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Contemporary Alimony

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CONTEMPORARY ALIMONY

I. INTRODUCTION

When a man loses the desire to support his wife or when the marital relations have been dissolved, he may be compelled to furnish support. This court enforced obligation is commonly called "alimony". Alimony stems from the Latin word, *Alimonia*, meaning "sustenance" and concerns;

. . . the sustenance or support of the wife by her divorced husband. It stems from the common-law right of the wife to support by her husband, which right, unless the wife by her own misconduct forfeits it, continues to exist even after they cease to live together. Alimony has as its sole object the support of the wife, and is not to be considered a property settlement upon a dissolution of the marriage.¹

In ancient patriarchal societies where divorce was unlimited to the *husband*, he was under no obligation to provide for his wife. As culture progressed, a fixed penalty was assessed upon dissolution. In Roman law the wife was, at first, without any rights as regards support but by the time of Justinian the guilty spouse forfeited 100 pounds of gold.

The early church control over divorce and separation greatly emphasized the penal character of alimony and the Anglo-American law of alimony is to be attributed to the persisting influence of Reformation ideas which passed from English Ecclesiastical courts into the common law.

In the United States, where there are 400,000 divorces granted each year, alimony is a vital necessity.² The law of alimony in this country has stood without a material change for over two hundred years. It is the purpose of this article to discuss the foundation for the present rule, the good and bad aspects of the rule, and to submit suggestions for modifying the law.

II. HISTORY OF THE LAW

A. RECOGNITION IN ENGLAND

In early England complete dissolution of the marital bond was a rarity. Divorce *a mensa et thoro* was granted for adultery

¹ Eaton v. Davis, 176 Va. 330, 338, 10 S.E.2d 893, 897 (1940).

² Judge Morris Ploscowe, Is There A Right Amount of Alimony? Coronet Magazine, April 1955, page 140-144.

and cruelty and this decree (commonly called divorce from bed and board) was given in hopes of a reconciliation as marriage was thought to be indissoluble. A divorce *a vinculo matrimonii* (absolute divorce) could only be granted by a private act of Parliament.³ Prior to 1857 the Ecclesiastical courts exercised full jurisdiction in matrimonial cases and this appears to be the reason for treating marriage as indissoluble in early England.⁴

The need for allowing permanent alimony became apparent due to the requirements of the social economy of the 19th century. The husband had the legal duty to protect and support the wife and the modern notion of equal rights was non-existent. In granting a divorce *a mensa et thoro*, the Ecclesiastical courts found that alimony was a necessity because the control exercised by the husband over the property of the family had caused the wife to be totally dependent on her spouse. She was not to be put into society to subsequently become a burden of the state.

As divorce *a mensa et thoro* destroyed the right of cohabitation, but not the marriage itself, the allowance of alimony was based on the continuing duty of the husband to support the wife. Permanent alimony, as we know it, was never contemplated in early England.

The broad discretionary power that today rests with the judges also existed in English law. The needs of the wife, the ability of the husband to pay, and the social status of the parties were essentially the determining factors in granting alimony. The wife was to be allowed "a comfortable subsistence in proportion to her husband's income."⁵ The punishment factor played a significant part in allowing alimony⁶ and the doctrine appeared to be strictly a benefit for the innocent wife with no allowance to the husband under any circumstances.

The passage of the English Divorce Act in 1857 allowed judicial separation and took jurisdiction in matrimonial cases away from the Ecclesiastical courts.⁷ By this time most of the American states had already taken control of these cases from the church.

³ 1 Holdsworth, A History of the English Law, page 390. The reader will find an excellent discussion of the popularity of these private acts.

⁴ 12 Holdsworth, A History of the English Law, page 685 (1938).

⁵ Kemp v. Kemp, 1 Hag.Ecc. 532, 162 Eng. Repr. 668 (1828).

⁶ Kemp v. Kemp, *ibid.*, ". . . it is due to the morals of society that a dissolute husband, who so offends (adultery) should contribute liberally to the support of an injured wife."

⁷ 20 & 21 Vict. c. 85 (1857).

The allowance of alimony could always be modified in England and the Ecclesiastical judges enforced the alimony order by the use of excommunication. After this method was forbidden by Parliament, enforcement by contempt proceedings was substituted.⁸ Contempt as known in 19th century England was much the same as we know it today in this country.

