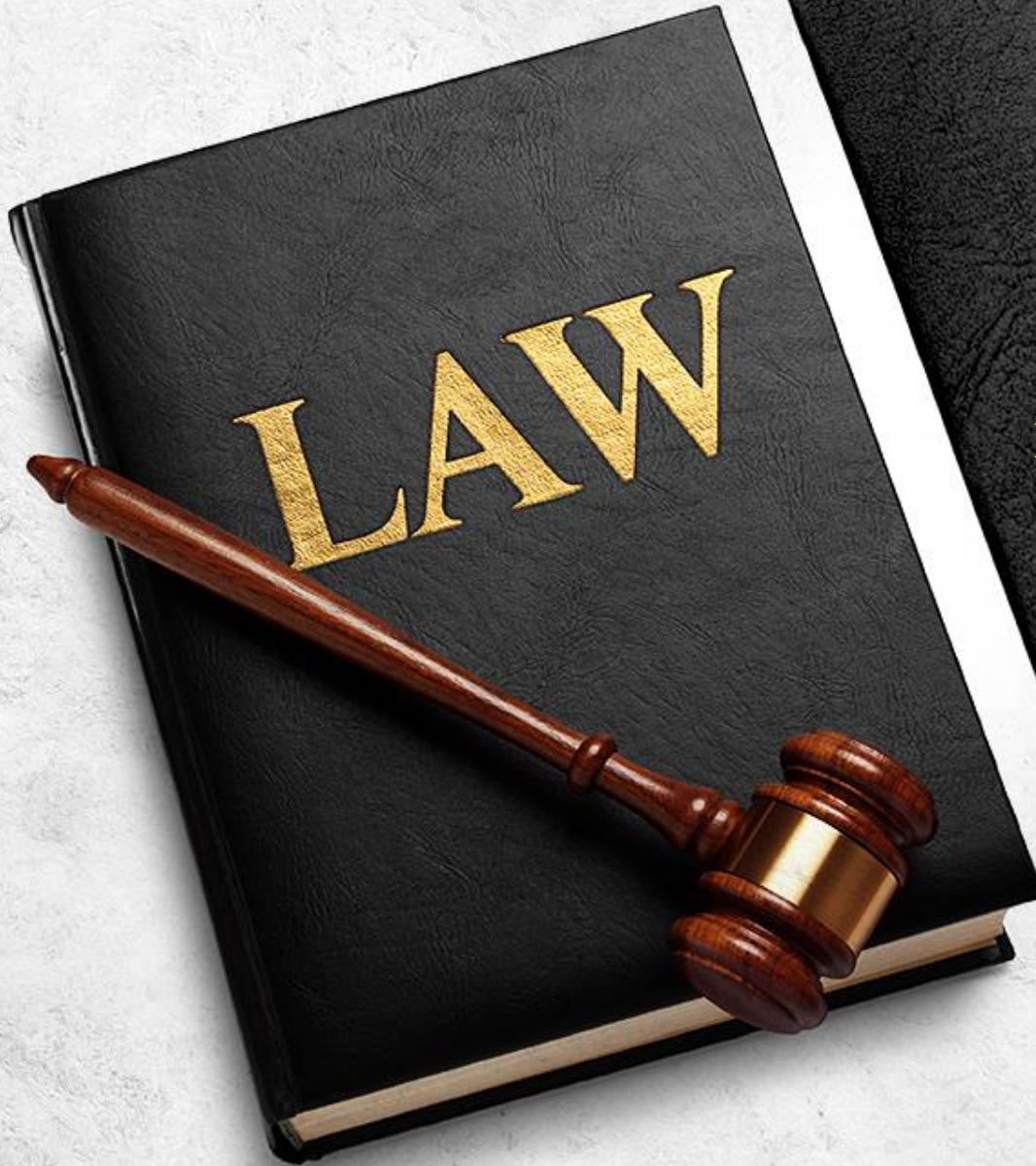


Domestic Law

Lecture 14

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Tax Considerations of Divorce

- Property settlement
 - Not a taxable transaction for either spouse. *See* IRC § 1041.
- Alimony
 - In order to constitute alimony (to be tax deductible by the payor), there are several requirements: *See* IRC § 71.
 - The payments must be in cash (but not in debt, property, or services).
 - The payments must be provided for in a divorce or a written agreement.
 - You can't claim alimony during any year in which you file a joint tax return (NOTE: Temporary alimony isn't deductible)
 - You can't pay alimony during a time when you and your spouse live in the same household.
 - The payments stop when the recipient spouse dies.
 - It cannot be treated as child support.
 - The annual payment amounts cannot vary drastically (recapture problem)
 - Child support
 - Not deductible by payor or considered income for recipient.



