



BUILDING BAR SKILLS

UNIVERSITY OF
WASHINGTON SCHOOL
OF LAW FAMILY LAW
AND CONTRACTS
MODULE FALL 2026

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SUMMARY OF MODULES

These Modules are designed to be used as formative assessments in a Family Law course. While these exercises focus on Family Law, there are also contractual issues included. In preparation for the NextGen Uniform Bar Exam (UBE) which will test more than one subject at a time, some of these exercises incorporate the two subjects. The Modules cover a wide range of topics including premarital agreements, division of property, alimony, establishment of parentage, and child custody. Two of the three integrated question sets also include the contract law doctrines of unconscionability, discharge due to impracticability, and the parol evidence rule. The exercises contained in these Modules are modeled after the integrated question sets and the performance tasks components of the NextGen UBE. Integrated question sets are “based on a common fact scenario and may include some legal resources (e.g., excerpts of statutes or judicial opinions) and/or supplemental documents (e.g., a police report or excerpt from a deposition) and include a mixture of multiple-choice and short-answer questions. In addition to testing doctrinal law, some integrated question sets will be focused on drafting or editing a legal document.”¹ In a performance task, students must use their legal research and drafting skills to answer “a question or series of questions about a single client matter.”²

No outside resources or materials are required to complete any of the exercises in the Modules. This serves two purposes: (1) the exercises can be easily incorporated into any Family Law course, and (2) the NextGen UBE will provide legal resources to students in the performance tasks as well as in some of the integrated question sets.³ While exercises in these Modules are based on real statutes and case law, all exercises take place in the fictional State of Orange with the neighboring jurisdictions located in the States of Purple and Green.

These exercises can be given during class time or assigned as homework. Depending on your law school’s learning management system, the integrated question sets can also be configured to allow for automatic grading.

Each exercise is accompanied by a faculty guide, answers and explanations, and when appropriate, grading rubrics. Because these Modules are widely available, it is recommended that faculty do not use these exercises as summative assessments.

1 <https://www.ncbex.org/exams/nextgen/sample-questions/integrated-question-sets>

2 <https://www.ncbex.org/exams/nextgen/sample-questions/performance-task>

3 <https://www.ncbex.org/sites/default/files/2025-07/NCBE%20NextGen%20UBE%20Content%20Scope-Aug%202025.pdf>

MODULE ONE: PREMARITAL AGREEMENTS AND UNCONSCIONABILITY

GENERAL NOTES TO INSTRUCTOR:

This Module contains one integrated question set consisting of multiple-choice and short-answer questions. The skills required to complete this integrated question set are similar to what students will see on the NextGen UBE. This Module is designed to be used as a formative assessment, to reinforce basic concepts of premarital agreements and their validity, as well as expose students to the intersection of Family Law and Contract Law. The exercise uses a statute modeled on the Uniform Premarital Agreement Act and excerpts from *Mamot v. Mamot*, 813 N.W.2d 440 (Neb. 2012).

The exercise is a closed universe, and no outside materials are required to complete it.

NEXTGEN UBE CONTENT SCOPE:

FAMILY LAW SECTION II.D.	Premarital, marital, separation, and dissolution/divorce agreements
CONTRACTS SECTION III.F.	Unconscionability under the common law and under the UCC

LEARNING OUTCOMES AND FOUNDATIONAL SKILLS:

STUDENT LEARNING OUTCOMES	FOUNDATIONAL SKILLS TESTED
The student learning outcomes for this Module include the following: - Identify simple and complex legal issues present in a factual scenario. - Evaluate statutory language, including the ability to identify the terms in the statutory language that may require further research. - While conducting research, understand the relative weight of authorities. - Apply both statutory law and case law to a fact pattern to reach a conclusion. - Provide advice to a client based on sound legal analysis. - Draft a brief argument applying legal rules to a client's case.	Group A: Issue Spotting and Analysis, Investigation and Evaluation A.2: Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter. A.4: Identify the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards. A.7: Identify the applicable or dispositive language, standards, elements, or factors of a provided resource. Group B: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management B.10: Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter Group C: Legal Research C.16: Identify ambiguities in the language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion). C.18: Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight. C.20: Given a collection of legal sources, identify other sources, search terms, or re-search strategies that might be used to up-date sources or find additional sources.

TIMING:

Approximately 25 minutes

ASSESSMENT TOOLS:

Answers and Explanations

INTEGRATED QUESTION SET

You are an associate at a firm and have been assigned to a case involving the validity of a premarital agreement. Your client, Madison, claims she signed the premarital agreement because there was no other alternative. Your partner gives you the following information:

- In May of 2021, Madison was a 21-year-old aspiring social media influencer who met a then 38-year-old Daniel, a doctor, on an online dating platform. After a whirlwind romance that Madison featured prominently on her social media account, the pair got engaged in September of 2021. Madison's online post of their engagement video went viral with 4.2 million views and, as a result, Madison's gained 300,000 subscribers, substantially increasing her monthly income. Madison then began creating content solely focused on their upcoming wedding in Hawaii, which was to be livestreamed on January 22, 2022.
- Four days before the wedding, on January 18, 2022, Daniel gave Madison a premarital agreement and told her that he couldn't enter the marriage unless she signed it. The agreement stated that:
 - should the marriage fail due to any reason, each party would retain the property they held before the marriage
 - neither party would be entitled to spousal supportAttached to the agreement was Daniel's financial declaration of assets indicating a value of \$200,000.
- With four days before her wedding, and no time to find an attorney amid last-minute wedding preparations, Madison signed the agreement the day before the wedding. She attached her own disclosure of assets valued at \$45,000, due in large part to her sponsorship deals. After signing and returning the document to Daniel, Madison sent a text to him stating that she didn't feel like she had any choice but to sign the agreement with the wedding so close, but that she loved him and had faith in their future together.
- On January 22, 2022, the parties married during a livestream event with 1.4 million viewers online. After the wedding, Madison continued to post to her social media account, but online interest in her life decreased significantly, due in large part to Daniel's refusal to be featured in any posts after the wedding. Madison, in turn, stopped posting regularly in early 2024 and began taking courses in photography while she maintained the couple's residence.
- In February of 2025, after three years of marriage, Madison received anonymous screenshots of illicit chats between Daniel and other women. Daniel did not deny the relationships, and Madison filed for divorce a week later. She has asked to have the premarital agreement thrown out, spousal support, and as much of Daniel's assets as she is entitled to.

After conducting some preliminary research, you find that the State of Orange has adopted the Orange Uniform Premarital Agreement Act that provides in relevant part:

“a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or (i) financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

Question One. After reviewing the statute, list two terms or phrases in the statute that you want to research further to determine whether the premarital agreement may not be enforceable?

Yesterday, you received an email from Madison stating that she just discovered Daniel has more assets than he disclosed in the premarital agreement. Specifically, Daniel is a silent partner in a group of popular nightclubs with an ownership share valued at over \$3 million dollars. Daniel also receives a monthly share of the profits from the clubs.

Question Three. The statute above does not define a number of terms. Which resource below would carry the most weight in deciding this case?

- a) The often-cited Williston on Contracts when interpreting other sections of the Orange Uniform Premarital Agreement Act.
- b) A decision by the Orange Supreme Court that discussed the terms in a case involving confidentiality agreements.
- c) The most recent decision by the Orange Court of Appeals addressing this section of the Orange Uniform Premarital Agreement Act.
- d) A decision from the neighboring Purple Supreme Court that adopted an identical version of the Orange Uniform Premarital Agreement Act.

