

Purposeful Navigation Through the Seas of Social Change: A Theory-based Approach to Florida Alimony Reform

The law changes to reflect behavior or concepts that society has deemed acceptable.¹ As such, the malleability of the law is crucial to its survival amidst the endless waves of social change. One area of Florida law that has recently been subject to change is alimony.² Looking back from 2014, the rights and roles of men and women have changed drastically since the concept of alimony originated in England in the 19th century. As a result, alimony's purpose in contemporary Floridian society has been questioned.³

Accordingly, efforts to modify Florida's alimony⁴ laws, F.S. §§61.08 and 61.14,⁵ have been underway for several years. In 2005, the concept of reducing or eliminating an alimony obligation due to the recipient spouse entering into a supportive relationship (and not just remarriage) was introduced.⁶ The Florida Legislature then modified several aspects of alimony effective January 1, 2011.⁷ The 2011 changes included defining lengths of marriages, creating durational alimony, and adding additional factors for judges to consider in determining whether to issue an award, how much to award, and what kind of alimony to award.⁸

Reform advocates have maintained that the foregoing changes have been insufficient to fully align alimony with contemporary society's needs.⁹ Therefore, the Florida alimony statute returned again to Tallahassee in early 2012 with H.B. 549,¹⁰ which included dozens of proposed changes.¹¹ H.B. 549 would have radically modified alimony, favoring more structured standards and hard and fast rules for alimony awards. H.B. 549 would have

eliminated permanent alimony and set alimony duration at half the length of the marriage in some cases.¹² The changes would have also minimized judicial discretion by requiring judges to provide written reasons for ordering longer awards and eliminating the court's ability to reserve jurisdiction to reinstate alimony.¹³ H.B. 549, like its Senate companion bill, died in Senate committees.

Similar alimony reform efforts were attempted in 2013 with S.B. 718.¹⁴ S.B. 718 also attempted radical changes to alimony similar to those proposed in 2012 H.B. 549. S.B. 718 passed the House and the Senate and was sent to the Governor, who subsequently vetoed it on May 1, 2013, over concerns related to some retroactivity provisions.¹⁵

The 2014 legislative session saw no proposed changes to alimony;¹⁶ however, its return to Tallahassee in the 2015 session would be unsurprising. The failings of prior House and Senate bills, and complete avoidance of the issue at the most recent legislative session, illustrate larger philosophical disagreements about how alimony should be adapted to reflect the needs of modern Florida society.

Although change in alimony law is seemingly inevitable, change without a purpose could spawn unproductive outcomes. If the people of Florida are passengers and the legislature is the captain of the ship, then changing alimony laws for the sake of change would be akin to embarking on a nighttime oceanic voyage without a navigational guide. As with any journey, Florida's captain needs to know where Florida came from to determine in which direction Florida is headed.

The history and theories of alimony should serve as the navigational guide to Florida alimony reform in 2015 and beyond. This compass should help Florida legislators carefully navigate the seas of social change to efficiently craft an alimony law that mitigates harm to all involved while best reflecting the needs of modern Florida society.

The Birth of Alimony

• *Before Divorce Was Possible* — Florida's alimony laws were born in England.¹⁷ English common law is premised upon the idea that a married woman's identity merged into that of her husband upon marriage (called *coverture*), so the husband assumed control of her assets.¹⁸ Consequently, the husband bore the moral and legal obligation to provide for his wife because she essentially became a nonperson lacking employment opportunities, access to her property,¹⁹ and even the ability to contract, sue, or be sued.²⁰ Until 1857, only legal separation was available²¹ in the ecclesiastically controlled courts.²² The husband's duty to financially support his wife continued during legal separation despite the end of the couple's cohabitation. Thus, alimony was born as a means to enforce a husband's lifetime obligation to support and sustain his wife.²³

• *Fault-based Divorce System: A Damages Theory for Alimony* — England's concept of alimony made its way to Florida while the state was first forming.²⁴ Prior to 1971,²⁵ divorce in Florida was based on one party's fault.²⁶ Alimony under the fault-based divorce system was rarely awarded²⁷ because the spouse desiring the divorce had to prove the

other one breached his or her marital obligation due to adultery, cruelty, or abandonment.²⁸ An alimony award in an at-fault divorce was analogous to compensatory damages award in a tort claim in which the innocent spouse was compensated for the guilty spouse's wrongful conduct.²⁹ This damages theory only required a guilty spouse to pay alimony to an innocent one³⁰ and it predominantly benefitted wives, offering a husband limited opportunities to receive alimony when his wife was the guilty party.³¹

