



2019 Edition

Cohabitation Law in Connecticut

A Guide to Resources in the Law Library

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Introduction

A Guide to Resources in the Law Library

- "Cohabitation is a dwelling together of man and woman in the same place in the manner of husband and wife." [Wolk v. Wolk](#), 191 Conn. 328, 332, 464 A.2d 780 (1983).
- "As is readily apparent, the word is not inflexible nor is it one of strict or narrow meaning." [DeMaria v. DeMaria](#), 247 Conn. 715, 720, 724 A.2d 1088 (1999).
- "In support of his first argument, the plaintiff cites the definition, adopted by our Supreme Court in [Wolk v. Wolk](#), 191 Conn. 328, 332, 464 A.2d 780 (1983), that '[c]ohabitation is a dwelling together of man and woman in the same place in the manner of husband and wife.' The plaintiff apparently interprets the phrase 'in the manner of husband and wife' to suggest that cohabitation is for all intents and purposes synonymous with marriage, and that cohabitation raises all of the same presumptions regarding the treatment of assets as does marriage. Such an interpretation, however, would essentially transform cohabitation into common-law marriage, contrary to the refusal of this state to recognize such relationships. See [McAnerney v. McAnerney](#), 165 Conn. 277, 285, 334 A.2d 437 (1973) ('[a]lthough other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status' [citations omitted]). '[C]ohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties.' [Boland v. Catalano](#), 202 Conn. 333, 339, 521 A.2d 142 (1987)." [Herring v. Daniels](#), 70 Conn. App. 649, 655, 805 A.2d 718 (2002).
- "Connecticut does not presently recognize, as valid marriages, living arrangements or informal commitments entered into in this state and loosely categorized as common law marriages." [McAnerney v. McAnerney](#), 165 Conn. 277, 285, 334 A.2d 437 (1973); [Hames v. Hames](#), 163 Conn. 588, 593, 316 A.2d 379 (1972); *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). Only recently this rule of law has been reaffirmed. 'In this jurisdiction, common law marriages are not accorded validity. . . . The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship.' (Citations omitted.) [Boland v. Catalano](#), 202 Conn. 333, 339, 521 A.2d 142 (1987)." [Collier v. Milford](#), 206 Conn. 242, 248, 537 A.2d 474 (1988).

Section 1: Cohabitation without Marriage or Civil Union

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the legal effect of cohabitation on persons not married or parties to a civil union—including contracts and agreements between them, child custody and visitation, and property rights.

SEE ALSO: • [Cohabitation Agreements in Connecticut](#)

DEFINITIONS: • **“We agree with the trial referee** that cohabitation alone does not create any contractual relationship or, unlike marriage, impose other legal duties upon the parties. In this jurisdiction, common law marriages are not accorded validity The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship. . . . Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not **they engage in sexual activity.”** [Boland v. Catalano](#), 202 Conn. 333, 339, 521 A.2d 142 (1987).

• **“With respect to the effect of cohabitation by those who hold themselves out as husband and wife, the law of this jurisdiction is clear. ‘Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status.’** (Citations omitted.) *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973); see also *Hames v. Hames*, supra, 163 Conn. 592-93, 597; *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). ‘The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship.’ [Boland v. Catalano](#), 202 Conn. 333, 339, 521 A.2d 142 (1987).” [Loughlin v. Loughlin](#), 93 Conn. App. 618, 628-629, 889 A.2d 902 (2006).

• “. . . a valid common-law marriage contracted in a state that **recognizes such marriages would be upheld in this state.”** [Delaney v. Delaney](#), 35 Conn. Supp. 230, 232, 405 A.2d 91 (1979).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

• Conn. Gen. Stat. (2019).
§ [46b-61](#). Orders re children where parents live separately. Filing of accompanying documents.

§ [46b-86\(b\)](#). Modification of alimony or support orders and judgments.

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

- Michelle Kirby, Common-Law Marriage, Connecticut General Assembly, Office of Legislative Research, OLR Report [2013-R-0264](#) (July 2, 2013).

COURT CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Herring v. Daniels](#), 70 Conn. App. 649, 656, 805 A.2d 718, 723 (2002). “[W]here the parties have established an unmarried, cohabiting relationship, it is the specific conduct of the parties within that relationship that determines their respective rights and obligations, including the treatment of their individual property.”
- [Burns v. Koellmer](#), 11 Conn. App. 375, 380, 527 A.2d 1210, 1214 (1987). “Claims of a contractual or quasi-contractual nature between parties in illicit relationships but which do not involve payment for prohibited sexual behavior are enforceable in courts of law.”

OTHER STATES:

- [Marvin v. Marvin](#), 557 P.2d 106 (1976). California.

WEST KEY NUMBERS:

- **Marriage & Cohabitation**
 - 211. Informal or nonceremonial marriage
 - 212. –In general.
 - 213. –Common-law marriage in general.
 - 217. –Cohabitation, reputation, or holding out.

DIGESTS:

- Cynthia C. George, et al. *Connecticut Family Law Citations* (2019).
 - § 1.03 Cohabitation

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

- 2 Alexander Lindey and Louis I. Parley, *Lindey and Parley on Separation Agreements and Antenuptial Contracts, 2nd ed.* (2019).
 - Chapter 100. Cohabitation Agreements
- 7 Arnold H. Rutkin et al. *Connecticut Practice Series. Family Law and Practice with Forms, 3d ed.* (2010).
 - Chapter 4. Marriage Licenses and Ceremonies
 - § 4:18. Validity of common-law marriage contracted outside state
 - § 4:19. Cohabitation after invalid marriage
- 8 Arnold H. Rutkin et al. *Connecticut Practice Series. Family Law and Practice with Forms, 3d ed.* (2010).
 - Chapter 42. Child Custody and Visitation
 - § 42.2. Rights of unmarried or non-cohabiting parents
- 8A Arnold H. Rutkin et al. *Connecticut Practice Series. Family Law and Practice with Forms, 3d ed.* (2010).

Chapter 47. Property rights and agreements between unmarried cohabitants

- § 47.1. In general
- § 47.3. Validity
- § 47.6. Separate property
- § 47.7. Joint purchases and contracts
- § 47.8. Enforcement of cohabitation agreements
- § 47.9. Termination of living together arrangements

- 6 Arnold H. Rutkin, *Family Law and Practice* (2019).
Chapter 65. Unmarried Cohabitants
 - § 65.02. Unmarried cohabitants and the courts
 - § 65.03. Issues facing unmarried cohabitants
 - [1]. Support (Alimony or maintenance)
 - [2]. Children and legitimacy
 - [3]. Custody and visitation
 - [4]. Child support
 - [5]. Adoption
 - [6]. Inheritance
 - [7]. Taxes
 - [8]. Cohabitants rights vis-à-vis third parties
 - [9]. **Criminal statutes restricting cohabitants' acts**
- Louise Truax, Editor, *LexisNexis Practice Guide: Connecticut Family Law* (2019 edition).
 - § 5.38[3]. Defining cohabitation
 - § 12.32. Checklist: Determining the status of unmarried cohabitants
- Frederick Hertz, *Counseling Unmarried Couples: A Guide to Effective Legal Representation, 2nd ed.* (2014).
Chapter 8. Cohabitation and Financial Arrangements
- Frederick Hertz & Lina Guillen. *Living Together: A Legal Guide For Unmarried Couples, 16th ed.* (2017, NOLO).
- Frederick Hertz & Emily Doskow. *A Legal Guide for Lesbian and Gay Couples, 19th ed.* (2018, NOLO).
Chapter 1. Defining Family: Basics of Marriage, Domestic Partnership, and More
Chapter 8. Living Together Contracts for Lesbian and Gay Couples

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries.](#)

- Kate Redburn, *Zoned Out: How Zoning Law Undermines Family Law's Functional Turn*, 128 Yale L. J. 2412 (2019).
- Helen M. Alvare, *Is This Any Way To Make Civil Rights Law?: Judicial Extension Of Marital Status Nondiscrimination To Protect Cohabitants*, 17 Georgetown Journal of Law & Public Policy 247 (2019).