Question Four. Referring to the Orange Uniform Premarital Agreement Act above, what other information would you need to know about the premarital agreement signed by Madison and Daniel after learning of the undisclosed \$3 million ownership interest? (Limit answer to one to two sentences.)

After continuing your research, you find a case excerpt that discusses both voluntariness and unconscionability in the premarital agreements.

“... Pursuant to the Orange Uniform Premarital Agreement Act, Husband must either prove that he did not enter voluntarily execute the agreement or that the premarital agreement was unconscionable when it was executed for this court to invalidate the agreement.

We turn first to the question of whether Husband voluntarily executed the premarital agreement. Neither the Uniform Premarital Agreement Act nor corresponding Orange statutes define “voluntarily,” and this court has not previously considered the term as related to a premarital agreement. The Orange Court of Appeals was asked to review such an agreement recently, and that court relied on the Green Supreme Court’s interpretation of “voluntarily” as used in the Uniform Premarital Agreement Act. The Green court identified the following factors that a court might consider:

- (1) “coercion that may arise from the proximity of execution of the agreement to the wedding, or from surprise in the presentation of the agreement”;*
- (2) “the presence or absence of independent counsel or of an opportunity to consult independent counsel”;*
- (3) “inequality of bargaining power—in some cases indicated by the relative age and sophistication of the parties”;*
- (4) “whether there was full disclosure of assets”; and*
- (5) the parties’ understanding of the “rights being waived under the agreement or at least their awareness of the intent of the agreement.”*

Question Five. Using the voluntary factors from the case above, which of the following statements would favor a finding that Madison did not sign the agreement voluntarily? (Select two answer choices.)

- a) Madison received the agreement four days before her wedding.

- b) Madison had an attorney review the agreement before signing it.
- c) Daniel stopped participating in Madison's social media posts leading to a significant decrease in Madison's income after the wedding.
- d) There was a 17-year age difference between Madison, a social media influencer, and Daniel, a doctor, at the time the agreement was signed.
- e) Daniel was involved with other women during their engagement to Madison.

In the same case, you also find the following:

"... If a contract or term thereof is unconscionable at the time the contract is made, a court may refuse to enforce the contract." REST 2d CONTR § 208. If Husband seeks to prove that the premarital agreement was unconscionable, Husband must prove three factors: that before execution of the agreement,

- (1) he was not provided a fair and reasonable disclosure of Wife's property or financial obligations;*
- (2) he did not voluntarily and expressly waive, in writing, his right to disclosure of Husband's property and financial obligations beyond the disclosure provided; and*
- (3) he did not have, or reasonably could not have had, an adequate knowledge of Wife's property or financial obligations."*

Question Six. Apply the three-factor test articulated by the court above to the facts in Madison's case to show the unconscionability of enforcing the premarital agreement. (Short answer. Limit to one paragraph.)

Answers and Explanations

Question One. After reviewing the statute, list two terms or phrases that you want to research further to determine whether the premarital agreement may not be enforceable?

Possible answers: voluntarily, unconscionable, fair and reasonable disclosure, adequate knowledge

Question Two. Given the initial interview notes, what are two factual issues that might be relevant to consider when determining the validity of the premarital agreement?

Answer: The premarital agreement was given to Madison four days before the wedding, the impact on Madison's career as an influencer if the wedding was canceled, Madison did not have the ability to consult with an attorney before signing the agreement, and the relative age and educational differences between Madison and Daniel.

Question Three. The statute above does not define a number of terms. Which resource below would carry the most weight in deciding this case?

- a) The often-cited Williston on Contracts when interpreting other sections of the Orange Uniform Premarital Agreement Act.
- b) A decision by the Orange Supreme Court that discussed the terms in a case involving confidentiality agreements.
- c) The most recent decision by the Orange Court of Appeals addressing this section of the Orange Uniform Premarital Agreement Act.
- d) A decision from the neighboring Purple Supreme Court that adopted an identical version of the Orange Uniform Premarital Agreement Act.

Answer: C is correct because that is a definition from the section of the statute at issue from the most recent Orange Court of Appeals case, which is binding on a district court in Orange. Answer choice A is incorrect because it is a secondary source and not binding on any court. Answer choice B is incorrect because it is a definition from a case involving a different area of law. Answer choice D is incorrect because a decision from the Purple Supreme Court is persuasive, not binding, on the Orange courts.

Question Four. Referring to the statute above, what other information would you need to know about the premarital agreement signed by Madison and Daniel after learning of the undisclosed \$3 million ownership interest? (Limit answer to one to two sentences.)

Answer: Whether or not the premarital agreement contained a provision that voluntarily and expressly waived any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided because Doctor did not disclose his \$3 million dollar ownership share. See section (a)(2)(ii) of the statute.

Question Five. Using the voluntary factors from the case above, which of the following statements would favor a finding that Madison did not sign the agreement voluntarily? (Select two answer choices.)

- a) Madison received the agreement four days before her wedding.
- b) Madison had an opportunity to have an attorney review the agreement before signing it.
- c) Daniel stopped participating in Madison's social media posts leading to a significant decrease in Madison's income after the wedding.
- d) There was a 17-year age difference between Madison, a social media influencer, and Daniel, a doctor, at the time the agreement was signed.
- e) Daniel was involved with other women during their engagement unbeknownst to Madison.

Answers: A and D

Answer Choice A is correct because Madison did not have adequate time to review the agreement nor seek legal counsel before the wedding day. Answer Choice D is also correct because of the unequal bargaining power and experience of the parties. Daniel was a doctor and business owner. Madison was 17 years his junior and a social media influencer. Answer Choice B is incorrect because if Madison had an opportunity to have an attorney review it, it would be a factor in favor of Madison signing the agreement voluntarily. Answer Choice C is incorrect because what Daniel did after the wedding has no bearing on whether Madison signed the agreement before the wedding. Answer Choice E is incorrect because Daniel's infidelity has no bearing on whether Madison signed the agreement voluntarily.

Question Six. Apply the three-factor test articulated by the court above to the facts in Madison's case to show the unconscionability of enforcing the premarital agreement. (Short answer. Limit to one paragraph.)

Answer: 1) Daniel did not provide a fair and reasonable disclosure of his property because he failed to disclose his \$3 million ownership share in the nightclubs. 2) Madison did not sign a waiver of her rights to disclosure of Daniel's property beyond what was disclosed in the financial disclosures attached to the premarital agreement. 3) Client had no way of knowing of Daniel's ownership interest as he was a silent partner in the nightclubs, and she had only days before their wedding to investigate his assets after receiving the agreement.

MODULE TWO: PREDIVISION OF PROPERTY AND ALIMONY

PART ONE

Topic Coverage: Division of Property, Maintenance/Alimony, Parol Evidence, and Discharge by Impracticability

GENERAL NOTES TO INSTRUCTOR:

This Module contains one integrated question set consisting of multiple-choice and short-answer questions. It is designed to be used as a formative assessment to reinforce basic concepts of property categorization and alimony, as well as expose students to the intersection of Family Law and Contract Law.