Alimony Theory in a No-fault Divorce

California was the first state to pass a no-fault divorce statute in 1969.³² The concept of no-fault divorce was strengthened by the endorsement in the Uniform Marriage and Divorce Act (UMDA) in 1970³³ and, by 1987, a no-fault divorce was available in all 50 states.³⁴ Florida has not fully adopted the UMDA; however, it has adopted many provisions,³⁵ including the no-fault divorce.³⁶ A no-fault divorce permitted one spouse to unilaterally petition for divorce and permitted the court to grant that petition without a finding that a party breached a marital obligation. The new system treated divorce as "the product of complex spousal dynamics beyond the understanding, and the appropriate inquiry, of a court of law"³⁷ and attempted to afford parties a "clean break."

This revolutionary change in divorce law eliminated the philosophical underpinning of alimony under coverture and at-fault divorces.³⁸ Therefore, new theories have emerged.

• *The UMDA Need-based Rehabilitative Alimony Theory* — The UMDA justifies alimony in a no-fault divorce as an award to help a "needy spouse" (one lacking sufficient property or employability to self-support) to rehabilitate him or her to self-sufficiency after a divorce (need-based theory).³⁹ After finding a reasonable need exists, the judge is vested with discretion to order an amount and duration of a maintenance award based on consideration of a number of factors.⁴⁰ Notably, the UMDA tries to control alimony awards by advocating that they should only be granted when property division

is unable to provide equity⁴¹ and, if awarded, it should extend for only the limited period necessary to rehabilitate the spouse to self-sufficiency.⁴²

• *The ALI: Alimony as Compensation for Loss Theory* — In response to the limitations of the UMDA model, the American Law Institute's (ALI) *Principles of the Law of Family Dissolution*, reframed the concept of alimony by rationalizing an award beyond "reasonable need."⁴³ Under the ALI model, alimony is "compensation for loss rather than relief of need,"⁴⁴ meaning alimony compensates a needy spouse for a loss in living standard due to lower earning capacity consequent to an investment in the other spouse's earning capacity.⁴⁵ As the ALI explains, "[t]he intuition that the former spouse has an obligation to meet [the other spouse's] need arises from the perception that the need results from the unfair allocation of the financial losses arising from the marital failure."⁴⁶ By basing alimony awards on shared financial losses, the ALI converts the needy spouse's request from a request for help to a claim for entitlement.⁴⁷

To ensure "equitable reallocation" of the financial losses, the ALI model encourages courts to look into the facts of the case and rely less on the general assumptions about need and the standard of becoming self-supporting.⁴⁸ In an aim to more accurately evaluate these financial losses, three types of compensable financial loss are identified: 1) loss of the marital standard of living; 2) earning capacity loss resulting from primary caretaking of children; and 3) earning capacity loss resulting from the care of identified third parties in fulfillment of a moral obligation.⁴⁹ While these types of losses are based on similar principles to a reliance remedy in contract law, the ALI never openly embraces a contract model for alimony.⁵⁰ These payments terminate upon remarriage or death.⁵¹

In addition to awards based on the three types of loss, the ALI also creates an award based on principles of restitution, which applies to a smaller number of short-term marriages. This type of award attempts to restore the spouse "to the position he or she would have been in had the marriage not taken place."⁵² However, these awards

are only available when 1) divorce happens before a "fair return" on an investment in the other spouse's education or training, or 2) divorce creates a situation in which a spouse is now living far below his or her premarital standard of living after a brief, childless marriage.⁵³ The ALI's recognition of these kind of awards were significant because it gave specific protection to two different kinds of spouses that previously went unrecognized: First, the spouse who was the supporter while the other went to professional school and the divorce occurs before the degree or license increases income; and second, the spouse who relocates to further the other spouse's career.⁵⁴

