony is left to the discretion of the family court judges who must consider case law in each state. In Mississippi, Texas and Tennessee, for example, there are 135 Appellate Cases in addition to 47 sections of State Statute that shape divorce law. As a result of these Appellate Cases, for example, Mississippi judges cannot order an end date to any alimony award. In 2012, Massachusetts signed into law comprehensive alimony reform. This law sets limits on alimony and eliminates lifetime alimony. Similarly, in 2013, Colorado signed into law alimony (Spousal Maintenance) reform, creating a standardized non-presumptive guideline upon which courts can rely.^[30]

In general, there are four types of alimony:^[31]

1. **Temporary alimony:** Support ordered when the parties are separated prior to divorce. Also called *alimony pendente lite*, which is Latin, meaning, "pending the suit".
2. **Rehabilitative alimony:** Support given to a lesser-earning spouse for a period of time necessary to acquire work outside the home and become self-sufficient.
3. **Permanent alimony:** Support paid to the lesser-earning spouse until the death of the payor, the death of the recipient, or the remarriage of the recipient.
4. **Reimbursement alimony:** Support given as a reimbursement for expenses incurred by a spouse during the marriage (such as educational expenses).

Some of the possible factors that bear on the amount and duration of the support are:^[32]

Factor	Description
Length of the marriage or civil union	Generally, alimony lasts for a term or period. However, it will last longer if the marriage or civil union lasted longer. A marriage or civil union of over 10 years is often a candidate for permanent alimony.
Time separated while still married	In some U.S. states, separation is a triggering event, recognized as the end of the term of the marriage. Other U.S. states do not recognize separation or <u>legal separation</u> . In a state not recognizing separation, a 2-year marriage followed by an 8-year separation will generally be treated like a 10-year marriage.
Age of the parties at the time of the divorce	Generally, more youthful spouses are considered to be more able to 'get on' with their lives, and therefore thought to require shorter periods of support.
Relative income of the parties	In U.S. states that recognize a right of the spouses to live 'according to the means to which they have become accustomed', alimony attempts to adjust the incomes of the spouses so that they are able to approximate, as best possible, their prior lifestyle.
Future financial prospects of the parties	A spouse who is going to realize significant income in the future is likely to have to pay higher alimony than one who is not.
Health of the parties	Poor health goes towards need, and potentially an inability to support oneself. The courts are disinclined to leave one party indigent.
Fault in marital breakdown	In U.S. states where fault is recognized, fault can significantly affect alimony, increasing, reducing or even nullifying it. Many U.S. states are 'no-fault' states, where one does not have to show fault to get divorced. No-fault divorce spares the spouses the acrimony of the 'fault' processes, and closes the eyes of the court to any and all improper spousal behavior. In Georgia, however, a person who has an affair that causes the divorce is not entitled to alimony. ^[33]

Prenuptial agreements

Prenuptial agreements are recognized in all fifty states and the District of Columbia, and every jurisdiction allows parties to agree to spousal support and alimony terms in a premarital or postnuptial agreement, if their marital agreement is prepared in accordance with state and federal law requirements. Divorce courts retain the discretion to refuse to enforce prenuptial agreement terms restricting a party's right to seek alimony if that party would have to seek public assistance as a result of the alimony waiver, or if the restriction on the right to seek alimony is unconscionable or unfair when the divorce occurs. Lack of financial disclosure prior to signing a prenuptial agreement or a post-nuptial agreement by the party against whom alimony is sought may also cause a court to invalidate a waiver of alimony provision. Prenuptial Agreements with valid alimony waivers or restrictions entered into in one state should be fully enforceable by the courts of another state in the event of a divorce, unless the terms of the prenuptial agreement are in material violation of the foreign jurisdiction's laws.

California is the only state with a law that requires that the parties be represented by counsel if spousal support (alimony) is limited by the agreement.^[34]

Instead of a complete waiver of the right to seek alimony, prenuptial agreements and post-nuptial agreements can also contain terms where the parties agree to a set amount of guaranteed alimony for the lower wage earner at the time of divorce, or a cap/limit on the amount of alimony either party can seek in the event of a divorce.