This module includes a portion of a statute defining separate vs. marital property (inspired by North Carolina's NC ST § 50-16.3A), a portion of the statute on spousal support/alimony (inspired by Maine's statute 19-A M.R.S.A. 951-A), the Restatement (Second) of Contracts § 261 on Discharge by Supervening Impracticability, and a case excerpt based on *Van Allen v. Van Allen*, 812 So.2d. 1276 (Ala. Civ. App. 2001) that also addresses the Restatement (Second) of Contracts § 209 Effect of Integrated Agreements on Prior Agreements (Parol Evidence Rule).

The exercise is a closed universe, and no outside materials are required to complete it.

NEXTGEN UBE CONTENT SCOPE:

FAMILY LAW SECTION III.E	Division of property
FAMILY LAW SECTION III F.	Maintenance/alimony
CONTRACTS SECTION IV.A.	Parol evidence rule
CONTRACTS SECTION VI.C.	Impossibility, impracticability, frustration of purpose, and risk of loss

LEARNING OUTCOMES AND FOUNDATIONAL SKILLS:

STUDENT LEARNING OUTCOMES	FOUNDATIONAL SKILLS TESTED
The student learning outcomes for this Module include the following: - Identify simple and complex legal issues present in a factual scenario. - Evaluate statutory language, including the ability to identify the terms in the statutory language that may require further research. - While conducting research, understand the relative weight of authorities. - Apply both statutory law and case law to a fact pattern to reach a conclusion. - Provide advice to a client based on sound legal analysis. - Draft a brief argument applying legal rules to a client's case.	Group A: Issue Spotting and Analysis, Investigation and Evaluation A.6: Assess the probable outcome of a claim, motion, discovery matter, defense, or objection based on the relevant legal rules and standards. Group B: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management B.10: Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter Group C: Legal Research C.18: Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight. C.20: Given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources. D: Legal Writing and Drafting D.27: Given a collection of legal sources, draft specified section(s) of a document, such as a memo, a persuasive brief or letter, or another common document, demonstrating skill at formulating an original legal analysis.

TIMING:

30-40 minutes

ASSESSMENT TOOLS:

Sample Answer and Assessment Rubric

INTEGRATED QUESTION SET

A couple is in discussions about their divorce settlement agreement. The parties both reside in the State of Orange.

The parties were married in 2015 and separated in early 2025. When the parties married, Maria (age 37) worked as a Certified Public Accountant and John (age 36) worked as a line cook at an upscale eatery. John stopped working in 2022 when he returned to school to earn his associate degree in nursing. Rather than returning to the workforce after earning his degree, John decided to enroll in a bridge program to earn his Bachelor of Science in Nursing in late 2024 which requires another two years of education. At issue is the distribution of their property and temporary alimony.

The State of Orange defines marital and separate property as follows:

Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

- (1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the marriage and before the date of the separation of the parties. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection.*
- (2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the marriage. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property."*

Question One: Of the selected pieces of property below, circle if the property is considered marital or separate property based upon the language of the statute above.

- a) A Honda Accord purchased in 2009 by John and titled in his name.
Marital or Separate
- b) A painting devised to Maria from her aunt in 2014.
Marital or Separate
- c) The increase in value due to market forces in the value of Maria's condominium that she owned prior to the marriage and rented out while she and John lived in their family home.
Marital or Separate
- d) The amount of the down payment in the family home purchased in 2021 that the

couple made with money made by Maria from the years 2016-2020. The title to the home is in both of their names.

Marital or Separate

- e) The \$2,000 in cash that represented John's holiday bonuses from his restaurant job (2016-2022) that he kept in a drawer in their house for "emergencies."

Marital or Separate

John also has requested temporary alimony to complete his two-year BSN degree. Although John could earn \$65,000 with the current degree he holds, John argues that completing his BSN degree would mean a substantial increase in salary over time. Maria's current annual salary at her accounting firm is \$120,000. Maria does not want to pay temporary alimony because she has already been supporting John for over two years while he earned his first degree and argues that he can find work tomorrow in the nursing field. You review the statute:

Orange General Statutes §49 – 8

"... Temporary alimony may be awarded to provide for a spouse's transitional needs, including, but not limited to: (1) Short-term needs resulting from financial dislocations associated with the dissolution of the marriage; or (2) Reentry or advancement in the work force, including, but not limited to, physical or emotional rehabilitation services, vocational training and education.

...

The court shall consider the following factors when determining an award of spousal support:

Question Two: List two factors that favor John receiving temporary alimony and provide a brief explanation for your answers.

Question Three: List two factors against John receiving temporary alimony and provide a brief explanation for your answers.

Following negotiations, the parties executed a settlement agreement that was later incorporated in the judgment and decree of divorce. Per the agreement, Maria would sign the title of the marital car to John. The marital car, which they purchased together in 2017, has always been parked on the street outside of the marital home. Before Maria could deliver the car to John, the car is totaled when it is hit by a truck speeding down the street. As Maria's attorney, you are trying to determine whether she is excused from performing that portion of the agreement. You find the following:

Restatement (Second) of Contracts § 261

Discharge by Supervening Impracticability

Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on

which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.

Question Four: What argument can you make that Maria's duty to deliver the marital car is discharged? (Short answer. Limit to one paragraph.)

One year after the divorce is finalized, Maria contacts your office and states that in a recent conversation with her now ex-husband John, he made an offhand remark that he is grateful he will receive such a significant portion from her Profit-Sharing Plan because he listened to a podcast about retirement and realized he needed to get serious. Maria told him that he's not getting that much because she was only eligible to contribute to the Profit-Sharing Plan starting in 2022 and their divorce was finalized on March 7, 2025. Maria interprets their settlement agreement to entitle John to one-third of the vested amount of the profit-sharing plan as of the date of their divorce, March 7, 2025, together with any accumulations thereon from that date. The portion of the separation agreement reads as follows:

"It is agreed that Maria shall pay to John an amount equal to one-third (1/3) of her vested interest in the Profit-Sharing Plan through her place of employment, Accounting Associates. The time of such payment shall be at the option of Maria, and the value will be figured as one-third (1/3) of the value at the time Maria makes such payment. However, should Maria withdraw any funds from said Profit Sharing Plan, said payment would be due immediately, and would be one-third (1/3) of the amount withdrawn."

At Maria's request, you file a petition requesting the Orange District Court to clarify the paragraph of the separation agreement above by allowing Maria to introduce parol evidence to resolve the ambiguity of the language. Maria seeks to introduce evidence of text exchanges between herself and John evidencing his agreement with her interpretation from 2024. John's attorney objects to the introduction of the text messages.

You find this excerpt from the following case, *Apple v. Apple* (Purple Sup. Ct. 2014):

... The wife argues that the trial court erred in finding no ambiguity in paragraph 6 of the separation agreement and by not allowing parol evidence to explain the ambiguity she says exists. This court has stated:

"The courts of this state favor compromise and settlement of litigation, particularly in cases involving families. '[A] settlement agreement which is incorporated into a divorce decree is in the nature of a contract.' A divorce judgment should be interpreted or construed as other written instruments are interpreted or construed. 'The words of the agreement are to be given their ordinary meaning, and the intentions of the parties are to be derived from them.' Whether an agreement is ambiguous is a question of law for the trial court. An agreement that by its terms is plain and free from ambiguity must be enforced as written. An ambiguity exists if the agreement is susceptible to more than one meaning. However, if only one reasonable meaning clearly emerges, then the agreement is unambiguous."