• *Feminist Theory: Alimony as Income Equalization* — One of the most predominantly discussed theories for alimony is the feminist model, which views alimony as an equalizing force between women and men after divorce, largely to compensate women for the unjust undervaluation of homemaking and child rearing that occurred during the marriage. The origin for substantially all of the recent publications on the feminist theory for alimony is Lenore Weitzman's 1985 book, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*.⁵⁵ In the book, Weitzman conducted independent research and evaluated the impact of the post no-fault divorce system in California and its effect on men, women, and children.⁵⁶ Her primary premise is that divorce impoverishes women and children in divorcing households "both absolutely and in relation to their ex-husbands and fathers."⁵⁷ Weitzman highlights that while most women and children's standard of living drop off drastically after divorce, men's standard of living generally improves.⁵⁸ She concludes that in "[j]ust one year after legal divorce, [men] experience a 42 percent improvement in their post-divorce standard of living, while women experience a 73 percent decline."⁵⁹

One of Weitzman's solutions to the post-divorce status of women is recognizing alimony as a vehicle to equalize post-divorce standards of living between men, women, and children by expanding the alimony equation to

include intangibles, such as valuing the homemaking and childrearing efforts of women.⁶⁰ While her theory falls short of providing a realistic model to apply in a no-fault divorce, her discussion of the post-divorce effects on women were fundamental to further discussion of feminist theories for alimony in the modern world.

Since Weitzman's 1985 publication, a variety of similar and different feminist theories have emerged. Most feminist scholars have gravitated toward contract and economic doctrines grounded in restitution-based theory,⁶¹ economic efficiency theory, and human capital theory,⁶² trying to expand them to include the different aspects of family and marriages.⁶³ While the modern feminist theories differ from model to model, the general principle of the feminist publications harkens back to Weitzman's desire to correct the effect of discrimination against women in the workforce and the heavy burden of family and household work after divorce. Similar to Weitzman, feminists in these articles generally seek to respond to the problem regarding the effects of discrimination against women and the fact that women generally bear the heavier and undercompensated burden of the household and family labor.⁶⁴

• *Alimony Partnership Theory: A Gender-neutral Model* — The “partnership” justification of alimony views marriage as a partnership, which is an agreement of shared profits, assets, and debts. Similar to transactions in contract law, when a party enters into a written agreement to engage in a joint enterprise, this view suggests that spouses have an implied agreement to work for the joint venture's benefits rather than for the individual's.⁶⁵ Put another way, the theory endorses marriage as a sharing venture and specifically recognizes that both spouses make vital financial and nonfinancial contributions to the marriage. At the heart of this theory are two basic tenets: 1) Divorce should be available at will; and 2) divorce should terminate the joint contributions of the parties, giving each party an emotional and financial clean break.⁶⁶ Under the partnership theory, the joint contribu-

tions of each party are explained under the theory as being “fully-credited,” so that a homemaker or stay-at-home mom gives equally valuable resources to the family as the spouse who brings in resources from his income in the job market.⁶⁷

At the time of the dissolution of a partnership, business partners often buyout the share or interest of the retiring or departing partner, especially when the departing partner's partnership contributions generate value or enhance the ability of the partnership to generate future income.⁶⁸ The departing partner is entitled to a share of that value.⁶⁹ Partners who continue what was once a shared effort are, thus, required to compensate a departing partner with a buyout.⁷⁰ Under the partnership theory, the function of alimony in a divorce is a buyout of one spouse's interest in the marital partnership from the spouse whose earnings are disproportionately higher than the other. The marital exit price resembles the buyout required of a partnership that continues to generate future income to operate after the disassociation of the partner.⁷¹ These joint spousal contributions mean that assets are owned jointly and, thus, upon divorce, the assets produced by either spouse's individual efforts are a part of the joint marital partnership.⁷² In other words, the dissociated spouse receives an equitable buyout of her investment of the marital partnership.

Alimony in Contemporary Florida: Mitigating Harm

In 2014, men and women in Florida have equal independent rights⁷³ and no-fault divorce is readily available;⁷⁴ therefore, alimony's continued role in contemporary Floridian society has been questioned.⁷⁵ The answer to this question most readily lies in F.S. §61.001, which states that, among other things, the provisions of Ch. 61 exist to “[t]o mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”⁷⁶ Research has consistently shown that divorce typically has a negative economic impact on family members.⁷⁷ Therefore, it can be reasoned that Florida views alimony as a tool that can be

used to mitigate harm to a financially dependent spouse resulting from a dissolution of marriage because alimony continues to exist within the provisions of Chapter 61.⁷⁸

Harm is defined as “something that causes someone or something to be hurt, broken, made less valuable or successful, etc.”⁷⁹ What can or does harm one person may not harm another based on the facts and circumstances of each person; therefore, how financial harm can be mitigated during a dissolution of marriage depends on the facts and circumstances of each case. The court must gain a detailed understanding of each case to make an equitable decision on how to best mitigate harm.⁸⁰ Florida's mitigation of harm approach could be seen as a hybrid of the previously articulated theories.