- Hallie Fisher, *Special Considerations in Estate Planning for Same-Sex and Unmarried Couples*, 21 Duke Journal of Gender Law & Policy 177 (2013).
- Frank S. Berall, *Estate Planning Considerations for Unmarried Same or Opposite Sex Cohabitants*, 23 QLR 361 (2004-2005).
- Frank S. Berall, *Tax Consequences Of Unmarried Cohabitation*, 23 QLR 395 (2004-2005).
- Dianne S. Burden, *Remarriage Vs. Cohabitation: Tradition Doesn't Always Make Sense*, 12 Connecticut Family Law Journal 4 (1993).
- Rebecca Melton Rosubsky, *Legal Rights Of Unmarried Heterosexual And Homosexual Couples*, 10 Connecticut Family Law Journal 8 (1991).
- Edith F. McClure, *Marvin Revisited: A Comment On Boland V. Catalano*, 5 Connecticut Family Law Journal 51 (1987).

ENCYCLOPEDIAS:

- 46 *AmJur* 2d Joint Ventures (2017).
§ 55. Marital relationship or unmarried cohabitation as constituting joint venture
- 59A *AmJur* 2d Partnership (2015).
§ 202. Unmarried coinhabitants of opposite sex as partners.
- See [Table 2: ALR Annotations on Cohabitation without marriage.](#)
- *Child Custody And Visitation Rights As Affected By Sexual Lifestyle Of Parents*, 3 Preparation for Settlement and Trial 659 (1986).
- *Cause of Action by Same-Sex or Heterosexual Unmarried Cohabitant to Enforce Agreement or Understanding Regarding Support or Division of Property on Dissolution of Relationship*, 35 COA2d 295 (2007).
- *Proving the Property and Other Rights of Cohabitants and Domestic Partners*, 95 Proof of Facts 3d 1 (2007).

Table 1: Unreported Connecticut Decisions on Cohabitation Without Marriage

Unreported Connecticut Decisions: Cohabitation without Marriage	
<p><u>Cheiken v. Greneman-Cheiken</u>, Superior Court, Judicial District of Hartford at Hartford, No. FA 03 0733308 (Aug. 24, 2004) (2004 WL 2095124) (2004 Conn. Super. LEXIS 2352).</p>	<p>“. . .the defendant filed a three-count cross complaint. Count one of the cross complaint mirrors plaintiff's complaint with the added claim that '[f]or a period of approximately seven years prior to their marriage, the plaintiff and defendant lived together as a family unit and to all intents and purposes as husband and wife'; count two alleges an express or implied promise during the period of premarital cohabitation; count three alleges unjust enrichment during the same period."</p> <p style="text-align: center;">*****</p> <p>"The parties agree and this court concurs that the defendant should not have 'two bites of the apple' - in other words, the contributions during the cohabitation period should not be considered during division of the property pursuant to the marriage dissolution and also under separate claims for unjust enrichment and breach of promise. The trial court may consider the period of cohabitation during which the defendant allegedly made substantial contributions to the success of the plaintiff's business operations either under breach of promise and unjust enrichment claims; or, the trial court may take it into account in a dissolution proceeding which considers the entire estate of each party, including the plaintiff's business operations, as well as the contribution of each in the acquisition or appreciation in value of their respective estates."</p>
<p><u>Champoux v. Porter</u>, Superior Court, Judicial District of Windham at Putnam, No. CV 98 0057585 S (Dec. 2, 1998) (23 Conn. L. Rptr. 219, 220) (1998 WL 867270) (1998 Conn. Super. LEXIS 3430).</p>	<p>"In the present case, the court finds that no agreement or understanding existed between the parties that each would accrue individual credit for each contribution made to buy and keep the home to be applied to the proceeds resulting from a future sale. Every sum used for these purposes was a gift to the other as a joint owner so that any disparity in amount contributed is immaterial."</p>
<p><u>Vibert v. Atchley</u>, Superior Court, Judicial District of New Haven at New Haven,</p>	<p>"Accordingly, because Connecticut does not recognize common law marriage and cohabitation alone does not create any contractual relationship or give rise to any other rights and obligations that attend to a valid marriage, such</p>

<p>No. CV 93-0346622 (May 23, 1996) (16 Conn. L. Rptr. 604, 605) (1996 WL 364777) (1996 Conn. Super. LEXIS 1353).</p>	<p>as the continuing duty to support upon which an award of alimony is primarily based, no right to palimony exists under Connecticut law.</p> <p>Nevertheless, '[o]rdinary contract principles are not suspended . . . for unmarried persons living together, whether or not they engage in sexual activity. Contracts expressly providing for the performance of sexual acts, of course, have been characterized as meretricious and held unenforceable as violative of public policy.' Boland v. Catalano, supra, 202 Conn. [333,] 339. "[T]he courts should enforce express contracts between nonmarital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services. . . . In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.' Boland v. Catalano, supra, 202 Conn. 340-41, quoting Marvin v. Marvin, 18 Cal.3d 660, 665, 557 P.2d 106, 134 Cal. Rptr. 815 (1976). 'Thus, a contract, express or implied, or some other tacit understanding between persons who are not married to one another which does not rely upon their sexual behavior is enforceable in the courts of this state.' <u>Burns v. Koellmer</u>, 11 Conn. App. 375, 381, 527 A.2d 1210 (1987).</p> <p>Based on the foregoing, the plaintiff and the defendant entered into an enforceable contract when the defendant signed their June 13, 1991 agreement."</p>
<p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.</p>	