K.T. v. R.T. (Purple Sup. Ct. 2012). “Where an ambiguity exists, parol evidence may be admitted to clarify or explain the ambiguity.” Ives v. Ives (Purple Ct. App. 2004). See also REST 2d CONTR § 209.

... After carefully reviewing paragraph 6 of the separation agreement, we conclude that it is reasonably susceptible to either the husband’s or the wife’s interpretation and, therefore, that it is ambiguous as written.

Accordingly, we conclude that the trial court erred in holding that paragraph 6 of the separation agreement was unambiguous and in failing to receive parol evidence to explain the ambiguity in the agreement. Therefore, we must reverse the judgment and remand the case for further proceedings.”

Question Five: This case is binding on the Orange District court.
True or False? (circle one)

Question Six: Draft a short answer on Maria’s behalf explaining why the court should allow parol evidence to resolve the ambiguity in the settlement agreement using the law from the case above. (Limit to one paragraph.)

Answers and Explanations

Question One: Of the selected pieces of property below, circle if the property is considered marital or separate property based upon the language of the statute above.

a) A Honda Accord purchased in 2009 by John and titled in his name.

Marital or Separate

Separate. Personal property acquired by a spouse before marriage is considered separate property. The car was purchased in 2009 prior to the marriage in 2015.

b) A painting devised to Maria from her aunt in 2014.

Marital or Separate

Separate. Personal property acquired by a spouse before marriage is considered separate property.

Maria inherited the painting in 2014 prior to the marriage in 2015.

c) The increase in value due to market forces in the value of Maria's condominium that she owned prior to the marriage and rented out while she and John lived in their family home.

Separate. The increase in value of separate property and the income derived from separate property shall be considered separate property. Maria owned the condominium prior to the marriage, thus the increase in value is considered separate property.

Marital or Separate

d) The amount of the down payment in the family home purchased in 2021 that the couple made with money made by Maria from the years 2016-2020. The title to the home is in both of their names.

Marital or Separate

Marital. Marital property means all real and personal property acquired by either spouse or both spouses during the marriage and before the date of the separation of the parties. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property. The home was acquired in 2016, after the marriage, and is presumed to be marital property.

e) The \$2,000 in cash that represented John's holiday bonuses from his restaurant job (2016-2022) that he kept in a drawer in their house for "emergencies."

Marital or Separate

Marital. Marital property means all real and personal property acquired by either spouse or both spouses during the marriage. The \$2000 in cash from 2016-2022 is considered marital property because John and Maria were married in 2015 and did not separate until 2024.

Question Two: List two factors that favor John receiving temporary alimony and provide a brief explanation for your answers.

Possible answers (only two necessary for credit):

- Maria has a greater education.
- Maria has far greater current earning power over the next few years and is established in her career.
- Alimony would allow John to earn his second degree, which would result in a substantial difference in salary over time.
- John has relied on Maria's income to live for the past three years.
- John will suffer a change in living conditions circumstances if he does not receive alimony.

Question Three: List two factors against John receiving temporary alimony and provide a brief explanation for your answers.

- John already has a degree that allows him to work.
- John could attend school part-time and earn his BSN on a part-time basis.
- John has extensive experience as a line cook and could also find a job in that field.
- Maria has already funded John's first degree.

Question Four: What argument can you make that Maria's duty to deliver the car is discharged?

(Short answer on frustration of purpose) The basic assumption was that the marital car would be in the shape it was in when the agreement was signed. Due to circumstances that were not in Maria's control, a truck totaling the car while it was parked in its normal spot on the street, she could no longer deliver the car to John. Therefore, Maria is excused from delivering the car.

Question Five: This case is binding on the Orange District Court.
True or False? (circle one)

False. This case is from the State of Purple. It is persuasive but not binding on a court in Orange.

Question Six: Draft a short answer on Maria's behalf explaining why the court should allow parol evidence to resolve the ambiguity in the settlement agreement using the law from the case above. (Limit to one paragraph.)

The issue is whether the court should allow the text messages to be admitted to clarify the terms of the settlement agreement. Parol evidence is permitted to clarify or explain an ambiguity. An ambiguity exists if the agreement is susceptible to more than one meaning.

Here, the language of the settlement agreement is ambiguous because it is unclear if John will continue to receive a one-third portion of the profit-sharing funds contributed after the date of their divorce on March 7, 2025, or if he will be limited to funds contributed prior to March 7, 2025. Therefore, it is appropriate for the court to allow parol evidence to resolve the ambiguity in the settlement agreement.

PART TWO

GENERAL NOTES TO INSTRUCTOR:

This performance task asks students to draft a memorandum related to property division, including separate vs. marital property, jurisdictional issues related to property distribution, and the commingling of assets. The exercise is a closed universe, and no outside materials are required to complete it. Contained in this performance task are a memorandum from the supervising attorney, notes from a client interview, two statutes, and two cases.

NEXTGEN UBE CONTENT SCOPE:

FAMILY LAW SECTION II.B	Jurisdiction
FAMILY LAW SECTION II.E	Property Division
FAMILY LAW SECTION II.F	Maintenance/alimony/spousal support

LEARNING OUTCOMES AND FOUNDATIONAL SKILLS:

STUDENT LEARNING OUTCOMES	FOUNDATIONAL SKILLS TESTED
The student learning outcomes for this Module include the following: • Knowledge of the law and the legal system • Ability to communicate effectively in writing, identifying rules and issues and then applying the facts to the law • Demonstrate knowledge of family law concepts	Group A: Issue Spotting and Analysis, Investigation and Evaluation A.1: Identify which legal concepts and principles are likely to affect the outcome of a matter based on the information provided. A.2: Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter. A.4: Identify the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and Standards. A.10: Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter. Group B: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management B.10: Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter D: Legal Writing and Drafting D.27: Given a collection of legal sources, draft specified section(s) of a document, such as a memo, a persuasive brief or letter, or another common document, demonstrating skill at formulating an original legal analysis.

TIMING:

Approximately 60 minutes

ASSESSMENT TOOLS:

Rubric for the drafting exercise

Performance Task

To: Associate
From: Supervising Attorney
Date: July 29, 2025
Re: Wendy Ruggio

Our firm represents Wendy Ruggio in her divorce against Harry Ruggio. All attempts at settlement have failed, and we need to begin preparing for trial. Please draft me a memo explaining what our client will be legally entitled to and what arguments Harry will make to support his claims. I have attached my notes from conversations with Wendy, along with relevant statutes and cases in this packet.

Meeting Notes with Wendy Ruggio

Four years ago, Harry and Wendy fell in love and married following Harry's divorce from his first wife, Diane. Wendy is an attorney. She owned a home in Orange prior to marriage, and Harry moved in there. It was completely furnished. Harry now works from home at a start-up company. He brought to the marriage his computer, his clothes (mostly sweatsuits), and his vinyl record collection.