When determining whether an award of alimony is appropriate in a case, Florida requires that the court first consider whether one party has a need for financial assistance and whether the other party has an ability to pay such assistance.⁸¹ This analysis is not limited to the parties' income but must also include the parties' earning abilities, earning histories, net worth after equitable distribution, age, health, education, duration of the marriage, and standard of living.⁸² The court must engage in this sweeping analysis to answer the two preliminary questions of whether the divorce is causing a party harm and if so, does the other party have sufficient resources to mitigate that harm? In other words, is there a problem and does the other spouse have the ability to fix it? If the answer is no to the first question, the inquiry ends there. If the answer is yes to the first, but no to the second, the court may proceed with the inquiry, but the alimony awarded may not be sufficient to meet the requesting party's established need at the time of the final hearing.⁸³

Presuming the answer is yes to both of the preliminary questions, the court must engage in a second level of inquiry to determine the type and amount of alimony award appropriate. During this second level of inquiry, the court explores what type of harm will be caused by the divorce and how the

other party can help. Presently, Florida has a list of 10 factors to consider when determining the type of assistance necessary to help the financially dependent spouse. These factors include, but are not limited to, the parties' standard of living, duration of marriage, each party's age, their physical and emotional condition, their available financial resources, each party's contribution to the marriage, and "[a]ny other factor necessary to do equity and justice between the parties."⁸⁴ Florida requires that the court make specific factual findings relative to each factor so that all may understand how the court reached its conclusion as to the alimony award.⁸⁵

Conclusion: Developing a Cohesive Theory for Alimony Reform in Florida

Florida's ship has been navigating the sea of alimony change for some time now. If, in 2015 or future legislative sessions, the captain determines that the passengers require or desire a new alimony destination, whatever reform should harmonize with Florida's mitigation of harm theory. There will likely be no perfect destination. Nevertheless, the legislature should mitigate the potential harm of alimony reform by acknowledging that change is inevitable and not changing the law for change's sake. □

¹ See John Dewey, *Logical Method and Law*, 10 CORNELL L. Q. 17, 26 (1925) (arguing law is akin to working hypotheses instead of rigid rules).

² Florida is not the only state contemplating changes to alimony. Massachusetts' Alimony Reform Act of 2011 took effect on March 1, 2012. Massachusetts Ch. 124 of the 2011 acts available at <http://www.nalegal.com/wp-content/uploads/2011/12/Signed-alimony-bill.pdf>. Other states considering changes include New Jersey and South Carolina. See, e.g., South Carolina Alimony Reform, Alimony Reform Movement Growing in South Carolina, <http://finance.yahoo.com/news/alimony-reform-movement-growing-south-150000397.html>; Colleen Diskin, *NJ Legislators Consider Two Plans to Reform System for Alimony*, THE RECORD, available at http://www.northjersey.com/news/alimony_new_jersey_law_mainor_permanent_allimony.html.

³ One of the most vocal groups challenging alimony's role in Florida is Florida Alimony Reform. Florida Alimony Reform, The Official Site for Alimony Reform in the State of Florida, <http://www.floridaalimonyreform.com>.

⁴ Alimony provides for the financial maintenance of the spouse (for pendent lite or temporary alimony) or former spouse. 27B C.J.S. DIVORCE §502 (West 2011). This article will focus on alimony awarded in a final judgment.

⁵ FLA. STAT. §61.09 permits the court to award maintenance and support for a spouse without a dissolution of the parties' marriage. For purposes of this article, alimony awards with or without a dissolution of the parties marriage will be treated interchangeably as the standards for the award are the same.

⁶ For more on the introduction and effects of FLA. STAT. §61.14(1)(b), see generally Odette Marie Bendeck, *Florida's "Cohabitation" Statute: The Revolution that Wasn't*, 82 FLA. B. J. 95 (June 2008).

⁷ FLA. STAT. ANN. §61.08 (West 2011).

⁸ *Id.*

⁹ Florida Alimony Reform, The Problem: What's Wrong with Florida Alimony Laws?, <http://www.floridaalimonyreform.com/the-problem>.