B. RECOGNITION IN AMERICA

The American colonies at first treated the marital bonds much the same as they were treated in England and marriage was thought to be indissoluble due to the predominate influence of the church. This feeling subsided along with the separation from English dominance and the law of alimony in this country became very similar to the law in England after the Act of 1857.

The American courts proceeded to give broader recognition to the fault doctrine in allowing both divorce and alimony. This was based on the theory that the actions of the husband are such as would constitute a tort and therefore punishment elements entered into the award. Alimony was also called "an assessment of damages in favor of the wife for breach of the marriage contract."⁹

As divorce in this country is statutory the allowance of alimony has also become statutory. The statutes are fairly uniform in providing for some type of temporary alimony, substantial judicial discretion in allowing permanent alimony, and some method of modification and enforcement.

III. THE NATURE OF ALIMONY

There are three distinct types of alimony recognized in this country: temporary alimony or alimony *pendente lite*, permanent alimony after an absolute divorce, and alimony without divorce.

A. ALIMONY *Pendente Lite*

This award, often called temporary alimony, is an allowance in support of a wife pending the divorce or separate maintenance

⁸ 53 Geo. III c. 127 (1812-13) and 2 & 3 Wm. IV c. 93 (1831-32).

⁹ *Driskill v. Driskill*, Mo. App., 181 S.W.2d 1001 (1944). See *Dayton v. Dayton*, 290 Ky. 418, 161 S.W.2d 618 (1942), where the court stated: ". . . the duty and moral obligation of a husband to maintain a wife if he is the cause of the severance of the marriage relation." See also: *Pinion v. Pinion*, 92 Utah 255, 67 P.2d 265 (1937).

proceedings and is based on the actual duty to support which exists because the marriage is still in effect. This allowance enables the wife to either prosecute or defend the suit.

In granting alimony *pendente lite* it appears that the most important factor considered is the financial condition of the wife and whether or not she is able to prosecute or defend the action. Some importance is settled on whether or not she was at fault, but the ability of the husband to pay is seldom considered. It has even been held that a husband suing for divorce in *forma pauperis* must pay alimony *pendente lite* to a wife in financial need.¹⁰

Expenses and counsel fees are usually allowed to the wife at the court's discretion during the same proceeding in which alimony *pendente lite* is granted. The husband may be ordered to pay the attorney fees of the wife up to a reasonable amount usually set by the court.

Temporary alimony, expenses, and counsel fees are a necessity and should not be abolished. These allowances enable the wife, who may be destitute, to sever the marital ties or defend the action to the best of her ability. The only argument against the present status of alimony *pendente lite* and counsel fees appears to lie in the fact that in only a minority of the jurisdictions these allowances are granted to the husband. Upon a proper showing of need, the husband should be entitled to alimony *pendente lite*.

B. PERMANENT ALIMONY

Although it is often stated that the granting of alimony rests on the obligation of the husband to continue supporting the wife, this is not truly the case as regards permanent alimony following divorce. The marital relationship no longer exists as in alimony *pendente lite* and therefore permanent alimony is awarded by the court upon considerations of equity and public policy alone.¹¹

The allowance of permanent alimony is a matter for the trial court and subject to review only where an abuse of discretion is clearly shown.¹² All the states except Georgia¹³ place the decision on alimony in the hands of the trial judge.

¹⁰ Moon v. Moon, 43 N.J. Eq. 403, 3 Atl. 350 (1886). The court held that although the husband was suing in *forma pauperis* he was capable of earning some type of income and therefore should pay alimony.

¹¹ Romaine v. Chauncey, 129 N.Y. 566, 29 N.E. 826 (1892).

¹² Swolec v. Swolec, 122 Neb. 837, 241 N.W. 771 (1932).

¹³ Georgia places the decision on alimony in the hands of the jury.

Although the records of the trial courts are not readily available, some of the standards used in allowing alimony appear to be: ability of the husband to pay, financial condition of the wife and her outside income, conduct during marriage, social status attained during marriage, age, health, how long the marriage existed, efforts of the wife in acquiring family wealth, children involved, and the expectancy of the husband's future.¹⁴ Where the wife's separate estate is sufficient to enable her to live in a manner to which she has been accustomed, no alimony will be allowed.¹⁵

Permanent alimony may be awarded in a single gross sum, a fixed amount payable in installments or a continuing allowance. The continuing allowance theory appears to be predominant in most of the states although it has been argued that when this method is used the husband never knows the limits of his obligation and that there is a constant burden of "never ending" payments.

