

CHAPTER 1

ALIMONY

I. GENERAL ALIMONY CASES

***Friederich v. Friederich*, 6 N.J. Super. 102 (App. Div. 1950)**

A wife, in order to prevail in a suit for separate maintenance, must show that her husband has, without justifiable cause, abandoned her or separated himself from her, and that he has refused or neglected to maintain and provide for her. Such a rule is applicable to preliminary applications as to final hearings.

A wife has a duty to live with her husband in his home and to give him her services and society. She is relieved of such an obligation only if she can show that the conduct of the husband was such as will reasonably convince a court that her life or health was endangered, or that her life was rendered of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that conduct of her husband, if continued, would have brought about such conditions, but physical violence need not be shown.

***Lehmann v. Lehmann*, 7 N.J. Super. 232 (App. Div. 1950)**

Evidence did not warrant the conclusion that the husband's conduct endangered the wife's life or health or that her life was one of such extreme discomfort or wretchedness as to incapacitate her, physically or mentally, to discharge her marital duties, or that parties should not live together, and, hence, the wife was not entitled to a decree of separate maintenance on the ground that the husband's extreme cruelty constituted constructive abandonment.

***Roth v. Roth*, 10 N.J. Super. 406 (Ch. Div. 1950)**

The remarriage of a divorced wife requires a vacation of the order for the allowance of alimony to the divorced wife. *R.S.2:50-38; R.S.2:50-38, N.J.S.A.*

***Malkin v. Malkin*, 12 N.J. Super. 496 (App. Div. 1951)**

After a wife's remarriage, the husband's obligation to provide for her support ceases.

***Schluter v. Schluter*, 23 N.J. Super. 409 (App. Div. 1952)**

Where a defendant of considerable financial resources has instituted a legal proceeding against his former wife, alleging, *inter alia*, a fictitious claim which the former wife is required to resist and which the defendant does not abandon until the approach of argument of the appeal, he should be required to defray at least the expenses incurred by the former wife in exposing, in her defense, the falsity of the adventurous claim.

***Miele v. Miele*, 25 N.J. Super. 220 (Ch. Div. 1953)**

A wife is not entitled to alimony merely because she obtains a decree of divorce.

***Zieper v. Zieper*, 25 N.J. Super. 500 (App. Div. 1953)**

A wife who obtained a divorce in California in violation of a New Jersey decree restraining her from proceeding with the California suit was precluded from prevailing on her counterclaim for alimony in the husband's New Jersey suit for divorce.

***Handelman v. Handelman*, 17 N.J. 1 (1954)**

In a wife's action for separate maintenance, the trial court's action in excusing the husband from answering pre-trial interrogatories submitted by the wife was error. However, it was not prejudicial. *R.R.4:16-1*. Where the Supreme Court found that certain alleged violations made by the court of various court rules were not prejudicial to one party, the ruling of said court would not be affected.

***Price v. Price*, 33 N.J. Super. 545 (Ch. Div. 1955)**

The continuing duty of a husband to support his divorced wife is grounded in public policy, and is something the parties themselves cannot bargain away. This court found that a divorced wife who is not remarried and who was destitute may apply for further relief even though a gross sum settlement was made in the divorce action.

This is so because the husband has a continuing duty to support his divorced wife and the enforcement thereof comes within the jurisdiction of the court.

***Turi v. Turi*, 34 N.J. Super. 313 (App. Div. 1955)**

The amount of support awarded to a wife in a separate maintenance action is not fixed solely with regard to her actual needs or the husband's actual means. The parties' physical condition and social position, the husband's property and income, including what he could derive from personal attention to his business, the wife's separate property and income, and any other factors bearing on said question, should be considered and the sum fixed at what the wife would have the right to expect as support if living with her husband.

***Raymond v. Raymond*, 39 N.J. Super. 24 (Ch. Div. 1956)**

In determining the amount of alimony, the following factors should be considered: the husband's reasonable capacity to earn as well as his actual earnings; his total estate; the style in which the parties were accustomed to live; and the wife's own property and income. *N.J.S.A. 2A:34-23*.

The court also held that a divorce court will not enforce the performance of an agreement for support or alimony to the extent of arrearages accrued thereunder, in the absence of a court order for alimony.

***Hnath v. Hnath*, 47 N.J. Super. 461 (App. Div. 1957)**

The husband was not entitled to maintain an action to recover money paid to the wife upon dismissal of the matrimonial action where the husband consented to the form and substance of the order and for more than four years took no steps to modify or to be relieved of the support order, since he thereby recognized his obligation and by periodic payments discharged his legal as well as his moral duty to provide support for the wife. *R.1:30-3*. Monies paid under an order of the court with full knowledge of the facts are, in the absence of fraud, not recoverable.