Table 2: ALR Annotations on Cohabitation without Marriage

ALR Annotations: Cohabitation without Marriage		
Subject	Title of Annotation	Citation
Automobile Insurance	<ul style="list-style-type: none"> Annotation, <i>Who Is A "Spouse" Within Clause Of Automobile Liability, Uninsured Motorist, Or No-Fault Insurance Policy Defining Additional Insured</i> 	36 <i>ALR4th</i> 588 (1985)
Children	<ul style="list-style-type: none"> Alan Stephens, Annotation, <i>Parental Rights Of Man Who Is Not Biological Or Adoptive Father Of Child But Was Husband Or Cohabitant Of Mother When Child Was Conceived Or Born</i> 	84 <i>ALR4th</i> 655 (1991)
Child Support	<ul style="list-style-type: none"> Alice M. Wright, Annotation, <i>Right To Credit On Child Support Arrearages For Time Parties Resided Together After Separation Or Divorce</i> 	104 <i>ALR5th</i> 605 (2002)
Contracts	<ul style="list-style-type: none"> Jane Massey Draper, Annotation, <i>Order Awarding Temporary Support Or Living Expenses Upon Separation Of Unmarried Partners Pending Contract Action Based Upon Services Relating To Personal Relationship</i> Jane Massey Draper, Annotation, <i>Recovery For Services Rendered By Persons Living In Apparent Relation Of Husband And Wife Without Express Agreement For Compensation</i> 	35 <i>ALR4th</i> 409 (1985) 94 <i>ALR3d</i> 552 (1979)
Domestic Violence	<ul style="list-style-type: none"> Elizabeth Trainor, Annotation, <i>"Cohabitation" For Purposes Of Domestic Violence Statutes</i> [Superseded in Part by <i>Legal Protection Against Domestic Violence in Same-Sex Relationships</i>, 19 <i>ALR7th</i> Art. 1, August 23, 2016] 	71 <i>ALR5th</i> 285 (1999)
Housing	<ul style="list-style-type: none"> Caroll J. Miller, Annotation, <i>What Constitutes Illegal Discrimination Under State Statutory Prohibition Against Discrimination In Housing Accommodations On Account Of Marital Status</i> 	33 <i>ALR4th</i> 964 (1984)
Palimony	<ul style="list-style-type: none"> William H. Danne, Annotation, <i>"Palimony" Actions for support following termination of nonmarital relationships</i> 	21 <i>ALR6th</i> 351 (2007)
Privileged communication	<ul style="list-style-type: none"> Annotation, <i>Communication Between Unmarried Couple Living Together As Privileged</i> 	4 <i>ALR4th</i> 422 (1981)

ALR Annotations: Cohabitation Without Marriage (cont'd)

Subject	Title of Annotation	Citation
Property	<ul style="list-style-type: none"> • George L. Blum, Annotation, <i>Property Rights Arising From Relationship Of Couple Cohabiting Without Marriage</i> • Wendy Evans Lehmann, Annotation, <i>Estate Created By Deed To Persons Described As Husband And Wife But Not Legally Married</i> 	<p>69 <i>ALR5th</i> 219 (1999)</p> <p>9 <i>ALR4th</i> 1189 (1981)</p>
Tort	<ul style="list-style-type: none"> • Sonja A. Soehnel, Annotation, <i>Action For Loss Of Consortium Based On Nonmarital Cohabitation</i> • Charles Plovovich, Annotation, <i>Recovery For Loss Of Consortium For Injury Occurring Prior To Marriage</i> 	<p>40 <i>ALR4th</i> 553 (1985)</p> <p>5 <i>ALR4th</i> 300 (1981)</p>
Zoning	<ul style="list-style-type: none"> • Vitauts M. Gulbis, Annotation, <i>Validity Of Ordinance Restricting Number Of Unrelated Persons Who Can Live Together In Residential Zoning</i> 	<p>12 <i>ALR4th</i> 238 (1982)</p>

Section 2: During Divorce

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the effect on alimony, custody and visitation of a spouse's cohabitation while a divorce action is pending.

DEFINITIONS:

- “The defendant claims first that, in fashioning its financial orders, the court improperly relied on the total length of the parties' relationship rather than on the length of their second marriage only, in violation of [Conn. Gen. Stats.] §§ 46b-81 and 46b-82. We agree.” [Loughlin v. Loughlin](#), 93 Conn. App. 618, 625, 889 A.2d 902 (2006).
- “While alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse's conduct on the other spouse. Because in making its assignment of property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result. [McPhee v. MCPhee](#), 186 Conn. 167, 177, 440 A.2d 274 (1982).” [Robinson v. Robinson](#), 187 Conn. 70, 72, 444 A.2d 234 (1982).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019).
§ [46b-61](#). Orders re children where parents live separately. Filing of accompanying documents.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Peterson v. Peterson](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FST FA 09-4015636 S (September 21, 2011) (2011 WL 4908846) (2011 Conn. Super. LEXIS 2415). “**Judicial gloss indicates the parties living apart is a requirement prior to the court entering an order of pendente lite alimony. Although the statutes are silent concerning a requirement of living apart, a number of court decisions seem to contain a requirement of living apart.**”
- [Makoski v. Makoski](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. FA04 041 26 17S (May 12, 2005) (2005 WL 1331724) (2005 Conn. Super. LEXIS 1254). “**While the wife candidly admits a sexual relationship outside of the marriage during the latter months of the**

marriage the marriage had broken down a long time prior thereto. The husband is primarily responsible for the breakdown of the marriage and the plaintiff shall prevail on her complaint based on irretrievable breakdown. The defendant's counter-claim alleging desertion and adultery are stricken in that they are not the cause of the marital breakdown."

- [Robinson v. Robinson](#), 187 Conn. 70, 72, 444 A.2d 234 (1982). "While alimony, in whatever form, or an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing, a spouse whose conduct has contributed substantially to the breakdown of the marriage should not expect to receive financial kudos for his or her misconduct. Moreover, in considering the gravity of such misconduct it is entirely proper for the court to assess the impact of the errant spouse's conduct on the other spouse. Because in making its assignment of property the trial court had a reasonable basis for its disposition we see no reason for disturbing the result."
- [Venuti v. Venuti](#), 185 Conn. 156, 159, 440 A.2d 878 (1981). "A review of the record shows that the trial court did not err in finding that adultery was not the cause of the breakdown of the marriage. There is, therefore, no basis in the statutes for the trial court to have considered any adultery by the plaintiff in making its award of alimony and counsel fees and the trial court did not abuse its discretion when it made those awards."

WEST KEY NUMBERS:

- *Divorce*
609(2). Conditions terminating or suspending obligation – Sexual relations, cohabitation or remarriage
745. Fault in separation or divorce

DIGESTS:

- Cynthia C. George, et al. *Connecticut Family Law Citations* (2019).
§ 1.03 Cohabitation
§ 8.07[11] Remarriage or Cohabitation

ENCYCLOPEDIAS:

- See [Table 3: ALR Annotations: Cohabitation During Divorce](#)

TEXTS & TREATISES:

- 8 Arnold H. Rutkin et al. *Connecticut Practice Series. Family Law And Practice with Forms, 3d ed.* (2010).
Chapter 33 Alimony in general
§ 33.2 Award to either spouse
 [Discussion of the effect of adultery on alimony award]
§ 33.6. Causes for the dissolution
 [Issue of fault in awarding alimony]
§ 33.17 Other factors considered
 [Extra-marital affair]

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

Chapter 42 Child custody and visitation
§ 42.35 Causes for dissolution
§ 42.38 Other parental misconduct
[Adulterous relationship]

- Louise Truax, Editor, *LexisNexis Practice Guide: Connecticut Family Law* (2019 edition)
 - § 5.09[5] Assessing the impact of the contributions by a cohabitant or new spouse
 - § 5.38 Modifying alimony based upon the cohabitation of the recipient
- American Law Institute. *Principles of the Law of Family Dissolution: Analysis and recommendations* (2002).
 - Chapter 5 Compensatory Spousal Payments
 - Chapter 6 Domestic Partners
- Paul Smith, *Jurisprudence And Adultery In Modern Day Connecticut*, 3 Connecticut Family Law Journal 1 (November 1984).
 - “What do you tell your clients when they ask what they can do socially after commencing a dissolution action.”
- Steven K. Berenson, *Should Cohabitation Matter in Family Law?*, 13 Journal of Law and Family Studies 289 (2011).