Reform

In the United States, family laws and precedents as they relate to divorce, community property and alimony vary based on state law. Also, with new family models, "working couples", "working wives", "stay-at-home dads", etc., there are situations where some parties to a divorce question whether traditional economic allocations made in a divorce are fair and equitable to the facts of their individual case. Some groups have proposed various forms of legislation to reform alimony parameters (i.e. amounts and term).^{[7][12][16][35][36][37][38]} Alimony terms are among the most frequent issues causing litigation in family law cases.^{[7][10]} Eighty percent of divorce cases involve a request for modification of alimony.^{[39][40]}

English Common Law

Divorce law in the U.S. was based on English Common Law, which developed at a time when a female gave up her personal property rights on marriage (see Coverture). Upon separation from marriage, the husband retained the right to the wife's property, but, in exchange, had an ongoing responsibility to support the wife after dissolution of the marriage.^{[6][7][11]} British law was amended by legislation including Married Women's Property Act 1870 and Married Women's Property Act 1882 which reformed females' property rights relating to marriage, by, for example, permitting divorced females to regain the property they owned before marriage.^{[7][11][36][39][41]}

State reform

Some states (e.g. Florida, Texas, Maine) are moving away from permanent alimony awards that are intended to maintain a spouse's standard of living enjoyed during the marriage and are moving towards durational or rehabilitative alimony.^{[42][43]} In other states, like Mississippi and Tennessee, alimony is usually awarded for life.^{[12][44][45]}

Some of the critical issues that proponents and opponents of alimony reform disagree upon are:

- Whether alimony should be temporary or permanent^[36]
- Regardless of duration, should alimony payers have the unquestionable right to retire?^[46]
- Does the lesser earning spouse deserve alimony to meet his or her basic needs (sustenance) or enough to sustain "the lifestyle accustomed to during the civil union or marriage"?^[36]
- Should the income and assets of a new spouse be used in determining how much alimony gets paid?^[12]
- How clear and prescriptive should state statutes be versus allowing a larger degree of Judicial Discretion?^{[12][47][48][49]}

In several US states, including Pennsylvania, Oklahoma and New Jersey, some lawmakers are attempting change of divorce laws as they pertain to alimony.^[36] Massachusetts law provided for lifetime alimony, but in early 2009 a reform bill (HB 1785) backed by a group called "Mass Alimony Reform"^[50] gained 72 state representatives as co-sponsors (of a total of 200 Representatives and Senators). HB 1785 would have required a spouse receiving alimony to become self-sufficient after a reasonable time. It would have established alimony as a temporary payment instead of a permanent entitlement.^[51] This law would also have addressed the issue of cohabitation^[24] – where the alimony recipient is living with, but not married to a new significant

other.^{[7][10][24][36][52][53]} In January 2011, the bill was filed with the Massachusetts legislature and was passed unanimously by the legislature and signed into law on September 26, 2011.^{[54][55]} The law, which took effect on March 1, 2012, provides for different categories of alimony, and limits the duration of alimony.^[56]

In New Jersey, a group called New Jersey Alimony Reform was established in 2011 to encourage and promote similar reforms to alimony reforms within the state.^[57] In 2012, a group called New Jersey Women For Alimony Reform was established to promote Alimony Reform in New Jersey. In 2012, bills were introduced in the NJ Assembly and Senate. The Assembly passed a bill calling for a Blue Ribbon Commission to address Alimony Reform.^[58] The Senate has a similar bill pending that has not yet been posted in the Judiciary Committee.^[59] The NJ Matrimonial Bar Association has been vehemently fighting against Alimony Reform, led by Patrick Judge Jr. chairman of the Family Law section of the New Jersey State Bar Association.^{[60][61]} Attorney Judge stated that the New Jersey State Bar Association ("NJSBA") objected to the inclusion of individuals with a vested interest in reforming alimony on the Blue Ribbon Commission and that the NJSBA supported the "establishment of a commission [to study alimony reform] but only as long as the commission is constituted so that a fair and unbiased review of the current alimony laws takes place...[and] should not be predisposed to an outcome...."^[62]

In Florida, a group called Florida Alimony Reform was also established in 2011 to encourage and promote similar reforms to alimony reforms within the state of Florida. A comprehensive Alimony Reform bill passed the Florida House in 2012 but died in the Senate. In 2013, both the Florida House and Senate passed a comprehensive alimony bill sponsored by Sen. Kelli Stargel, which was vetoed by Governor Scott at the end of the legislative session.^[63] As in New Jersey, the Florida Matrimonial Bar, led by Carin Porras, Chair, Family Law Section of The Florida Bar strongly opposes reform.^[64]

In California, a non-profit organization called CalAlimonyReform.org was established by Steve Clark in 2015 to develop and advocate legislation, regulations and government programs to provide equality in all aspects of marital settlements relating to the dissolution or nullity of marriage within the state of California.

In Minnesota, a group called Minnesota Alimony Reform was formed in early 2016 by Dr. Michael Thomas. The organization is closely modeled after Mass Alimony Reform and has consulted with its founder Stephen Hitner. Minnesota Alimony Reform successfully worked with legislators in the House and Senate to change alimony law in the state (MN Statute 518.552 (<https://www.revisor.mn.gov/statutes/?id=518.552>)) to allow for modification upon the cohabitation of the recipient.