***Joseph Harris & Sons, Inc. v. Van Loan*, 23 N.J. 466 (1957)**

The words "alimony" and "maintenance" have always had a technical signification in the law and are regarded as annuities, *a futuro*. Once a judgment or order establishing a fixed sum due for past due alimony and maintenance payments is entered, such a judgment or order, insofar as it adjudges money to be due from a defendant to a plaintiff, resembles a judgment at law and is equivalent to a judgment at law in its effect under the statutes relating to decrees or orders creating means to aid in the enforcement thereof. *R. 4:74-1*.

***Trace v. Trace*, 69 N.J. Super. 382 (App. Div. 1961)**

The common law duty of a husband to support his wife and children is a continuing application enduring throughout the continuance of the marital relation. This includes a time during which a suit for divorce is pending. The jurisdiction of the courts toward maintenance or alimony is purely statutory. This court also held that under the Non-Support Act, a husband or father is considered to be a "deserter" when he wilfully fails to provide food and other necessities of life in accordance with his means. *N.J.S.A. 2A:34-2*. However, this court also noted that in a proceeding for support under the Desertion Act, a husband may defend by showing that he did not desert his wife or children or that the separation of the husband and wife was by mutual consent, although, in any event, he is obligated to provide for his children. *N.J.S.A. 2A:418*.

***Salzano v. Salzano*, 74 N.J. Super. 408 (Ch. Div. 1962)**

A divorced wife and children are entitled to support and maintenance in accordance with their station in life and in a manner to which they have been accustomed. Support and maintenance orders are made with a view to having payments made with regularity and dependability.

***Minder v. Minder*, 83 N.J. Super. 159 (Ch. Div. 1964)**

A “voidable marriage” is valid and not *ipso facto* void, until a sentence of nullity is obtained; a “void marriage” is void *ab initio*. A judgment of nullity is merely declaratory that no marriage in law ever existed, while in a voidable marriage, the judgment of nullity relates back to the time of the marriage and renders the marriage void. Civil disabilities, such as a prior marriage, want of age, idiocy, inability to consent, and the like, make contract of marriage void *ab initio* and not merely voidable, and may render the party incapable of contracting. Therefore, no sentence of nullity is necessary in such a situation.

In light of the foregoing, this court held that a statute terminating alimony on remarriage of a divorced wife is inapplicable where the wife’s remarriage is void.

N.J.S.A. 2A:34-25. Lastly, the court held that a void marriage does not give rise to any status or rights on the part of either spouse. Therefore, a woman is not entitled to alimony or support from a spouse where the marriage is void.

***Campbell v. Campbell*, 88 N.J. Super. 63 (Ch. Div. 1965)**

Alimony paid by a divorced husband to the wife through the county probation department was subject to levy to satisfy unpaid Federal taxes, notwithstanding that without the money the family unit of wife and child cannot be kept intact except on the welfare rolls. 26 *U.S.C.A. (I.R.C.1954) Section 6331 et seq.*, 6334(a, c). Unless property has been specifically exempted under Federal law, it is subject to levy by the United States to satisfy unpaid taxes. [Note: *U.S. v. McDevitt*, Dist. Ct., New Jersey, Docket No. 85-0359 (1987), holding that a statute that provides for the imposition of a lien against an obligor’s property to secure payment of unpaid support, which lien is expressly given priority over “any claim that may interrupt the support” of the obligee or their children, renders a judgment for child support arrearages superior to a prior Federal judgment lien against the obligor.]

***Blain v. Blain*, 96 N.J. Super. 460 (Ch. Div. 1967)**

Alimony is for the personal support of the wife and is not a property right or enrichment of the wife or a penalty against the husband. It is *in futuro* and not *in esse* and cannot be enjoyed by a wife in anticipation. *N.J.S.A. 2A:34-8, 23*. Also, as a matter of public policy, alimony is not susceptible of assignment by the wife to another, or of a contingent or percentage fee arrangement between a recipient and an attorney.

***Isserlis v. Isserlis*, 99 N.J. Super. 203 (Ch. Div. 1968)**

Alimony to a divorced wife or support to a wife entitled to separate maintenance enforces a husband’s obligation to provide for her shelter, as well as for her other basic needs, but that obligation is met by an allowance for rental payments or for mortgage payments on the marital home.

***Sharpe v. Sharpe*, 109 N.J. Super. 410 (Ch. Div. 1970)**

On a former wife’s remarriage, which was valid until annulled, the former husband had a right to regard himself as free of the duty to support his former wife, to assume new obligations, and to rely on his new status without remaining forever subject to the possibility that the obligation to pay alimony might be revived in the event of an annulment proceeding, which was completely within the power of the former wife to pursue or not as she saw fit. *N.J.S.A. 2:34-23, 25*.

Except as may be created by statute, there is no right to alimony where a marriage has been declared a nullity.