LAW REVIEWS:

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Table 3: ALR Annotations on Cohabitation During Divorce

ALR Annotations: Cohabitation During Divorce	
Subject	Title of Annotation
Adultery	<ul style="list-style-type: none"> Annotation, <i>Cohabitation Under Marriage Contracted After Divorce Decree As Adultery, Where Decree Later Reversed Or Set Aside</i>, 63 ALR2d 816 (1959)
Alimony	<ul style="list-style-type: none"> Robin Cheryl Miller, Annotation, <i>Effect Of Same-Sex Relationship On Right To Spousal Support</i>, 73 ALR5th 599 (1999) Kristine Cordier Karnezis, Annotation, <i>Adulterous Wife's Right To Permanent Alimony</i>, 86 ALR3d 97 (1978)
Children	<ul style="list-style-type: none"> Robin Cheryl Miller, Annotation, <i>Child Custody And Visitation Rights Arising From Same-Sex Relationship</i>, 80 ALR5th 1 (2000) Robin Cheryl Miller, Annotation, <i>Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct</i>, 99 ALR5th 475 (2002)
Continuity	<ul style="list-style-type: none"> Annotation, <i>Individual Acts of Cohabitation between Husband and Wife as Breaking Continuity of Abandonment, Desertion, or Separation, or as Condonation thereof</i>, 155 ALR 132 (1945)

Table 4: Unreported Connecticut Decisions on Adultery During Divorce

Unreported Connecticut Decisions: Adultery During Divorce	
<p><u>Morson v. Morson</u>, Superior Court, Judicial District Stamford-Norwalk at Stamford, No. FA99 0175656 S (Sep. 13, 2001) (2001 WL 1200315) (2001 1991 Conn. Super. LEXIS 2597 2681).</p>	<p>"The parties' final separation occurred on November 17, 1999 when, after requesting a divorce, the defendant left the home. The court finds that the defendant's one act of adultery prior to the final separation did not contribute to the marriage breakdown which was total prior to that episode, <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981)."</p>
<p><u>Marchiano v. Marchiano</u>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA96 0156039 S, (Nov. 28, 1997) (1997 WL 753406) (1997 Conn. Super. LEXIS 3163).</p>	<p>"The causes of the marriage breakdown are found rooted in a generalized incompatibility of life style. The marriage was irretrievably broken down by the summer of 1996. Each party has behaved as an unmarried person since then, 185 <u>Venuti v. Venuti</u>, 156 Conn. The court concludes that fault is not to be assigned to either party."</p>
<p><u>Blackburn v. Blackburn</u>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA95 0144698 S (Nov. 6, 1997) (1997 WL 724499) (1997 Conn. Super. LEXIS 3001).</p>	<p>"In April, 1996, the defendant returned to the marital home at 2:00 a.m. to find the plaintiff with a man who the defendant assaulted. Since this episode occurred one year after this dissolution suit was commenced, the court finds such evidence not relevant to the causes of the marriage breakdown, <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981)."</p>
<p><u>Fischer v. Fischer</u>, 45 Conn. Sup. 94, 96, 700 A.2d 123 (1995).</p>	<p>"The breakdown of the marriage began in 1981 when the defendant began seeing another woman. This relationship ripened into a long term liaison that continued until the trial of the present case. For her part, the plaintiff admitted committing adultery with a house guest who stayed at the family home between August and November of 1982. Since the breakdown of the marriage was complete by the time the separation agreement was executed, the plaintiff's behavior after June, 1982, did not contribute to the breakdown. <i>Venuti v. Venuti</i>, 185 Conn. 156, 158-59, 440 A.2d 878 (1981). The defendant's behavior is found to be the prime cause for the breakdown."</p>

Unreported Connecticut Decisions: Adultery During Divorce

<p><u>Paul v. Paul</u>, Superior Court, Judicial District of Waterbury at Waterbury, No. FA93 0117672 S, (Sep. 29, 1994) (1994 WL 564051) (1994 Conn. Super. LEXIS 2548).</p>	<p>"Regarding the defendant's adultery as impacting on the custody issue, it is correct that a party's morals as demonstrated by conduct may be considered by the court. <u>Adams v. Adams</u>, 180 Conn. 498; <u>Sullivan v. Sullivan</u>, 141 Conn. 235. The plaintiff's living with Mrs. Goodwin occurred after the breakdown and is not considered as bearing on fault. <u>Venuti v. Venuti</u>, 185 Conn. 156. The court can consider the behavior of each party to the time of trial in determining how each party's behavior may impact the child, for the question is not who was the better custodian in the past, but which party is the better custodian now. <u>Yontel v. Yontel</u>, 185 Conn. 275, 283."</p>
<p><u>Buechele v. Buechele</u>, Superior Court, Judicial District of New Haven at New Haven, No. 32 54 02 (May 26, 1993) (1993 WL 190426) (1993 Conn. Super. LEXIS 1308).</p>	<p>"In <u>Venuti v. Venuti</u>, 185 Conn. 156, 159 (1981), the court stated in part as follows: 'A review of the record shows that the trial court did not err in finding that adultery was not the cause of the breakdown of the marriage. There is, therefore, no basis in the statutes for the trial court to have considered any adultery by the plaintiff in making its award of alimony and counsel fees. . . .' The court finds that the defendant's involvement with a third party and her existing pregnancy is not a factor in the cause of the breakdown of the marriage."</p>
<p><u>Mason v. Mason</u>, Superior Court, Judicial District of New Haven at New Haven, No. 30 06 62 (Nov. 8, 1991) (1991 WL 240727) (1991 Conn. Super. LEXIS 2597).</p>	<p>"In <u>Venuti v. Venuti</u>, 185 Conn. 156 (1981), our Supreme Court considered the questions of awarding alimony and counsel fees to an adulterous spouse. The Court noted on pages 157 and 158 that, under the dissolution statute, adultery is one of ten causes for granting a dissolution but a trial court may dissolve a marriage with irretrievable breakdown as the basis even though another cause is proven. Also that adultery is not listed as a factor in General Statutes 46b-62, 46b-82 to be considered in making an award unless it is one of causes of the dissolution; and further that, as a cause, it is only a factor to consider together with all the other factors enumerated in the General Statutes; and concluding on page 148 with the following: 'Thus, there is no longer a foundation for the claim that as a matter of law it is an abuse of discretion to award alimony and counsel fees to an adulterous spouse.' In the Venuti case the trial court found that the adultery was not a cause of the breakdown."</p>

Unreported Connecticut Decisions: Adultery During Divorce

Foley v. Foley, Superior Court, Judicial District of New Haven at New Haven, No. FA-89-292125 (Apr. 10, 1991) (1991 WL 61184) (1991 Conn. Super. LEXIS 796).

"The court does not find that adultery was the cause of the breakdown of this marriage. There is, therefore, no basis in the statutes and case law for this court to have considered any adultery by the plaintiff in making any award of alimony, etc., Venuti v. Venuti, 185 Conn. 159. Adultery will not be inferred from circumstantial evidence, unless there is both an opportunity and an adulterous disposition. Eberhard v. Eberhard, 4 N.J. 535 (1950). Moreover, the existence of both the opportunity and the inclination without more does not necessarily compel a conclusion that adultery has occurred. Antonata v. Antonata, 85 Conn. 390 (1912)."