Prior to his marriage to Wendy, Harry had been married to Diane for ten years. As soon as Harry and Diane married at the age of twenty-five, they bought a house together after Harry inherited some money from his grandparents. They used it as a downpayment to purchase a piece of property for \$500,000 in the State of Purple. They applied for and took out a mortgage. The mortgage payment was \$2,000 per month. The taxes, improvements and insurance totaled \$12,000 per year. The couple split the payments in half, \$1,500 each per month. In the five years since Harry and Diane's divorce, the property has appreciated and is now worth \$600,000. Although Harry stopped paying anything towards his house with Diane when he moved out. Diane decided to keep their house and pay all the bills. After the divorce, Harry left his job with an international IT firm, joined a start-up, and moved to the neighboring State of Orange where he met and married Wendy.

Any IRA funds that Harry had accumulated went to Diane in his divorce. He sold his secondhand furniture prior to moving into Wendy's place. As both are environmentalists, they do not own a car but rather take public transportation. Harry had about \$1,000 in savings. Wendy had \$10,000 in savings plus an IRA. Wendy thought it would be easiest if the couple just used one bank account to pay the house bills, so both paychecks were put into that account. They decided to split the mortgage payments, \$1,000 each per month. Harry did not tell Wendy about the shared property with his ex-wife, Diane, until he got into financial difficulty. It turns out that Harry was paying his half of the mortgage on Wendy's house using cash transfers on a credit card he had before their marriage. When Harry failed to receive a paycheck from his job at the start-up, Wendy paid the mortgage and the additional expenses on the property from her account. Wendy estimates that in the four years of marriage, she paid the mortgage completely half the time and half the time they split it per their agreement. She does not know that Harry paid using his credit card much of that time, so he has a debt of \$15,000.

In the first year of their marriage, both Wendy and Harry wanted to add a porch to the house. They agreed to split the cost-\$5,000 each.

Wendy was unhappy with Harry's four years of employment roller-coaster. The last straw was when she caught him having an online affair with a coworker. Wendy filed for divorce. Her demands are:

1. She keeps her house outright, and all the furnishings.
2. Harry pays her \$10,000 for pain and humiliation on account of his affair.
3. She wants to be reimbursed for the mortgage payments Harry did not make to be taken out of his ownership interest in his house with Diane.

She estimates that she is owed \$24,000 in house payments plus interest, since Harry failed to pay his portion for two years. With the pain and humiliation amount, she wants a total of \$34,000 plus interest. With that money and the money from selling her house, she can move out of state and start a new life.

Harry does not have the money, and he cannot ask Diane (his ex-wife) for his ownership interest in the house. Harry counters that he wants a \$5,000 credit for the porch plus \$10,000, which he estimates as the appreciation on Wendy's house with that addition. Wendy claims that Harry got all the benefit of the porch for three-plus years and therefore is not entitled to any offset.

Harry offers to pay Wendy spousal support, but she knows 1) that he does not always get a paycheck, and 2) that it would be taxable income to her. She wants to force Harry and Diane to sell the property to pay her off. She does not want a lien on the property because although it protects her right to the payment, it does not get paid off until they eventually sell the property, which could be years from now. Instead of the lien, Wendy intends to ask the court to retitle the property and make her a co-owner.

Wendy happens to look at Harry's vinyl record collection one day and realizes that it is worth a great deal of money. She would agree to taking the collection as payment of the debt. Harry refuses. He has been collecting that vinyl for years and does not want to part with it.

All attempts at settlement have failed.

The State of Orange has the following property division and spousal support statutes:

OR-101-26-123 Property Division at Dissolution

- (1) The court shall divide marital property in a fair manner, considering all relevant factors, without regard to marital misconduct, including but not limited to:
 - (a) length of marriage;
 - (b) age and health of the parties;
 - (c) present and future income, employability, and earning power;
 - (d) contributions of each party to the marriage;
 - (e) tax consequences;
 - (f) marital debts and liabilities; and
 - (g) any other factors the court deems proper.
- (2) Non-marital property: property owned by one spouse before the marriage or received as a gift or inheritance during the marriage is generally considered non-marital and not subject to division.

Marriage of Melinda English and Mackenzie Jewell
Orange Supreme Court 2024

Mackenzie Jewell comes before this court to overturn the trial court's decision that separate stock options exercised with community funds are transformed into a community asset.

History

Mackenzie Jewell worked for an international IT firm from 2000 to 2010. In addition to the generous salary, the employees were allotted stock options. Over the decade that she was employed there, she earned 1000 stock options per year, or 10,000 total.

Ms. Jewell and Ms. English met in 2012 and married in 2015 when the U.S. Supreme Court legalized same-sex marriage. They pooled their resources as a couple, and paid bills from one joint checking account. In 2020, they used the common account funds to exercise the stock options. At the time of the transaction, the stock was selling at \$10/share but the option gave the owner to purchase it at half, \$5/share. Using their joint funds, they spent \$5,000 to purchase the 10,000 shares. The shares are now worth \$100,000.

The parties are now divorcing. Ms. Jewell claims that the stock options were separate property from the time of accumulation. She argues the \$5,000 used to purchase the stock was just a loan from the community to her, and that the correct property division would be \$97,250 for her and \$2,500 for Ms. English. Ms. English argues that without the joint funds, there would be no stock. Hence the correct division is roughly \$50,000 for each party. The trial court ruled for Ms. English. Ms. Jewell appeals.

Analysis

Property obtains its classification at the time it is acquired. OR-101-26-123. Mixed assets are divided by separating out the separate property portion and then dividing the amount owed to the marriage. Id.

In this case, the stock options, which were separate because they predate the marriage, lost their character when they were exercised. They cease to exist. If anything, Ms. Jewell gave them as a donation to the marital community. Once she donated them to the community, and \$5,000 of commingled funds were used to purchase the stocks, then they were completely a marital asset. Ms. English is correct. This case is remanded to the trial court to include this into the property division for the marital assets.

So ordered.

Marriage of Alexa Crowne and Orlando Franco
Orange Supreme Court 2003

Alexa Crowne comes before the court for reimbursement of Orlando Franco's tuition and fees that she paid for his law degree.

History

Alexa Crowne and Orlando Franco were married for three years when Franco decided to go to law school. After a year of preparation, he was accepted at the University of Orange School of Law. He attended three years of law school, graduated, and passed the bar exam. After getting hired by a law firm, Franco filed papers to divorce Crowne.

When Crowne and Franco first met, she was a nurse in the intensive care unit of a local hospital, and he was working in the business office. She continued to work in the hospital all the time that Franco was in law school. She took extra shifts to make sure the bills were paid. Franco took out separate student loans to pay tuition, but Crowne's salary covered all the food, clothing, and shelter expenses. Crowne expected that when Franco passed the bar exam and got hired by a firm, she would be able to go back to school for her additional education.

Crowne earned \$80,000 for each of the three years that Franco was in law school. She would like him to pay her \$120,000 for the three years (\$40,000 per year). Franco refuses. He claims Crowne was working anyway, and that her contribution was a gift.

Analysis

Is Crowne entitled to be compensated for the loss of the future she was expecting? No, the law has no way to compensate for expectation damages within a married couple's breakup. Is she owed a reimbursement interest from the property that Franco earned? No. Franco earned the education himself. There is no way to impart education on Crowne. Furthermore, he paid the educational expenses through student loans in his name alone.

However, Crowne is not without relief. She is entitled to spousal support to compensate her for additional efforts while assisting Franco during law school. The regular shift work was her work at the time and part of their agreement. However, she is entitled to be compensated through spousal support for additional work that she took on during the marriage, when she could have been advancing her own career, volunteering, or doing anything else she wanted.