¹⁰ There was a companion bill in the Senate, which died in rules. S.B. 748 2012 Jt. Legis., 2d Sess. (Oct. 28, 2011), available at <http://www.flsenate.gov/Session/Bill/2012/0748>. A related bill was also filed in the house but it died on the calendar. H.B. 565, 2012 Jt. Legis., 2d Sess. (Nov. 3, 2011), available at <http://www.flsenate.gov/Session/Bill/2012/0565>. For the sake of clarity, this article will only reference H.B. 549.

¹¹ See H.B. 549, 2012 Jt. Legis., 2d Sess. 1 (Feb. 23, 2012), available at <http://www.flsenate.gov/Session/Bill/2012/0549>.

¹² *Id.*

¹³ *Id.*

¹⁴ There was a companion bill in the House, which was laid on table and substituted by S.B. 718. H.B. 231, 2013 Jt. Legis. 2d Sess. (Jan. 17, 2013), available at <http://www.flsenate.gov/Session/Bill/2013/0231>. For the sake of clarity, this article will reference only S.B. 718.

¹⁵ Ray Reyes, *Gov. Scott Vetoes Alimony Bill, but Debate Not Over*, TAMPA TRIBUNE, available at <http://tbo.com/gov-scott-mulls-alimony--other-bills-on-deadline-b82486384z1>.

¹⁶ It is speculated that the reform effort fell victim to election-year politics likely, among other things, due to the controversy surrounding it. Kathleen McGrory, *Don't Expect an Alimony Reform Bill in 2014*, TAMPA BAY TIMES, available at <http://www.tampabay.com/blogs/the-buzz-florida-politics/dont-expect-an-alimony-reform-bill-in-2014/2168954>.

¹⁷ Cynthia Lee Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 983 (2006).

¹⁸ *Id.*

¹⁹ Pamela Laufer-Ukeles, *Selective Recognition of Gender Difference in the Law: Revaluating the Caretaker Role*, 31 HARV. J. L. & GENDER 1, 24 (2008).

²⁰ Johnston, *Sex and Property: The Common Law Tradition, the Law School Curriculum and Developments Toward*

Equality, 47 N.Y.U. L. REV. 1033, 1044-1046 (1972).

²¹ *Id.* It took a special act of parliament to obtain a divorce. This was due to the church-controlled courts and government taking the vow "till death do us part" seriously.

²² Twila L. Perry, *The "Essentials of Marriage": Reconsidering the Duty of Support and Services*, 15 YALE J. L. & FEMINISM 1, 23 (2003).

²³ Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 983 (2006).

²⁴ The concept of alimony has existed in Florida from as early as when it was only a territory in 1822. Ch. 93, §9 (Laws of Florida Territory, 1822).

²⁵ By 1900, all states except for South Carolina offered divorce, but generally it had to be based on one party's fault. Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 VA. L. REV. 1497, 1533-34 (2000).

²⁶ Denese Ashbaugh Vlosky & Pamela A. Monroe, *The Effective Dates of No-fault Divorce Laws in the 50 States*, 51 FAM. RELATIONS 317, 320 (2002), available at <http://content.csbs.utah.edu/~fan/fcs5400-6400/studentpresentation2009/04DivorceReadingVinsky.pdf>.

²⁷ Jana B. Singer, *Alimony and Efficiency: The Gendered Costs and Benefits of the Economic Justification for Alimony*, 82 GEO. L. J. 2423, 2424 (1994).

²⁸ Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 985 (2006).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Herma Hill Kay, *Equality and Difference: A Perspective on No-fault Divorce and Its Aftermath*, 56 U. CIN. L. REV. 1, 2 (1987).

³³ *Id.* at 5.

³⁴ *Id.* at 2.

³⁵ Uniform Law Commission, *Marriage and Divorce Act, Model Summary*, available at <http://www.uniformlaws.org/Act.aspx?title=Marriage%20and%20Divorce%20Act,%20Model>.

³⁶ FLA. STAT. §61.052(1) (2013). This presumes that all statutory grounds, such as residency requirements, have been satisfied. FLA. STAT. §61.021 (2013).

³⁷ Singer, *Alimony and Efficiency: The Gendered Costs and Benefits of the Economic Justification for Alimony*, 82 GEO. L. J. 2423, 2424 (1994).

³⁸ UMDA §308(b), 9A ULA 348 (West 2011).

³⁹ UMDA §308(b), 29A ULA 348 (West 2011).