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

Section 3: Following Divorce

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the effect on alimony, custody and visitation of cohabitation after a divorce is final.

DEFINITIONS:

- **Cohabitation vs. living together:** "Section 46b-86 (b) does not use the word cohabitation. The legislature instead 'chose the broader language of "living with another person" rather than "cohabitation". . . .' Because, however, 'living with another' person without financial benefit did not establish sufficient reason to refashion an award of alimony under General Statutes § 46b-81, the legislature imposed the additional requirement that the party making alimony payments prove that the living arrangement has resulted in a change in circumstances that alters the financial needs of the alimony recipient. Therefore, this additional requirement, in effect, serves as a limitation. Pursuant to § 46b-86 (b), the nonmarital union must be one with attendant financial consequences before the trial court may alter an award of alimony." [DeMaria v. DeMaria](#), 247 Conn. 715, 720, 724 A.2d 1088 (1999).
- **Cohabitation Statute:** "Section § 46b-86(b) is commonly known as the cohabitation statute in actions for divorce. [Cushman v. Cushman](#), 93 Conn. App. 186, 198, 88 A.2d 156 (2006). In accordance with the statute, 'before the payment of alimony can be modified or terminated [on cohabitation grounds], two requirements must be established. First, it must be shown that the party receiving the alimony is cohabit[ing] with another individual. If it is proven that there is cohabitation, the party seeking to alter the terms of the alimony payments must then establish that the recipient's financial needs have been altered as a result of the cohabitation.'" [Lehan v. Lehan](#), 118 Conn. App. 685, 695, 985 A.2d 378 (2010).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019).
 - § [46b-61](#). Orders re children where parents live separately. Filing of accompanying documents.
 - § [46b-86\(b\)](#). Modification of alimony or support orders and judgments.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Boreen v. Boreen](#), 192 Conn. App. 303, 312, --- A.3d --- (2019). "In the present case, we conclude that the trial court had ample evidence to support its finding that the plaintiff had been living with Rodriguez within the meaning of **§ 46b-86 (b)** since January, 2015. The couple resided under the same roof for approximately half the week, took many of their meals together, regularly communicated by cell phone, and frequently traveled together. Rodriguez, moreover, provided for the plaintiff's health insurance coverage under his own policy as a result of the couple holding themselves out as being in a domestic partnership. Further, Rodriguez allows the plaintiff to keep a rent-free art studio at his home. The totality of these facts form a reasonable basis to support the court's finding that the plaintiff has been 'living with another person' pursuant to **§ 46b-86 (b)** since January, 2015. As our Supreme Court stated in *Kaplan*, **§ 46b-86 (b)** was written broadly and was clearly intended by the legislature to encompass a factual situation such as the present case where, although the plaintiff and Rodriguez maintain separate homes and do not sleep in the same residence every night, the plaintiff's living arrangements have changed such that she no longer needs the same financial support as at the time of the original alimony order. See *Kaplan v. Kaplan*, *supra*, 186 Conn. 389."
- [Murphy v. Murphy](#), 181 Conn. App. 716, 727, 188 A.3d 144 (2018). "In the present case, the court interpreted **§ 46b-86 (b)** too narrowly by focusing on the lack of proof of the *boyfriend's* financial contributions, to the exclusion of the *defendant's savings* as a result of her move. Although the boyfriend's contributions may have been factually relevant in *Blum*, proof of them is not a prerequisite in all cases involving the application of **§ 46b-86 (b)**, and that is not the only basis pursuant to **§ 46b-86 (b)** to determine if a party's living arrangements cause such a change of circumstances as to alter that party's financial needs. As *Spencer* demonstrates, evidence of a \$575 reduction in the receiving party's monthly rent obligation is 'clear evidence' of a change in circumstances as to alter the financial needs of that party. See *Spencer v. Spencer*, *supra*, 177 Conn. App. 521."
- [Spencer v. Spencer](#), 177 Conn. App. 504, 518, 173 A.3d 1 (2017). "... the trial court in the present case determined that only two factors controlled its cohabitation analysis. Those two factors are the two requirements imposed by § 46b-86 (b). In the present case, the court based its decision to terminate alimony on only two findings: (1) the plaintiff admitted that she began 'cohabitating with her boyfriend'; and (2) the plaintiff's cohabitation altered her financial needs. The first finding, although formulated in terms of 'cohabitating,' refers to the first requirement imposed by § 46b-86 (b) that the obligee live with another person. See,

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e.g., [Gervais v. Gervais](#) Gervais v. Gervais, 91 Conn. App. 840, 854, 882 A.2d 731 (referring to first requirement of § 46b-86 [b] as 'cohabitation'), cert. denied, 276 Conn. 919, 888 A.2d 88 (2005). The second finding unequivocally refers to the second requirement of § 46b-86 (b) that the obligee's financial needs have been altered. Thus, the trial court effectively determined that the two requirements of § 46b-86 (b) were the exclusive considerations in its analysis of **cohabitation.**"

- [Norberg-Hurlburt v. Hurlburt](#), 162 Conn. App. 661, 673, 133 A.3d 482, 488-489 (2016). "The court heard testimony from the defendant that the plaintiff and Brown were cohabitating, and an exhibit provided by the defendant demonstrated that she and Brown were engaged. Additionally, the court drew an adverse inference with respect to the issue of cohabitation because the plaintiff failed to appear to testify at the **scheduled hearing.** '[A] trier of fact generally may draw an adverse inference against a party for its failure to rebut **evidence.**' [In Re Samantha C.](#), 268 Conn. 614, 637, 847 A.2d 883 (2004). 'After a prima facie case is established, an adverse inference may be drawn against a party for his or her failure to testify, unless the party was entitled to rely upon one of the few exceptional privileges that carry with it a protection **from adverse inferences.**' *Id.*, at 638.

We conclude that the court had sufficient evidence, under the circumstances of this case, to make the finding that the plaintiff **was cohabiting with Brown in a** 'relationship similar to that of husband and **wife.**' Under the provisions of the agreement, as incorporated into the dissolution judgment, the defendant was entitled to seek a modification of his alimony obligation. We conclude that the court did not abuse its broad discretion in granting the defendant's motion to **terminate the alimony payments.**"

- [Fazio v. Fazio](#), 162 Conn. App. 236, 249-250, 131 A.3d 1162 (2016). "Our Supreme Court has allowed a party obligated to pay alimony to request, pursuant to § 46b-86 (b), that alimony be suspended, reduced, or terminated in the event of cohabitation in cases where a dissolution judgment requires payment of alimony, but contains no provision regarding the effect of cohabitation on the obligation to pay alimony. See *Kaplan v. Kaplan*, 186 Conn. 387, 388-89, 441 A.2d 629 (1982) (allowing plaintiff to seek modification of alimony, pursuant to § 46b-86 [b], because plaintiff was ordered to pay alimony but dissolution judgment contained no provision regarding effect of cohabitation on obligation to pay alimony). This court, however, has held that, because the provisions in an incorporated separation agreement prevail over § 46b-86 (b), if the incorporated separation agreement limits modification of the amount or duration of alimony, and does not make an exception for modification in the event of cohabitation, the court does not have access to its remedial

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powers pursuant to § 46b-86 (b). See *Wichman v. Wichman*, 49 Conn.App. 529, 533, 714 A.2d 1274, (“[w]e find nothing in the legislative history [of § 46b-86 (b)] cited by the defendant, however, that would permit the trial court to modify a judgment based on cohabitation when the judgment itself precludes modification for any reason other than remarriage or death”), cert. denied, 247 Conn. 910, 719 A.2d 906 (1998).”