Conclusion

Franco owes Crowne compensation for the additional effort she put in while he was in law school. On remand, the trial court should determine how many extra hours Crowne took on and what she was compensated. Then it can determine what Crowne's spousal support.

So ordered

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
Format of the memo/follows directions/organization of issues	The memo begins with a statement of the major issue and the general rule; follows with a separate explanation of each individual issue, including which facts support which parties.	The memo begins with a statement of the major issue and the general rule BUT fails to identify the individual issues and rules.	Follows different format and does not begin with the issues and rule statements.
Understanding of general property division principles in a divorce	The memo begins with a general statement of law about property division in a divorce AND lays out specific considerations about joint and separate property.	The memo begins with a general statement of law about property division in a divorce BUT fails to expound on the specifics components of the division.	The memo fails to provide a general property division roadmap.
Identification of separate property interests.	The memo identifies that Harry may have a separate property interest in his house with Diane and that Wendy has a separate property interest in her house, AND that the separate property is generally excluded from the equitable distribution of assets.	The memo identifies that Harry may have a separate property interest in his house with Diane and that Wendy has a separate property interest in her house BUT fails to consider that the separate property is generally excluded from the equitable distribution of assets.	The memo fails to consider that there are two different jurisdictions in the problem.
Jurisdictional issues – the houses are in different states	The memo identifies that Harry's house with Diane is in one state while Wendy's house is in another, AND that the State of Orange has no jurisdiction over Harry and Diane's house.	The memo identifies that Harry's house with Diane is in one state while Wendy's house is in another BUT fails to consider that the State of Orange cannot order any changes/sales to Harry and Diane's house for lack of jurisdiction.	The memo fails to consider that there are two different jurisdictions in the problem.
Commingled assets	The memo identifies that separate property assets have been mixed by the couples into joint accounts such that their separate character may no longer exist unless it can be traced.	The memo identifies that the separate property assets have been mixed by the couples into joint accounts BUT fails to consider that the separate character may no longer exist.	The memo does not distinguish between separate or joint/shared property.

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
Debt issues –separate or joint debt?	The memo identifies that Harry created debt when he charged the mortgage to his credit card AND considers whether this is separate or shared debt.	The memo identifies that Harry created debt when he charged the mortgage to his credit card BUT fails to consider whether this is separate or shared debt.	The memo does not consider debt in the property division.
House addition – separate or joint property interest?	The memo identifies that Harry's contribution to the porch renovation is a property interest, AND he would be entitled to a lien for the amount but not for the house appreciation.	The memo identifies that Harry's contribution to the porch renovation is a property interest BUT does not address whether he would be entitled to any reimbursement for the funds expended or entitled to the appreciation.	The memo does not separate out the porch renovation contributions in the property division.
No fault property division	The memo identifies that marital misconduct cannot be considered in a property division, AND therefore there is no claim for pain and humiliation as part of the divorce.	The memo identifies that marital misconduct cannot be considered in a property division BUT fails to dismiss the claim for pain and humiliation as part of the divorce.	The memo fails to consider that there are two different jurisdictions in the problem.
Spousal support	The memo considers marital misconduct with-in the property division.	The memo identifies that the separate property assets have been mixed by the couples into joint accounts BUT fails to consider that the separate character may no longer exist.	The memo does not distinguish between separate or joint/shared property.

MODULE THREE: CHILD CUSTODY AND ESTABLISHMENT OF PARENTAGE

PART ONE

GENERAL NOTES TO INSTRUCTOR:

This module contains one integrated question set consisting of a drafting exercise. It is designed to be used as a formative assessment to reinforce basic concepts of child custody arrangements and modifications.

Students receive a memorandum from a supervising partner explaining the client's legal issue, two statute excerpts (based on R.C.W. 26.09.525 and NDCC, 14-09-06.2), and a case excerpt based on *Maynard v. McNett*, 710 N.W.2d 369 (N.D. 2006).

The exercise is closed universe, and no outside materials are required to complete it.

NEXTGEN UBE CONTENT SCOPE:

FAMILY LAW SECTION II.G	Child custody
FAMILY LAW SECTION II.I.2.	Modification of dissolution/divorce decrees - child support and custody

LEARNING OUTCOMES AND FOUNDATIONAL SKILLS:

STUDENT LEARNING OUTCOMES	FOUNDATIONAL SKILLS TESTED
The student learning outcomes for this Module include the following: - Identify simple and complex legal issues present in a factual scenario. - Identify evidence that will support client claim(s). - Evaluate statutory language, including identifying terms in the statutory language that may require further research. - Identify and evaluate relevant legal rules contained in case law. - While conducting research, understand the relative weight of authorities. - Apply both statutory and case law to a fact pattern to reach a conclusion. - Advise clients as to their legal rights. Provide advice to a client based on those rights to reach the most favorable conclusion for client. - Draft a client letter explaining their legal rights and evaluating their likelihood of success related to their claim(s).	Group A: Issue Spotting and Analysis, Investigation and Evaluation A.2: Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter Group B: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management B.8: Identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments or defenses to raise, or how to respond to arguments or defenses, and in a transactional matter which provisions to recommend including, based on the relevant legal rules and standards and consistent with a client's objectives, interests, and constraints. B.14: Determine the best strategy to identify the client's needs and achieve the client's stated goals and objectives. D: Legal Writing and Drafting D.23: Draft or edit correspondence to a client explaining the legal implications of a course of action, updating the client on the status of the client's matter, and/or providing advice on the next steps to be taken in the matter.

TIMING:

Approximately 30 minutes

ASSESSMENT TOOLS:

Sample answer and assessment rubric

Integrated Question Set

You are an associate at firm, and your supervising attorney sends you the following memorandum:

MEMORANDUM

To: Associate
From: Supervising Partner
Re: Gabriel's custody issue

I met today with our new client, Gabriel. He has one child from his previous marriage, Toby (age 10). Gabriel and Naomi, his ex-wife, share joint custody of Toby.

Earlier this week, Naomi received a job offer in the State of Green. Although she is currently employed, she told Gabriel that she was looking for a new adventure. She wants Toby to move with her. The job offer in Green is a two-hour plane flight away from where the parties live now.

As background, Gabriel and Naomi have enjoyed an amicable co-parenting relationship. Gabriel was born and raised in the area, so in addition to Toby's grandparents and aunt living locally, Toby has grown up surrounded by a loving and supportive community. Toby, currently in 5th grade, has attended the same elementary school since kindergarten. Next year, he and his friends are really looking forward to attending the middle school, located within walking distance of Gabriel's residence. Gabriel shared that Toby is a happy and well-adjusted child that does well in school and really enjoys playing with the recreational soccer team he's been a part of for the past three years. Neither Naomi nor Toby have any connections to the State of Green.

Please draft a letter on my behalf to Gabriel explaining whether Naomi can relocate with Toby. I am attaching a draft of their duly executed Parenting Plan and a case from the Orange Supreme Court.