Alimony Negotiation Strategies

- If representing the payor
 - Strangely, alimony is preferable in some instances to a disproportionate property distribution:
 - Alimony is tax deductible; property distribution is not
 - Recipient spouse may die, thus terminating the alimony obligation
 - Recipient spouse may remarry, thus (usually) terminating the alimony obligation
- If representing the recipient
 - Tax deductibility is negotiable
 - With some exceptions, the IRS' concern is that the payor spouse deducts the expense while the recipient spouse neglects to claim the income
 - Termination upon remarriage of recipient spouse is also negotiable
- Watch out (while representing either) for “recapture” problems



Modification / Termination of Alimony

- Similar to the modification of child support orders that we will look at later in this lecture, a spouse who is moving to have a spousal support order modified carries the burden of convincing the court that a change in circumstances, that took place subsequent to the original spousal support or and that was unforeseeable, warrants a modification of the support order.
- We will take a look at the specific life events for each the obligor spouse and the recipient spouse that may be viewed by courts as a legitimate change in circumstances warranting a modification of an existing support order.
- Lastly, we will examine three procedural considerations that often come into play in spousal support modification: jurisdictional concerns, the burden of proof, and the retroactivity of spousal support modifications.



Change in Circumstances Standard

- In order for a court to consider a moving spouse's motion to modify an existing spousal support order, the moving spouse must prove that there has been a substantial change in circumstances, either in the life of the obligor spouse or the recipient spouse, that occurred subsequent to the entry of the initial support order, and was itself unforeseen by both spouses.
- This strict standard is employed by courts to prevent a disgruntled spouse, who at the time of the entry of the initial support order agreed with its terms but has since changed his mind, from subsequently seeking a modification.
- The requirement that the change in circumstances be unforeseeable further ensures that spouses with frivolous motions be stopped from wasting the courts' time.



Obligor's Change in Circumstances

- There are four changes in circumstances in an obligor spouse's life that, if substantial and unforeseeable, may warrant a modification of a spousal support order:
 - Unanticipated large increase in an obligor spouse's income
 - If an obligor spouse retires
 - A change in an obligor spouse's employment
 - When an obligor spouse dies



Recipient's Change in Circumstances

- There are also various changes in a recipient spouse's lifestyle that may warrant a modification of spousal support:
 - A court finding that recipient spouse has achieved financial self-sufficiency
 - Unanticipated increase in financial needs
 - Remarriage of a recipient spouse
 - Cohabitation isn't enough
 - Death of a recipient spouse



Procedural Considerations

- Procedurally, there are three considerations that most often arise in the context of spousal support modification:
- Does the court have proper jurisdiction to hear a moving spouse's motion to modify support?
 - Is the previous support order still in effect?
 - Did the court reserve subject matter jurisdiction to revisit or modify?
 - Once a support order expires, the court does not have jurisdiction to reinstate or modify.
- The spouse moving to have the support order modified carries the burden of proving that there has been an unforeseeable substantial change in circumstances since the support order was issued.
- When a court grants a motion to modify a spousal support order, the procedural issue of retroactivity arises.



Modification of Child Support

- **Factors a court may consider**
 - The financial resources of the child;
 - The financial resources of the custodial parent;
 - The standard of living previously enjoyed by the child;
 - The physical and emotional condition of the child;
 - The child's education needs; and
 - The financial resources and needs of the non-custodial parent.
- Many states have specific guidelines based on income levels, etc. that call for the exact amount that should be ordered for child support.
- Presumptive maximums
 - Multiple children with different obligee parents
- Child support can be ordered of parents who were never married, etc.
- Cost of Living Adjustments
- Change in Employment



Quick Quiz



Enforcement of a Child Support

- Jurisdiction of a state's courts over a parent follows the same rules as regular personal jurisdiction.
- Enforcement can be based on federal law or state law
 - Federal law
 - Child Support Recovery Act (includes criminal penalties for violations involving interstate travel)
 - State law
 - Uniform Reciprocal Enforcement of Support Act (to enforce the judgments from other states)
 - State kidnapping statutes
 - Jail
 - Suspension of Drivers' Licenses
 - Suspension of Recreational, Occupational Licenses
 - Credit Bureau



End Of Class Review Quiz

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**THE
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QUIZ**



The End