- [Nation-Bailey v. Bailey](#), 316 Conn. 182, 184, 112 A3d 144, 146-147 (2015). **“The sole issue in this certified appeal is whether a separation agreement that requires the payment of unallocated alimony and child support ‘until the death of either party, the [w]ife’s remarriage or cohabitation as defined by [General Statutes] § 46b–86 (b),’ terminates the support obligation permanently upon the wife’s cohabitation, or whether that agreement affords the trial court discretion to suspend that obligation for the cohabitation period, which in this case lasted approximately four months.”**
- [Barber v. Barber](#), 121 Conn. App. 96, 97-98, 994 A.2d 284, 285 (2010). **“The parties, who were formerly married,** became partners after the dissolution of their marriage and acquired interests in various properties during their partnership. This appeal arises out of proceedings related to the settlement of their partnership account, in which the trial court ordered an accounting to be performed by an auditor, as stipulated by the parties...**The parties’ marriage was dissolved on February 5, 1992. Thereafter, the parties lived together and held themselves out as husband and wife. Following their marital dissolution, but while cohabiting, the parties acquired substantial interests in several real properties as partners.”**
- [DeMaria v. DeMaria](#), 247 Conn. 715, 719-720, 724 A.2d 1088 (1999). **“The Appellate Court essentially treated the word ‘cohabit’ as synonymous with ‘living together,’ and concluded that in view of its finding that the plaintiff was living with an unrelated male, the trial court should have terminated her alimony We conclude, in accordance with the definition contained in § 46b-86 (b), that the trial court properly construed the term ‘cohabitation’ as used in the dissolution judgment to include the financial impact of the living arrangement on the cohabiting spouse, and accordingly, we reverse the judgment of the Appellate Court.”**
- [D’Ascanio v. D’Ascanio](#), 237 Conn. 481, 486, 678 A.2d 469 (1996). **“On her cross appeal, however, the defendant asserts that no evidence was presented to support the trial court’s finding that her living arrangement with Griffin caused such a change of circumstances as to alter her financial needs. We disagree.”**

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- [Mihalyak v. Mihalyak](#), 30 Conn. App. 516, 521, 620 A.2d 1327 (1993). "The defendant contends, and we agree, that the dissolution judgment itself provided for termination of the alimony upon the occurrence of the plaintiff's cohabitation. The provisions of General Statutes § 46b-86 are inapplicable. The trial court should have considered the terms of the dissolution decree, which incorporated the agreement of the parties in the form of a stipulation."
- [Charpentier v. Charpentier](#), 206 Conn. 150, 152, 536 A.2d 948 (1988). "A major contention of the defendant is that the trial court's financial orders were impermissibly influenced by her admitted lesbian sexual preference. We conclude that the trial court's financial orders were not so premised, but instead reasonably reflected the economic burden imposed on the plaintiff by the custody decree as the parent primarily responsible for raising five young children."
- [Kaplan v. Kaplan](#), 185 Conn. 42, 45-46, 440 A.2d 252 (1981). "We note that the General Assembly chose the broader language of 'living with another person' rather than 'cohabitation' and that this provision requires only a 'change' of circumstances, not a 'substantial change' as required by 46b-86 (a)."
- [McAnerney v. McAnerney](#), 165 Conn. 277, 287, 334 A2d 437 (1973). "But no policy or rule of equity makes a divorced wife accountable to her former husband for her conduct . . . any more than it makes the enforcement of a debt contingent on a creditor's chastity."

WEST KEY NUMBERS:

- *Divorce*
 - 609(2). Conditions terminating or suspending obligation – Sexual relations, cohabitation or remarriage
 - 627(13). Modification of judgment or decree – Remarriage, cohabitation, sexual activity, or birth of new children
 - 628. Modification of judgment or decree – Modification of decree incorporating or based on separation agreement
 - 916. Settlement agreements and stipulations – Construction and operation.
- *Implied and Constructive Contracts*
 - 47. Cohabitants

DIGESTS:

- Cynthia C. George, et al. *Connecticut Family Law Citations* (2019).
 - § 1.03 Cohabitation
 - § 8.07[11] Remarriage or Cohabitation

ENCYCLOPEDIAS:

- 27B *C.J.S.* Divorce (2016).
 - § 681. Cohabitation by recipient as ground for

modification

§ 682. Cohabitation by recipient as ground for modification – what constitutes cohabitation

- 24A *AmJur* 2d Divorce and Separation (2018).
 - § 704. Recipient spouse's cohabitation with another
 - § 705. Remarriage of spouse to each other; resumption of cohabitation
 - § 749. Cohabitation of dependent spouse
- *Cause Of Action To Obtain Increase In Amount Or Duration Of Alimony Based On Changed Financial Circumstances Of Party*, 19 *COA* 1 (1989).
 - § 31. Change caused or contributed to by recipient
 - § 33. Other sources of support
- *Modification Of Spousal Support On Ground Of Supported Spouse's Cohabitation*, 6 *POF3d* 765 (1989).
- 8 Arnold H. Rutkin, *Connecticut Practice Series. Family Law and Practice With Forms*, 3d ed. (2010).
 - Chapter 35. Modification of alimony provisions
 - § 35.25. Modification of alimony based on cohabitation
 - § 35.26. Proof of cohabitation
 - § 35.27. Relief available based upon cohabitation
 - Chapter 42. Child custody and visitation
 - §42.2. Rights of unmarried or non-cohabiting parents
 - §42.38. Restrictions on care and supervision
 - Chapter 44. Modification of custody and visitation orders
 - §44.16. Remarriage or cohabitation of parent
- 6 Arnold H. Rutkin, *Family Law and Practice* (2019).
 - Chapter 65. Unmarried Cohabitants
 - § 65.02. Unmarried cohabitants and the courts
 - § 65.03. Issues facing unmarried cohabitants
 - [1]. Support (Alimony or maintenance)
 - [b]. Post-divorce cohabitation as support determinant
 - [3]. Custody and visitation
 - [c]. Post-Divorce cohabitation as a custody determinant
- Louise Truax, Editor, *LexisNexis Practice Guide: Connecticut Family Law* (2019 edition).
 - § 5.09[5] Assessing the impact of the contributions by a cohabitant or new spouse
 - § 5.38 Modifying alimony based upon the cohabitation of the recipient
 - [1] Determining the statutory criteria for Cohabitation

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

- [2] Assessing non-modifiable alimony provisions when there is cohabitation
- [3] Defining cohabitation
- [4] Altering the alimony recipient's financial needs**
- [5] Filing a motion for modification based upon cohabitation
- [6] Defining remedies in a motion to modify based upon cohabitation

PAMPHLETS:

- CTLawHelp.Org, *How to Change Your Child Support Order*.
<https://ctlawhelp.org/en/change-support-order>

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Emily M. May, *Should Moving In Mean Losing Out? Making a Case to Clarify the Legal Effect of Cohabitation on Alimony*, 62 Duke Law Journal 403 (2012).
- Jill Bornstein, *At a Crossroad: Anti-Same-Sex Marriage Policies and Principles of Equity: The Effect of Same-Sex Cohabitation on Alimony Payments to an Ex-Spouse*, 84 Chicago-Kent Law Review 1027 (2010).
- Edward S. Snyder, *Post-divorce Cohabitation And Its Effect On Spousal Support*, 1 American Journal of Family Law 57 (Spring 1987).