The fault principal still plays a significant part in the awarding of alimony although it may still be granted where both parties are at fault.¹⁶ If the wife is primarily at fault she will ordinarily not be allowed alimony.¹⁷

Enforcement of the alimony decree is done by the use of the contempt remedy and imprisonment for contempt in these cases does not lie within the constitutional provision prohibiting such imprisonment for a debt.¹⁸ Other methods of enforcement are an injunction to prevent the husband from disposing of his property to avoid payment¹⁹ and the issuance of a writ of *ne exeat* to restrain the husband from leaving the state to avoid paying alimony. The husband may have a defense in the contempt proceedings if he is totally unable to pay, although the burden is upon him to prove such inability.²⁰

¹⁴ *Young v. Young*, 322 Ill. 608, 154 N.E. 405 (1926), and *Zimmerman v. Zimmerman*, 59 Neb. 80, 80 N.W. 643 (1899).

¹⁵ *Wilkins v. Wilkins*, 84 Neb. 206, 120 N.W. 907 (1909).

¹⁶ *Nichols v. Nichols*, 189 Ky. 500, 225 S.W. 147 (1920).

¹⁷ *Ahrns v. Ahrns*, 160 Ky. 342, 169 S.W. 720 (1914) and *Garsed v. Garsed*, 170 N.Car. 672, 87 S.E. 45 (1915).

¹⁸ *Barclay v. Barclay*, 184 Ill. 375, 56 N.E. 636 (1900), and *Daniels v. Lindley*, 44 Iowa 567 (1876).

¹⁹ *Tank v. Tank*, 69 N.Dak. 39, 283 N.W. 787 (1939) and *Dissette v. Dissette*, 208 Ind. 567, 196 N.E. 684 (1935).

²⁰ *Snook v. Snook*, 110 Wash. 310, 188 Pac. 502 (1920). On enforcement of foreign alimony decrees see: *Sistare v. Sistare*, 218 U.S. 1 (1909),

C. ALIMONY WITHOUT DIVORCE

Alimony without divorce, or separate maintenance, is the allowance granted a wife for the support of herself and her children while living separate and apart from her husband without fault of her own. It may be decreed in an action brought solely for that purpose and is grounded on the theory that, although a wife may have grounds to divorce her husband, she should have an alternative remedy, namely living apart without divorce.²¹ The causes giving rise to a suit for separate maintenance are statutory and deal primarily with desertion although in some states the causes are similar to those for a divorce action.

In order to receive separate maintenance the wife must be either free of fault or at least guilty of a lesser degree of fault than the husband.²² The amount allowed for maintenance and support, like all types of alimony, is largely within the discretion of the court and is subject to appellate review only if unreasonable.²³

IV. SHOULD THE LAW OF ALIMONY BE MODIFIED OR ABOLISHED?

To abolish the allowance of alimony entirely seems to be a quite radical approach. Although there appear to be many deficiencies in the present status of the law, society should not be required to support the dependent spouse who, upon dissolution of the marriage, is unable to support herself. It was upon this basis that alimony was first allowed to the wife. The wife was at one time entirely dependent upon the husband, but conditions have greatly changed and the various equal rights movements have greatly improved the wife's position. It is because of these changes in society that the present law of alimony has been

where it was held that a final alimony decree in a foreign state was entitled to full faith and credit. This case represents the weight of authority on alimony decrees and the present tendency appears to be in discarding the finality requirement. See: *Williams v. North Carolina*, 325 U.S. 226 (1944), where it was held that a foreign state may look into the validity of the decree given in a sister state.

²¹ *Earle v. Earle*, 27 Neb. 277, 43 N.W. 118 (1889) and *Decker v. Decker*, 56 Mont. 338, 185 Pac. 168 (1919).

²² *Price v. Price*, 75 Neb. 552, 106 N.W. 657 (1909) and *Snouffer v. Snouffer*, 150 Iowa 58, 129 N.W. 326 (1911) dealing with those situations where both parties are at fault and the wife's fault is equal to, or greater than, the husband's.

²³ *Fountain v. Fountain*, 150 Ga. 742, 105 S.E. 294 (1920).

criticized. The purpose of this section is to discuss the arguments both for and against the modification of the present law, along with some of the limitations now in existence in the various states.