⁴⁰ *Id.*; UMDA §308(b) provides that the maintenance order shall be in amounts and for periods of time the court deems just, without regard to marital misconduct, and after considering all relevant factors including "1) the financial resources of the party seeking maintenance ...; 2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate

employment; 3) the standard of living established during the marriage; 4) the duration of the marriage; 5) the age and the physical and emotional condition of the spouse seeking maintenance; and 6) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.”

⁴¹ UMDA §308 Official Comment, 9A ULA 348 (West 2011).

⁴² *Id.*

⁴³ See generally AMERICAN LAW INSTITUTE, PRINCIPLES OF LAW OF FAMILY DISSOLUTION §5 (2011) [hereinafter ALI, PRINCIPLES]; Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 992 (2006).

⁴⁴ ALI, PRINCIPLES at §5.02 cmt.

⁴⁵ Gaytri Kachroo, *Mapping Alimony: From Status to Contract and Beyond*, 5 PIERCE L. REV. 163, 168-169 (2007).

⁴⁶ ALI, PRINCIPLES at §5.02 cmt. (2011); Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 992 (2006).

⁴⁷ ALI, PRINCIPLES at §5.02 cmt. (2011).

⁴⁸ *Id.*; see also Mary Kay Kisthardt, *Rethinking Alimony: The Aaml's Considerations for Calculating Alimony, Spousal Support or Maintenance*, 21 J. AM. ACAD. MATRIM. LAW. 61, 69 (2008).

⁴⁹ ALI, PRINCIPLES at §§5.04, 5.05, 5.11 (2011).

⁵⁰ *Id.* at §5; Starnes, *One More Time, One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 992 (2006).

⁵¹ ALI, PRINCIPLES at §§5.08, 5.15(5), 5.16(5).

⁵² *Id.* at §5.07, cmt. a.

⁵³ *Id.* at §§5.12-5.13; Starnes, *One More Time: Alimony, Intuition, and the Remarriage-Termination Rule*, 81 IND. L. J. 971, 992 (2006).

⁵⁴ Cynthia Lee Starnes, *Victims, Breeders, Joy, and Math: First Thoughts on Compensatory Spousal Payments Under the Principles*, 8 DUKE J. GENDER L. & POLICY 137, 140 (2001).

⁵⁵ Jana B. Singer, *Divorce Reform and Gender Injustice*, 67 N.C. L. REV. 1103, 1104 (1989).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 1104-1105.

⁵⁹ Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 U. CIN. L. REV. 1, 61 (1987).

⁶⁰ Singer, *Divorce Reform and Gender Injustice*, 67 N.C. L. REV. 1103, 1116-1117 (1989).

⁶¹ Ira Mark Ellman, *The Theory of Alimony*, 77 CAL. L. REV. 1, 6 (1989).

⁶² See June Carbone, *Economics, Feminism, & the Reinvention of Alimony: A Reply to Ira Ellman*, 43 VAND. L. REV. 1465, 1489-90 (1990); see also June Carbone & Margaret F. Brinig, *Rethinking Marriage: Feminist Ideology, Economic Change and Divorce Reform*, 65 TUL. L. REV. 953, 990 (1991).

⁶³ Kachroo, *Mapping Alimony: From Status to Contract and Beyond*, 5 PIERCE L.

REV. 163, 203 (2007).

⁶⁴ *Id.*

⁶⁵ Ira Mark Ellman, *The Theory of Alimony*, 77 CAL. L. REV. 1, 33 (1989).

⁶⁶ Cynthia Starnes, *Divorce and the Displaced Homemaker: A Discourse on Playing with Dolls, Partnership Buyouts and Dissociation Under No-fault*, 60 U. CHI. L. REV. 67, 108-109 (1993).

⁶⁷ Alicia Brokars Kelly, *Rehabilitating Partnership Marriage as a Theory of Wealth Distribution at Divorce: In Recognition of a Shared Life*, 19 WIS. WOMEN'S L. J. 141, 147 (2004).

⁶⁸ Singer, *Divorce Reform and Gender Injustice*, 67 N.C. L. REV. 1103, 1114 (1989).

⁶⁹ Cynthia Lee Starnes, *Mothers as Suckers: Pity, Partnership, and Divorce Discourse*, 90 IOWA L. REV. 1513, 1543 (2005).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Kelly, *Rehabilitating Partnership Marriage as a Theory of Wealth Distribution at Divorce: In Recognition of a Shared Life*, 19 WIS. WOMEN'S L. J. 141, 147 (2004).