Table 5: Connecticut's Cohabitation Statute

Connecticut's Cohabitation Statute Conn. Gen. Stat. § 46b-86(b)	
<p>Conn. Gen. Stat. § 46b-86(b)</p> <p>You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p>	<p>"In an action for divorce, dissolution of marriage, legal separation or annulment brought by a spouse, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other spouse, the Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party. In the event that a final judgment incorporates a provision of an agreement in which the parties agree to circumstances, other than as provided in this subsection, under which alimony will be modified, including suspension, reduction, or termination of alimony, the court shall enforce the provision of such agreement and enter orders in accordance therewith."</p>
<p>Knapp v. Knapp, 270 Conn. 815, 825, 856 A.2d 358 (2004).</p>	<p>"Although § 46b-86 (b) does not specifically define cohabitation, our appellate courts consistently have referred to that statute as the cohabitation statute"</p>
History of Statute	
<p>OLR Report No. 94-R-0700 (July 29, 1994).</p> <p>Office of Legislative Research reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.</p>	<p>"The statute, CGS Sec. 46b-86(b), was enacted as PA 77-394. Before its passage the court could already alter alimony awards upon a showing of changed circumstances, unless the terms of the award itself precluded modification. PA 77-394 empowered the court to alter or terminate an alimony award upon a finding that the alimony recipient was living with another person under arrangements which alter his or her financial needs.</p> <p>PA 77-394 began as sHB 6174. It was referred to the Judiciary Committee and given a public hearing on March 2. The committee favorably reported the bill on April 4 and it passed the House on May 6 and the Senate on May 24, in both cases on consent with no debate. During the public hearing only one person spoke on the bill, attorney Samuel Schoonmaker from Stamford. Representing both himself and the American Academy of Matrimonial Lawyers, he spoke in support. Senator DePiano</p>

<p>OLR Report No. 94-R-0700 (July 29, 1994). [cont'd]</p>	<p>asked if the bill was designed to 'correct' a situation in Stamford that had resulted in a state Supreme Court case where 'somebody claimed that his wife was living with somebody else, out of wedlock and that therefore, he was not responsible to give her alimony and he lost that case?' Schoonmaker responded that this was the intent, to make it within the court's discretion. He said he was aware of another Stamford case where there was a substantial alimony award in favor of the wife while she had been living for 15 years without being married with a man who was providing her with very ample support. Schoonmaker said the bill was a practical attempt at economic justice and not an attempt to legislate morality. DePiano summed it up as '[Y]ou want alimony to be used only by the person receiving the alimony and not anybody else getting the benefit if it and conspiring between the two not to get married, so that the alimony would stay on forever.' , Schoonmaker responded ', That's right.' [cont'd]</p> <p>Although it was not specified in the testimony, the case they were referring to was probably McAnerney v. McAnerney, 165 Conn 277 (1973) a copy of which is enclosed. In that case a separation agreement, later incorporated in the divorce decree, obligated the plaintiff to pay alimony to his ex-wife until her remarriage or death. He subsequently sued because she was co-habiting with a man and he argued that he was no longer bound by the agreement because his ex-wife and her partner had created a condition approximating marriage thus circumventing the terms of the agreement. The Court held that neither of the terms of the agreement, death or remarriage of the wife, had occurred and that Connecticut law did not recognize common law marriage, and thus the plaintiff husband had no cause of action against his ex-wife."</p>
<p>McAnerney v. McAnerney, 165 Conn. 277, 285-286, 334 A.2d 437 (1973).</p>	<p>"Since our decision in the <i>Hames</i> [163 Conn. 588, 316 A.2d 379 (1972)] case, there should be little question as to what is required under our law to constitute the status of marriage. Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. Hames v. Hames, supra, 7; <i>State ex rel. Felson v. Allen</i>, 129 Conn. 427, 432, 29 A.2d 306. It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status. Thus, for the purposes of the laws of this jurisdiction and for the purposes of the contract, Mrs. McAnerney's cohabitation with another has no effect on the contractual provision whereby the plaintiff's obligation terminates with the wife's remarriage."</p>
<p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.</p>	

Table 6: ALR Annotation on Cohabitation Following Divorce

ALR Annotations: Cohabitation Following Divorce	
Subject	Title of Annotation
Alimony, Modification of	<ul style="list-style-type: none"> • Diane M. Allen, Annotation, <i>Divorced Or Separated Spouse's Living With Member Of Opposite Sex As Affecting Other Spouse's Obligation Of Alimony Or Support Under Separation Agreement</i>, 47 ALR4th 38 (1986). • Annotation, <i>Divorced Woman's Subsequent Sexual Relations Or Misconduct As Warranting, Alone Or With Other Circumstances, Modification Of Alimony Decrees</i>, 98 ALR3d 453 (1980).
Children	<ul style="list-style-type: none"> • Robin Cheryl Miller, Annotation, <i>Child Custody And Visitation Rights Arising From Same-Sex Relationship</i>, 80 ALR5th 1 (2000). • Robin Cheryl Miller, Annotation, <i>Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct</i>, 99 ALR5th 475 (2002) • Annotation, <i>Custodial Parent's Sexual Relations With Third Person As Justifying Modification Of Child Custody Order</i>, 100 ALR3d 625 (1980) [Superseded in Part by <i>Custodial parent's homosexual or lesbian relationship with third person as justifying modification of child custody order</i>, 65 ALR5th 591]
Child support arrearage	<ul style="list-style-type: none"> • Alice M. Wright, Annotation, <i>Right To Credit On Child Support Arrearages For Time Parties Resided Together After Separation Or Divorce</i>, 104 ALR5th 605 (2002).

Figure 1: Motion for modification and/or termination of periodic alimony

DOCKET NO. FA 97 0161402 S : SUPERIOR COURT
JOSEPH DISTEFANO : JUDICIAL DISTRICT OF
STAMFORD/NORWALK
VS. : AT STAMFORD
RENE DISTEFANO : SEPTEMBER 1, 2000

MOTION FOR MODIFICATION AND/OR TERMINATION OF PERIODIC ALIMONY

[POST JUDGMENT]

The plaintiff, JOSEPH DISTEFANO, by and through his attorneys, Piazza & Pickel, hereby moves that this Honorable Court modify the existing alimony order as there has been a substantial change in financial circumstances since the entering of the orders. In support hereof, plaintiff sets forth as follows:

1. That the marriage of the parties was dissolved on an uncontested basis on October 14, 1998 (Kavanewsky, J.).
2. That the Agreement dated October 14, 1998, which was incorporated into the judgment of dissolution sets forth orders with respect to alimony.
3. Specifically, the order provides as follows:

ARTICLE IV - ALIMONY

(4.1.) The Husband shall pay to the Wife as periodic alimony, the sum of \$1,505.60 per month commencing November 1, 1998 payable on the 1st of each month which shall terminate upon the first to occur: the death of either party, remarriage of the Wife, cohabitation by the Wife pursuant to statute...

4. Since the entering of the above referenced orders, the Wife has cohabitated and therefore, a modification or termination of the alimony order is necessary.