A. ARGUMENTS FOR ALIMONY.

The main argument for allowing alimony, as before mentioned, is to keep the burden of supporting the dependent spouse from falling upon society as a whole. Although the wife may stand on nearly an equal footing in most cases there are still many instances where one spouse is unable to support herself or through her efforts appears entitled to an award of alimony. The wife may have devoted her time exclusively to household chores and is therefore unprepared to set out on her own, she may have greatly contributed to the ability of her husband to earn a large income, and illness or physical injury may prevent her from adequately supporting herself. In these cases, along with others (such as mental illness cases)²⁴ alimony serves a distinct purpose and is a necessity.

B. ARGUMENTS AGAINST ALIMONY

The wife is no longer dependent upon the husband completely and as the present law of alimony is based upon the economic conditions during that period when she was totally dependent, it should be abolished or modified to conform with present economic standards. The married woman is now permitted to hold most any type of job, hold property independently of her husband, enter into contractual relations independently or with him, and she may be sued and sue in her own name. She is liable for her own wrongs and she may vote without her husband's supervision. She is no longer obliged to "love, honor and obey" and the law may not compel her to do any of these. In this era she attains a social status quite equal with the husband in both civic and public affairs. Marital dissolution has become a natural remedy and a woman living an independent life does not at all shock society. This comparative ease with which a woman may support herself lends itself to the conclusion that the husband should not be compelled to support her after divorce.

²⁴ Nearly all of the jurisdictions in this country provide some type of support in the case of the divorced, insane spouse. However, only a very few of these states include this provision in that section of the statutes dealing with divorce and alimony.

Society is causing the divorce requirements to become more lenient and there should be a comparative modification to restrict the law of alimony. If the grass appears greener on the other side of the fence it is easy for the wife to get a divorce, along with substantial alimony. This may tend to cause a hasty, emotional wife to permanently sever any possibility of reconciliation in hopes of "getting back at her spouse", through a recovery of alimony. If the right to alimony were limited, her opportunity to "get back" at her husband would be delayed and hence, a reconciliation may occur.

Alimony can be used as a method of blackmail and extortion for those women who are able to trap men into the bonds of matrimony for just that purpose. It also tends to increase or continue former antagonisms and it has often provoked those who are ordered to pay it to leave their job, residence, leave the state, and disappear forever. This maintains a distasteful link with the dissolved partnership and is a type of penal servitude that transposes lost affection into ready cash.

C. METHODS OF MODIFICATION OR LIMITATION NOW IN USE

1. *Alimony for the Husband?*

Until the last quarter of a century alimony was a privilege enjoyed strictly by the wife alone.²⁵ It was felt that the husband could always provide for himself and no exception was made for the physically disabled husband with a wealthy wife. One of the first states to allow alimony to the husband was Illinois in 1935 and since that time approximately eighteen other states grant the husband alimony in some form.²⁶ The basis

²⁵ *Sommers v. Sommers*, 39 Kan. 132, 17 Pac. 841 (1888) and *Green v. Green*, 49 Neb. 546, 68 N.W. 947 (1896).

²⁶ These states allow alimony to the husband: Alaska Comp. Laws Ann. § 56-5-13 (1949); California Civ. Code Ann. § 137 (Supp. 1953); Iowa Code c. 598, § 598.19 (1950); Maine Rev. Stat. c. 166, § 66 (1954); Massachusetts Gen. Laws c. 208, § 34 (1932); Nebraska Rev. Stat. § 42-318.01 (1943) insanity only; New Hampshire Rev. Laws c. 399, § 19 (1942); North Dakota Rev. Code § 14-0524; Ohio Code Ann. § 8003-17 (Supp. 1952); Oklahoma Stat. Ann. tit. 12 §§ 1278 and 1284 (1937); Oregon Comp. Laws Ann. § 107.100 (1935); Pennsylvania Stat. Ann. tit. 23 § 45-47, insanity only (Purdon 1955); Utah Code Ann. § 30-4-4 (1943); Vermont Rev. Stat. § 3247-adultery of wife, § 3209-insanity, § 3230-temporary alimony (1947); West Virginia Code Ann. § 4715; Virginia Code § 20-107-similar to property division (1950); Wisconsin Stat. § 247.27 - for child support only (1949); Washington Rev. Code § 26.08.110 - similar to property division (1951). In all of these jurisdictions it is