In re the Marriage of Gabriel v. Naomi

Parenting Plan for Toby



COMES NOW Gabriel and Naomi, the legal parents of Toby (age 7), and agree to the following parenting plan for their child, to commence at once:

LEGAL DECISION-MAKING: The parents agree that all major decisions will be made jointly. This includes education, religious upbringing, and non-emergent health care/orthodontia care. Day-to-day decisions will be made by the parent with whom the child is residing at that time. Each parent agrees to share information with the other parent concerning the major decisions. Specific agreed provisions are as follows:

- A. The parents agree that the child will attend public school in the State of Orange, County of Yellow, until high school graduation.
- B. The parents agree not to introduce a new partner to the child until the child is ten years old.
- C. The parents also agree that each parent can share their religious upbringing and holidays with the child during their residential time but cannot use religious events/holidays to interfere with the other parent's parenting time.
- D. The parents agree that important decisions, such as tattoos, driving lessons, and choice of colleges, will be determined jointly.

SCHOOL YEAR RESIDENTIAL PROVISIONS: The parents agree to a shared residential schedule, maximizing the time that the child spends with each parent. The parents also agree that there are no parenting limitations that would impact the amount of time that the child can spend with either parent. To that end, beginning from the signing of this document, the child will alternate residences with each parent each week. The transfer time will be 6:00 pm Sunday evening, and the receiving parent will pick the child up. The sending parent will make sure that the child has all their homework and materials for school on Monday morning.

SUMMER RESIDENTIAL PROVISIONS: Starting with the first full week after school ends, the parents will each have six weeks of summertime with the child. They can take the time in two-week increments. The summer schedule must be agreed to by April 1. Gabriel will select dates first in the odd numbered years. Naomi will select dates first in the even numbered years. When the child reaches 10 years old, the parents can take the summer vacation time in three-week increments.

HOLIDAYS: The child will generally celebrate the holidays with the parent they are residing with, with the following exceptions:

- Mother's Day – always with Naomi
- Father's Day – always with Gabriel
- Thanksgiving – with Naomi in the even numbered years; Gabriel in the odd numbered years.
- Christmas Eve and Day – with Gabriel in the even numbered years; Naomi in the odd numbered years. Eve and Day (above).

- Mid-Winter break – Naomi in the even numbered years; Gabriel in the odd numbered years.
- Spring break – Gabriel in the even numbered years; Naomi in the odd numbered years.

DISPUTE RESOLUTION: In the event that the parents disagree about a provision of this parenting plan, the parents agree that they will schedule with XYZ Mediation Inc. for mediation/arbitration of the dispute. Each party will pay 50% of the cost for the mediation/arbitration services.

SIGNED:

Gabriel 8/18/23
Gabriel

Naomi 8/18/23
Naomi

Martinez v. Jones
Orange Supreme Court (2008)

Roger Martinez appeals an order allowing his former wife, Sarah Jones, formerly known as Sarah Martinez, to move from the State of Orange to the State of Purple with their nine-year-old child.

Martinez and Jones were married on June 14, 1997, and their child was born in 1999. Martinez and Jones divorced in 2003, and the parties stipulated to “joint legal and joint physical custody” of the child. The stipulation was incorporated into the judgment.

In July 2006, Jones brought a motion to move their child out of State to Purple to pursue an advanced degree in her field of study. Martinez, who lives in Orange, opposed Jones’s request to move to Purple, arguing that a move would infringe on his parental rights.

On February 6, 2007, a hearing was held in the district court. The court issued an order permitting Jones’s move to Purple with the child. This appeal followed.

In Stout, this Court discussed how the courts of Orange should decide whether allowing a primary custodial parent to relocate with a child was in the best interests of the child. Stout v. Stout (Orange Sup. Ct. 2001). When one parent has primary custody and the other parent has visitation rights, the Stout developed a four-factor test for considering whether a move is in the best interest of a child:

1. The prospective advantages of the move in improving the custodial parent’s and child’s quality of life,
2. The integrity of the custodial parent’s motive for relocation, considering whether it is to defeat or deter visitation by the noncustodial parent,
3. The integrity of the noncustodial parent’s motives for opposing the move,
4. Whether there is a realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the noncustodial parent’s relationship with the child if relocation is allowed, and the likelihood that each parent will comply with such alternate visitation. *Id.*

Stout recognized, however, the differences between a motion to relocate in a sole custody arrangement and a joint custody arrangement. In Stout, the majority said, “We emphasize that motions to relocate are not motions for change of custody.... In contrast, in a motion to relocate, the primary physical custody decision has already been made, and custody is not the issue.” *Id.*

This case presents a motion to relocate when there is true joint legal and joint physical custody. As acknowledged by the majority in Stout, this case requires a determination of primary custody before Jones may be granted permission to relocate with the child because primary custody has not been decided. To allow one parent to relocate without first deciding primary custody would completely undermine the joint custody rights the parties agreed to share.

We hold that a parent with joint legal and physical custody may not be granted permission to move with the parties' child, unless the district court first determines the best interests of the child require a change in primary custody to that parent. A parent with joint custody who wishes to relocate with the child must make two motions: one for a change of custody, and one to relocate with the child. The change-of-custody motion requires the party wishing to relocate to show there has been a substantial change in circumstances and the best interests of the child would be served by the child's moving with the relocating parent. The best interests of the child standard in Orange the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. Orange General Statutes § 24.20

There was no motion to change custody, and therefore the motion to relocate could not have been properly granted. We reverse.

Sample Answer

Dear Gabriel,

Thank you for contacting our office to assist you with your custody matter.

As you shared with us, Naomi has received a job offer in the State of Green and wants to take your son Toby with her if she accepts the job. Beyond seeking a new adventure, there is no other reason for Naomi to relocate to the State of Green. The new job is a two-hour plane ride away, and you currently have Toby with you 50% of the time. You are an active and involved father and do not want Toby to move out of state. The joint custody you share with Naomi has been amicable to date.

Since you share joint custody, it is unlikely that Naomi will be able to relocate with Toby. To do so, Naomi would first have to be appointed the primary custodial parent. This would require a change in your parenting plan to award her primary custody. To petition the court for a change in a custody arrangement, Naomi would have to demonstrate a “substantial change” in circumstances. *Martinez v. Jones*. Here, there is no such change present for Toby. Rather, Naomi would just prefer to take a different job.

Even if the court did find there was substantial change that requires revisiting the custody arrangements, which we think is highly unlikely, the court would then use the best interest of the child standard to make a determination regarding custody. We do not believe that a court would find it to be in Toby’s best interest to uproot him from his hometown, separate him from his loving and active father, extended family, school friends, and community when all indications is that Toby is a happy and well-adjusted child.

If you have any additional questions, please let us know. If you receive any court filings from Naomi, please contact us immediately.

Sincerely,

Supervising Attorney

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
Structure	Follows the structure of a letter with salutations.	Missing some component of a letter.	Follows a different format.
Includes a brief summation of client's legal issue.	Includes the following: 1) Ex-wife has received a job offer out of state and wants to take son. 2) No reason to take job beyond seeking a new adventure. 3) New job is a two-hour plane ride away. 4) Client is an active par-ent that has shares joint custody and has son 50% of the time. 5) Client does not want son to move. (Note that a student can receive full credit even if facts are incorporated later in the letter.)	Missing two to three facts in summation.	Fails to summarize the issue.
Change of Custody	Includes the following: 1) Parenting plan would have to be changed to award primary custody to ex-wife. 2) Change in a custody arrangement requires ex-wife to demonstrate a "substantial change" in circumstances.	Missing one of the two legal procedures necessary for ex-wife to relocate with son.	Does not address the legal procedures required for ex-wife to relocate with son.
Application of Law to Facts	No substantial change present as the only change is ex-wife wanting a new adventure.	Fails to mention that only reason to relocate is for a new adventure for ex-wife.	Fails to apply the law to any of the facts.
Best interest of the child	If court found substantial change, the best interest of the child standard then applies.	Mentions best interest of the child but does not articulate when the court considers the standard.	Does not mention best inter-est of the child standard.