WHEREFORE, the plaintiff moves that this court modify the following existing periodic alimony order by terminating the order.

THE PLAINTIFF

BY _____

Name

Firm

Address

Phone number

Juris Number

[Motion For Modification And/Or Termination of Periodic Alimony [Post Judgment], Connecticut Appellate Court Records and Briefs (September 2001). [Distefano v. Distefano](#), 67 Conn. App. 628, 787 A.2d 675 (2002).]

Table 7: Unpublished Connecticut Alimony Decisions - Cohabitation Following Divorce

Unpublished Connecticut Decisions: Cohabitation Following Divorce and Alimony	
<p><u>Flater v. Flater</u>, Superior Court, Judicial District of Hartford at Hartford, No. HH DFA11405605 6S, (Aug. 26, 2019) (2019 WL 4277039) (2019 Conn. Super. LEXIS 2352).</p>	<p>"Moreover, § 46b-86 (b) does not require a substantial change in circumstances. 'Pursuant to § 46b-86 (b), the nonmarital union must be one with attendant financial consequences before the trial court may alter an award of alimony.' <i>DeMaria v. DeMaria</i>, 247 Conn. 715, 720, 724 A.2d 1088 (1999). Whereas a modification of alimony sought pursuant to § 46b-86 (a) requires a showing of a substantial change in circumstances; <i>Zitnay v. Zitnay</i>, 90 Conn. App. 71, 78, 875 A.2d 583, cert denied, 276 Conn. 918, 888 A.2d 90 (2005); § 46b-86 (b) 'requires only a change of circumstances' (Internal quotations marks omitted). <i>D'Ascanio v. D'Ascanio</i>, 237 Conn. 481, 486, 678 A.2d 469 (1996). 'Put another way, in cases involving the cohabitation statute, subsection (b) lowers the threshold predicate for the modification of alimony to situations where the court finds cohabitation and a change of circumstances so as to alter the needs of the party.' <i>Gervais v. Gervais</i>, 91 Conn. App. 840, 853, 882 A.2d 731, cert. denied, 276 Conn. 919, 888 A.2d 88 (2005)."</p>
<p><u>Keogh v. Keogh</u>, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FSTFA030195891 S, (June 19, 2018) (2018 WL 3401498) (2018 Conn. Super. LEXIS 1266).</p>	<p>"The legal fees and expenses incurred to prove the plaintiff's cohabitation prior to and during the hearing before Judge Tindill in March and June 2016 became part of the preparation for presenting the defendant's case and making that proof before this court. See <i>Ruiz v. Cole</i>, Superior Court, judicial district of Waterbury, Docket No. CV-96-01322883-S (Aug. 12, 1999, Leheny, J.) (25 Conn. L. Rptr. 291) (trial court awarded attorneys fees pursuant to Practice Book § 13-25 for legal services rendered to prove liability when defendant unreasonably failed to admit liability; legal services included preparation for and attendance at deposition and efforts to locate fact witness). Pursuant to Practice Book §13-25, the defendant may recover the attorneys fees and expenses that he incurred to prove the plaintiff's cohabitation, in the amount of \$37,004.32."</p>
<p><u>Kunschaft v. Kunschaft</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. FA10-4032600S,</p>	<p>"A clause of a dissolution judgment providing that an award of alimony 'shall terminate upon the payee's cohabitation as defined by statute' requires that an alimony obligation be completely eliminated if the court finds that cohabitation has occurred; a court has no discretion under such a clause to merely reduce alimony to account for a change in the payee's circumstances brought about by cohabitation."</p>

<p>(Jun. 24, 2016) (62 Conn. L. Rptr. 529, 529) (2016 WL 4071438) (2016 Conn. Super. LEXIS 1852).</p>	
<p><u>Clay v. Clay</u>, No. Superior Court, Judicial District of Hartford at Hartford, FA98-0717513-S, (Nov. 24, 2003) (36 Conn. L. Rptr. 67, 67-68) (2003 WL 22904553) (2003 Conn. Super. LEXIS 3263).</p>	<p>"The so-called 'cohabitation statute' is codified as § 46b-86(b) and provides that 'in an action for divorce dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the CT Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.' The statute, and its subsequent interpretation requires a showing that the party receiving alimony is living with another person, and that such living arrangement result in a change of circumstances that alter the financial needs of such party." [Emphasis added.]</p>
<p><u>Santese (DeNunzio) v. Santese</u>, Superior Court, Judicial District of Hartford at Hartford, FA 96-00727935 (Mar. 14, 2002) (2002 WL 521393) (2002 Conn. Super. LEXIS 830).</p>	<p>"Although the parties have stipulated that the plaintiff and her male friend have lived together since August 2001, they disagree over whether or not those living arrangements have altered the plaintiff's financial needs.</p> <p>The plaintiff contends that she continues to maintain herself financially ". . . and receives no financial benefits . . . other than an indirect benefit that would be provided by sharing living quarters with any roommate." (Plaintiff's Summary of Law). The plaintiff argues that although the amount she pays for rent may be lower, her overall financial circumstances have not been improved by her current living arrangement.</p> <p>The court is not persuaded."</p>
<p><u>Keays v. Keays</u>, Superior Court, Judicial District of New Haven at New Haven, No. FA 93-0355163S, (Mar. 19, 2002) (2002 WL 532425) (2002</p>	<p>"In this case, the judgment provided that alimony would terminate upon the issuance of an order terminating alimony pursuant to 46b-86 (b). That is not self executing. Moreover, the statute does not require termination upon a finding that an alimony recipient is living with another person, but also includes modification, suspension, or reduction as relief for a payor. The Muhlalyak decision does not alter the principle that alimony cannot be modified retroactively. <u>Sanchione v. Sanchione</u>, 173 Conn. 397 (1977).</p>

<p>Conn. Super. LEXIS 890).</p>	<p>The court denies so much of the defendant's motion as seeks to have the modification of alimony be made retroactive to the date the plaintiffs cohabitation began, but grants the defendant's motion for attorney's fees."</p>
<p><u>Stranko v. Stranko</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. FA93 0301174, (Feb. 28, 2002) (2002 WL 450471) (2002 Conn. Super. LEXIS 672).</p>	<p>"Therefore, the holding in Connelly that the recipient of alimony must have notice through a motion for modification that she is facing a request to terminate alimony because of cohabitation in accordance with Connecticut General Statutes § 46b-86 (b) is clearly not applicable to this case. The plaintiff herein is not asking this court to terminate the defendant's alimony. The plaintiff is asking the court to prevent the defendant from enforcing a claim for arrearage as a result of conduct on her part that constitutes laches, equitable estoppel or waiver."</p>
<p><u>Iadarola v. Iadarola</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. FA98 0356552 S (Aug. 10, 2001) (2001 WL 1044627) (2001 Conn. Super. LEXIS 2370).</p>	<p>"The Appellate Court recently has explained the difference between a termination of alimony because of operation of a cohabitation clause in a judgment and a modification under § 46b-86 (b) of the General Statutes. <u>DeMaria v. DeMaria</u>, 47 Conn. App. 672 (1998). The latter required proof of living together and a resultant change in the alimony recipient's financial circumstances. <u>Mihalyak v. Mihalyak</u>, 30 Conn. App. 516, 520-21 (1993)."</p>
<p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.</p>	