for this trend lies in the fact that if alimony is to be an economic necessity, elderly and disabled husbands are just as apt to be put on the public assistance rolls as is a divorced woman. Where alimony is allowed to the husband it is always necessary for him to prove extenuating circumstances and records show that his chances of a sizable recovery appear to be less than that of the wife. All the jurisdictions except Alabama, Delaware, Florida, Hawaii, Idaho, Maryland, Mississippi, Missouri, Montana, New Jersey and North Carolina have some type of statute allowing either alimony for the husband or which give the court a broad discretion in distribution of the property. Courts have still been slow in distributing property to the husband unless there is a specific statute allowing him a distribution in lieu of alimony.

2. *Community Property?*

The second theory offered as a possible solution to the alimony problem lies in the acceptance of the Community Property theory. Under this principle the community of gains during the marital status are divided upon dissolution of the marriage. Each party retains the property held before the marriage ceremony and thus the matrimonial period is viewed in a more business-like manner. As the contribution of the wife to the enrichment of the family is difficult to adjust, the simple splitting of the assets acquired during the marriage and less emphasis on permanent alimony has been suggested to be the most equitable result. Under this system the wife in the home, who is unable to go outside to earn money, would not have the feeling of being a liability rather than an asset. Where the earnings, income, and assets of the two are vested jointly during the marriage, a real economic, as well as conjugal, partnership results.

The true community or partnership idea seems a practical and simple method of giving each spouse a sense of security, reward, accomplishment, and justice. Neither spouse should lose the ownership of his part, accumulated by the efforts during marriage, because of a failure to live up to the emotional side of marriage. Personal ownership of this type serves as a stabilizer for the individual and for society. Thrifty spouses may be kept together because of their financial interest in the status of marriage. This type of financial concern appears to be the grow-

necessary for the husband to prove extenuating circumstances which justify his receipt of alimony. Most courts have still been slow in even distributing property to the husband unless there is a specific statute allowing him alimony.

ing and progressive view towards the marriage contract. The possibility of burdening the state with the support of one of the parting spouses would be greatly diminished if that spouse could be certain of an equitable split of the property.

In answer to those who suggest that community property would allow us to do away with the law of alimony entirely it is submitted that in the overwhelming majority of divorce cases a division of property would not be sufficient to provide for a destitute wife. In most of the divorce cases the amount of property is so small that any division would not enable either spouse to maintain adequate support for himself. The following chart, taken from *After Divorce*, by Goode reveals the startling facts as to the average amount of property upon dissolution of the marriage:²⁷

Total Value of Property At Time of Divorce

<u>Value</u>	<u>Percent</u>
No property	40
\$ 1.00—\$ 249	5
\$ 250—\$ 999	16
\$1000—\$1999	14
\$2000—\$3999	8
\$4000— and over	18
Total	101

N = 425

The results of this study show that the community property theory alone, would be an incomplete substitute for alimony and only the high middle class and wealthy families would derive any benefit whatsoever from an acceptance of the community property theory.

3. *Modification of the Decree?*

Another method of limitation used by the courts to keep alimony awards equitable lies in the retainment of jurisdiction to modify or halt the payments. This right of modification is accepted by the overwhelming majority of the states. The logic behind the rule is not hard to comprehend. Changing conditions

²⁷ Goode, *After Divorce*, page 217. This study was taken from a substantial number of divorced women living in and around the Detroit, Michigan area. This book also contains an excellent discussion and many surveys on the social and economic conditions of the divorced spouse.

may make it hard to meet the obligation and thus cause extreme hardship and as recovery is based on economic need and ability to pay, the award must be changed when these two elements are altered.

This power should not be taken away from the court's discretion as it serves as an ever present equitable safeguard.

4. *Alimony Based on Fault?*

A further limitation of the right to alimony is imposed in those states that refuse recovery where the recipient is the guilty party in the divorce action.²⁸ In those jurisdictions that accept the "fault principle", alimony is considered basically a punishment and hence, no alimony is granted where there is no need for punishment.

This type of limitation should be abolished. It combines the emotional and financial aspects of the marriage and as alimony is, and should be, based entirely on an economical foundation, this is an unrealistic approach to the problem.

