### - Alimony and maintenance : Is there a difference? -

Prior to the enactment of gender neutral support laws in 1980, the husband was charged with the primary obligation to support his wife. This obligation arose out of the marriage contract and the relationship it created, and was in direct proportion to the husband's station and position in life. However, the wife's misconduct, constituting grounds for divorce or separation, was a defense to an award of alimony. Until the 1970's alimony was a substitute for the rights of the innocent wife, which the divorce cut off, and was in the nature of a penalty imposed on the guilty husband for a violation of his marriage vows and obligations.

In the late 1970s, the United States Supreme Court held unconstitutional an Alabama statute that provided that husband's, but not wives, may be required to pay alimony upon divorce. As a result of the decision, the courts of the State of New York read the New York alimony statute to be gender neutral.

Alimony was designed to reach a portion of the husband's estate or income in order to satisfy the support obligation he assumed by marriage, and also reflected numerous other factors, including perhaps the failure of New York Matrimonial Property Law to effect economic justice between the parties in the days prior to the enactment of the equitable distribution law. Although is difficult to generalize, ordinarily an award of permanent alimony, where possible, reflected an amount which enabled the wife or former wife to maintain her accustomed social and economic status until her death or remarriage.

In 1980 New York Domestic Relations Law was amended, as part of the enactment of the Equitable Distribution Law so as to provide for "maintenance" instead of "alimony" to be awarded in all actions or proceedings commenced on or after July 19, 1980.

The law defined "maintenance" as "payments...for a definite or indefinite period of time, to meet the reasonable needs of a party to the matrimonial action...." Maintenance served a new function, and was based on principles different from those underlying the old law. The objective of the maintenance provision was to award the recipient spouse an opportunity to achieve independence, recognizing that in marriages of long duration, or where the former spouse is, and has been, out of the labor market and lacks sufficient resources, or has sacrificed her business or professional career to serve as a parent and homemaker, "maintenance" on a permanent basis would be necessary.

The main difference, aside from duration, is that in theory, alimony was awarded in order to help maintain the wife's prior standard of living. Originally, 10 factors were set forth as criteria to be weighed by the court in awarding maintenance, including marital property distributed to the parties as part of the equitable distribution of marital property pursuant to a judgment of divorce, and the wasteful dissipation of marital property by either spouse. It is important to note that both of these factors can only be considered if there is a dissolution of the marriage.

The maintenance provisions of the statute were amended in 1986. The purpose of the amendment was to alleviate the adverse economic consequences which have befallen women under the maintenance provisions of the Domestic Relations Law which were being interpreted by the courts to preclude awards of permanent maintenance for older homemakers in marriages of long duration, homemakers with responsibility for minor children and homemakers who have sacrificed employment opportunities to priority to family needs.

The 1986 amendment removed the "standard of living" where "practical and relevant" from the list of 10 factors and substituted "standard of living of the parties established during the marriage" for "reasonable needs", creating a new basis for the award of maintenance. The standard of living established during the marriage became the objective the court should try to reach in determining "whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs" and whether the other party has sufficient property or income to provide for the reasonable needs of the other.

It also added as a factor "any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration, another factor based upon an action which may result in a dissolution of the marriage.

Interestingly, (or inadvertently) the legislature carried over the authority of the Supreme Court to make a direction for maintenance "notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by either party.