California, Connecticut, Georgia, Illinois, Oklahoma, New York, South Carolina, Tennessee, Utah, and West Virginia have all passed laws that allow for the modification or termination of alimony upon demonstration that the recipient is cohabitating with another person.^[65] In April 2009, the Governor of New Jersey, Jon Corzine, signed into law changes in the alimony statutes for his state which would bar alimony payments to parents who kill, abuse, or abandon their children.^[66]

Canada

Types of spousal support

In Canada, spousal support may be awarded upon divorce, under the federal *Divorce Act*, or upon separation without divorce under provincial statutes. There are generally three different forms of spousal support awarded:

1. Compensatory support – This form of support compensates an individual for her or his contributions to the relationship as well as for any losses that individual has suffered;
2. Non-compensatory support – In some cases support may be awarded on a needs basis. This form of support may be awarded by a Court where an individual is sick or disabled; and
3. Contractual support (divorce agreement) – This form of support upholds a contract between the parties which governs support payments.^[67]

Married spouses and common-law spouses

Both married spouses and common-law spouses may be entitled to spousal support. An important distinction between the two is that common-law spouses must start an action claiming spousal support within one year of the breakdown of the relationship. A second important distinction is that only married couples may divorce under the federal *Divorce Act*, common-law spouses may only separate under provincial legislation, such as Ontario's *Family Law Act*^[68] or British Columbia's *Family Relations Act*.^[69] No such limitation arises for married individuals. In addition to being in a marriage or common-law relationship, courts will look at the conditions, means, needs and other circumstances of each spouse. This includes:

1. The length of time the spouses cohabited;
2. The functions performed by each spouse during the relationship; and
3. Any existing orders or agreements.

This is by no means an exhaustive list of factors which the court will consider when determining entitlement. Each case is determined on its own unique set of circumstances.

Factors for awarding spousal support

The federal *Divorce Act* at s.15.2 (6) states that there are four objectives of spousal support orders:

1. Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
2. Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
3. Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
4. In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.^[67]

Amount and duration

The longer the length of cohabitation and the greater the disparity between each party's incomes, the larger an award of spousal support will be and the longer the duration will be. As stated above, spousal support calculations are complex. There are no tables to use as in child support calculations. Lawyers use special software designed specifically to calculate the entitlement, amount, and duration of support. After information is input into a computer, the software will provide a range for the spousal support amount and duration.^[70]

Although there is no set formula to determine the exact amount and duration of spousal support, there are guidelines, referred to as the *Spousal Support Advisory Guidelines*, which provides ranges for both. *The Spousal Support Advisory Guidelines* calculates the ranges taking into account the factors set out above. Although the courts are not required to abide by the *Spousal Support Advisory Guidelines*, they are required to take them into account when deciding on the issue of spousal support.^[71]

Depending on the means and needs of the individual receiving support, the court will generally award an amount of spousal support somewhere within the range provided by the software. The longer the relationship, the greater the presumption that the parties should have an equal standard of living.^[70]

Similarly, the length of the relationship will be taken into account when determining how long spousal support should be paid for. Awards for spousal support can be for a limited term or indefinite.^[72]

While declaring bankruptcy does not absolve Canadians of obligations to pay alimony or child support, a 2011 ruling by the Supreme Court of Canada established that under current laws "equalization payments agreed to as part of a divorce are considered debts, and are wiped off a person's balance sheet when they declare bankruptcy."^{[73][74]}

Czech Republic

Laws of the Czech Republic provide for spousal maintenance both during marriage and after divorce. As main principle, both spouses have the right for generally equal standard of living during the marriage.^[75]

The same "generally equal standard of living" applies also to post-divorce period in special cases, when the payee wasn't mostly responsible for the failure of marriage or did not agree with the divorce and the payee suffered serious harm due to the divorce and hadn't committed an act of domestic violence against the payer. In such case the payee may request alimony in amount providing "generally equal standard of living" for a period adequate to circumstances, but no longer than three years.^[75]

If those special conditions are not met, both of the divorced have mutual spousal maintenance obligation in case that one of them is not able to provide for themselves due to circumstances originating in marriage, if payment of alimony is reasonable under general circumstances that each of the divorced found themselves in.^[75]

See also

- Child support
- Coverture
- Divorce
- Filial responsibility laws, similar to alimony but the money is paid by children to impoverished parents
- Men's rights
- Palimony – term from litigation involving Lee Marvin
- Prenuptial agreement
- Women's rights

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