5. *A Percentage Limitation?*

A very few states have recognized still another limitation by restricting the amount of recovery to not more than one-third of the income and property of the obligor spouse.²⁹ The reason for using the one-third limitation appears to be founded in the old common law right of dower whereby the wife had the one-third interest in the property of her husband upon his death. This method is quite equitable and although most of the awards made in alimony cases do not exceed the one-third limit, even in the absence of a statute, some definite limitation should be set. The changed circumstances of the wife again enter into discussion and it is argued that in nearly all cases a divorced spouse is able to support herself on this one-third allowance plus her own income. Pennsylvania, which has done away with permanent alimony except where one spouse is insane, has restricted even this allowance to one-third of the income and prop-

²⁸ Some of those states that rely heavily on the "fault doctrine", in both statutes and decisions, are: Delaware, Florida, Louisiana, Maine, Michigan, Minnesota, Rhode Island, South Dakota, Vermont, Virginia, and Wisconsin.

²⁹ Those states that use the one-third limitation are: Arkansas, Louisiana, Maine, Minnesota, and Pennsylvania, which allows alimony only in case of an insane spouse.

erty of the other spouse. Thus, it appears that a one-third allowance is sufficient in all cases. A higher amount puts too great a burden and penalty on the obligor spouse.

6. *Method of Payment*

The final limitation controversy lies in the different methods of payment allowed in the various jurisdictions. Although the periodic payment method provides continuing support to the destitute spouse, the extent of the husband's obligation is never determined. He is at all times subject to the jurisdiction of the courts. If a lump sum is decreed the judgment is final and both parties are subsequently on their own. Those who favor the periodic payment system argue that a lump sum award can work a hardship on either party. If the wife should become sick and unable to support herself at all, her payments have been advanced and she is entitled to no more. Therefore she will eventually become a burden on society. The periodic payment approach also protects society against the spendthrift spouse who quickly spends the lump sum allowance. After a lump sum award has been decreed what happens if the obligee spouse immediately marries? The obligor is not allowed to plead this in an effort to recover the monies advanced and he has enriched his former spouse and her new husband by order of the court.

It is submitted that the best method of payment is a lump sum award payable in installments. This system determines the extent of the husband's obligation, protects against the spendthrift wife, and suffices as a temporary aid in starting the wife (or husband) on the road to acquiring the ability of self-support.

V. CONCLUSION.

The research and preparation of this article has yielded the following conclusions and suggestions:

1. *Some form of alimony is a necessity.* The burden of supporting the destitute divorced spouse must not fall upon society. Although the duty to support is, in reality, ended after the divorce, the time spent together in furthering the family unity should entitle the wife or husband, as the case may be, to some form of compensation upon dissolution of the marriage, at least until the obligee spouse is in a position to completely support himself.
2. *The granting of alimony must not be taken from the discretion of the trial court.* Each case presents a different situa-

tion and the needs and abilities of the parties is never the same, hence, each situation must be judged with a complete knowledge of the facts. No stringent rules of procedure are practicable in this area and each case must be decided with due regard to the particular condition of the parties.

3. *The court must be able to modify the original decree at all times.* Changing circumstances most certainly require this remedy and if it is not provided unreasonable hardships may arise.
4. *Neither alimony pendente lite nor permanent alimony should be restricted to the wife only.* It is the recent trend in this country to grant alimony to either spouse upon a proper showing of need. Although only a minority of the jurisdictions grant alimony to the husband, those that do have accepted the better rule. In early England alimony to the husband was unheard of, but the changing position of the wife has made it much easier for her to provide self-support. Why should the independently wealthy wife escape the burden of providing for her needy spouse upon dissolution of the marriage? It is just as easy for him to become a ward of the state.
5. *Such yardsticks as: "fault", "guilt", "clean hands" and "innocent spouse" should be abolished.* These ecclesiastical yardsticks disregard the true economical basis for the law of alimony. Economic need should be the only yardstick and the punishment theory has no place in this phase of domestic relations law. The emotional and financial aspects of divorce law should be separated and the tendency to punish fault and reward virtue should be halted.

Regardless of what method is used to provide for the destitute spouse, a more "business-like" approach to the financial situation of the parties should be used. The real questions are first, whether the family can be rehabilitated; second, if the family is finished, what can be done for the children; and *lastly*, what type of an equitable distribution can be made for the support of the spouses.

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