⁷³ Florida has not ratified the Equal Rights Amendment. Alice Paul Institute & ERA Task Force of the National Council of Women's Organizations, *The Equal Rights Amendment: Unfinished Business for the Constitution*, <http://www.equalrightsamendment.org/states.htm>. Nevertheless, the Florida Constitution provides in pertinent part: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law." FLA. CONST. art. I, §2.

⁷⁴ FLA. STAT. §61.052(1)(a) permits the court to grant a divorce upon one party simply showing that the marriage is irretrievably broken.

⁷⁵ One of the most vocal groups challenging alimony's role in Florida is Florida Alimony Reform. Florida Alimony Reform, *The Official Site for Alimony Reform in the State of Florida*, <http://www.floridaalimonyreform.com/>.

⁷⁶ FLA. STAT. §61.001(c) (2013).

⁷⁷ For a sampling of research, see, e.g., Jerome Jamal Dean, *The Effects of Child Custody and Support Policy Outcomes on Male Employment and Labor Supply in the United States*, L. & PUB. POLICY DISSERTATIONS, Paper 17 (Jan. 1, 2014), available at http://iris.lib.neu.edu/law_pub_pol_diss/17/; Caroline Dewilde & Wilfred Uunk, *Remarriage as a Way to Overcome the Financial Consequences of Divorce—A Test of the Economic Need Hypothesis for European Women*, 24 EUR. SOCIOL. REV. 393 (2008); Hans-Jürgen Andreß, Barbara Borgloh, Miriam Bröckel, et al., *The Economic Consequences of Partnership Dissolution—A Comparative Analysis of Panel Studies from Belgium, Germany, Great Britain, Italy, and Sweden*, 22 EUR.

SOCIAL REV. 533 (2006); Dorien Manting & Anne Marthe Bouman, *Short- and Long-Term Economic Consequences of the Dissolution of Marital and Consensual Unions, The Example of the Netherlands*, 22 EUR. SOCIAL REV. 413 (2006); John H. Johnson, IV & Christopher J. Mazingo, *The Economic Consequences of Unilateral Divorce for Children* (July 2000), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=236227; Peter Uhlenberg & Mary Anne P. Myers, *Divorce and the Elderly*, 21 GERONTOLOGIST 276 (1981); Thomas J. Espenshade, *The Economic Consequences of Divorce*, 41 J. MARR. & FAMILY 615 (Aug. 1979).

⁷⁸ The Florida Supreme Court has observed: "While permanent periodic alimony is most commonly used to provide support, in limited circumstances it may be appropriate to balance such inequities as might result from the allocation of income-generating properties acquired during the marriage." *Canakaris v. Canakaris*, 382 So. 2d 1197, 1202 (Fla. 1980).

⁷⁹ Merriam-Webster, *Harm*, <http://www.merriam-webster.com/dictionary/harm?show=0&t=1394731983>.

⁸⁰ Victoria M. Ho & Jennifer L. Johnson, *Overview of Florida Alimony*, 78 FLA. B. J. 71 (Oct. 2004).

⁸¹ *Canakaris v. Canakaris*, 382 So. 2d 1197, 1201 (Fla. 1980).

⁸² *Id.* at 1201-1202.

⁸³ See, e.g., *Bedell v. Bedell*, 583 So. 2d 1005 (Fla. 1991); *Gildea v. Gildea*, 593 So. 2d 1212, 1213 (Fla. 2d DCA 1992); *Schlagel v. Schlagel*, 973 So. 2d 672, 676-677 (Fla. 2d DCA 2008); *Schmidt v. Schmidt*, 997 So. 2d 451 (Fla. 2d DCA 2008).

⁸⁴ For the complete list, see FLA. STAT. §61.08(2)(a)-(j) (2013).

⁸⁵ FLA. STAT. §61.08 (1) requires the court to include "findings of fact relative to the factors enumerated in subsection (92) supporting an award or denial of alimony." Specific factual findings are required relating to permanent alimony awards, FLA. STAT. §61.08 (8), and awards in which the payor is left with significantly less net income than the recipient, FLA. STAT. §61.08(9).

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This column is submitted on behalf of the Family Law Section, Norberto Sergio Katz, chair, and Sarah Kay, editor.