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
Application of Law to Facts	Letter includes the following: 1) Unlikely ex-wife could demonstrate a substantial change in the circumstances. 2) If she did, client would likely prevail under a best interest of the child analysis be-cause son is happy and well-adjusted. 3) Son has a good quality of life. Reasons include extended family and community nearby, doing well in school, group of friends, soccer team, etc. (Note- A student can receive full credit even if they are missing one to two reasons above.)	Doesn't mention specific facts as to why Client would likely prevail under a best inter-est of the child standard.	Doesn't mention or apply that client would likely prevail under a best interest of the child analysis.

PART TWO

GENERAL NOTES TO INSTRUCTOR:

This performance task asks students to draft a memorandum. The issues involve child custody, including jurisdictional concerns, establishment of parentage, and custodial disputes between parents and third parties. The skills required to complete this performance task are similar to what students will see on the NextGen UBE. This Module is designed to be used as a formative assessment.

The exercise is a closed universe, and no outside materials are required to complete it.

NEXTGEN UBE CONTENT SCOPE:

FAMILY LAW SECTION II.B	Jurisdiction
FAMILY LAW SECTION II.G	Child custody
FAMILY LAW SECTION III.A	Establishment of parentage
FAMILY LAW SECTION III.C	Custodial disputes between parents and third parties

LEARNING OUTCOMES AND FOUNDATIONAL SKILLS:

STUDENT LEARNING OUTCOMES	FOUNDATIONAL SKILLS TESTED
The student learning outcomes for this Module include the following: • Knowledge of the law and the legal system • Ability to communicate effectively in writing, identifying rules and issues and then applying the facts to the law • Demonstrate knowledge of family law concepts	Group A: Issue Spotting and Analysis, Investigation and Evaluation A.1: Identify which legal concepts and principles are likely to affect the outcome of a matter based on the information provided. A.2: Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter. D: Legal Writing and Drafting D.27: Given a collection of legal sources, draft specified section(s) of a document, such as a memo, a persuasive brief or letter, or another common document, demonstrating skill at formulating an original legal analysis.

TIMING:

Approximately 60 minutes

ASSESSMENT TOOLS:

Assessment rubric

Performance Task

You are a law clerk to a district court judge in the City of East Metropolis, State of Orange. The judge hands you these three declarations for a *de facto parentage* case. Your task is to write a memo to the judge about the issues and how the case should be resolved.

The States of Orange and Purple adjoin each other, with the Red River separating them. The major city, Metropolis, is in both states.

The personal jurisdiction statutes for the States of Purple and Orange are as follows:

- (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
 - (a) The transaction of any business within this state;
 - (b) The commission of a tortious act within this state;
 - (c) The ownership, use, or possession of any property whether real or personal situated in this state;
 - (d) Contracting to insure any person, property, or risk located within this state at the time of contracting;
 - (e) The act of sexual intercourse within this state with respect to which a child may have been conceived;
 - (f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.
- (2) Necessary minimum contacts. The State of Orange may only exercise jurisdiction over those who have the necessary contacts with the state if it does not offend the principles of fair play and substantial justice.

Orange Revised Statutes 26-09-510

Third-party visitation

If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority. The court shall grant the petition if it finds that:

- (1) visitation rights would be in the best interests of the child;
- (2) the petitioner and child had established emotional ties creating a parent and child relationship; and
- (3) visitation rights would not interfere with the relationship between the custodial parent and the child.

CITY OF EAST METROPOLIS
STATE OF ORANGE

JERRY JONAS,

Petitioner,

vs.

JULIE SMITH

Respondent.

NO. 24 CIV. 1918 (TM)

DECLARATION OF JERRY JONAS IN SUPPORT OF HIS PETITION
FOR DE FACTO PARENTAGE AND VISITATION

I, Jerry Jonas, declare as follows:

1. I am the named plaintiff in this case. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this Declaration is based on my personal knowledge.
2. STATE OF ORANGE JURISDICTION OVER THIS CASE. The State of Orange has jurisdiction over this matter because the parties lived together as a couple and a family for eight years until Julie Smith left the relationship and moved to the neighboring state.
 - a) I am a single man. I was previously married and have two children from that marriage. My ex-wife and I share substantially equal time with our two children from that marriage. I own my own house in East Metropolis, State of Orange.
 - b) I met Julie Smith at work. I knew that she was married at the time we met.
 - c) Julie became pregnant when we first became a couple. We were secretive about the relationship at the time because she was a supervisor at work and because she was still living with her husband, Howard.
 - d) The baby, TS, was born six months into our relationship. Julie put Howard's name on the birth certificate. But Howard and Julie were no longer living together when TS was born.
 - e) Howard and Julie's lease expired right before she gave birth. When Julie was discharged from the hospital, she and TS came to live in my house. Along with my two children, Julie and I raised TS on our own.
 - f) Howard never paid any support for TS.
 - g) Julie and I shared expenses of child-rearing for eight years. Although we generally paid the expenses of our biological children, often the one overseeing the particular activity would pay for all three children.
 - h) Only a few people at work knew that Julie and I were a couple. In order to reduce the awkwardness, Julie and I would never arrive at work together, attend different events, and leave separately. Some neighbors knew we were a couple.
 - i) During the last two years of the relationship, we went to couples therapy to resolve our issues.

- j) In the eighth year of the relationship, Julie reconnected with her high school boyfriend, Ben, on social media. He lives in a house across the river, in West Metropolis, State of Purple. He is independently wealthy.
 - k) Julie began seeing Ben on a regular basis without my knowledge. After six months, Ben proposed marriage to Julie, and she accepted. She filed divorce papers right away to end her marriage to Howard so she could marry Ben.
 - l) Julie told me that she was divorcing Howard, marrying Ben, and moving out at the beginning of this year
3. PARENTAGE. I should be declared the legal father because I believe that this child is biologically my own.
4. *DE FACTO PARENTAGE*. In the alternative, when I realized how much I missed TS that we both raised, I resolved to bring this *de facto parentage* petition. I meet all the criteria under State of Orange Supreme Court case, Parentage of AB because Julie, TS, and I lived together for eight years in my house; and I took care of day care transportation, staying home with the child when the child was ill and Julie couldn't stay home, paying for child-rearing expenses as necessary (food, clothing, school supplies), etc.
5. VISITATION. In the alternative, if the Court does not grant me parentage or de facto parentage status, I ask the Court to grant me visitation with TS, the child I have raised. Under penalty of perjury, I declare that the foregoing statements are true and correct to the best of my knowledge.

Dated May 1, 2025

/s/ Jerry Jonas
Jerry Jonas

CITY OF EAST METROPOLIS
STATE OF ORANGE

JERRY JONAS,

Petitioner,

vs.

JULIE SMITH

Respondent.

NO. 24 CIV. 1918 (TM)

DECLARATION JULIE SMITH IN OPPOSITION OF JERRY JONAS'
PETITION FOR DE FACTO PARENTAGE AND VISITATION

I, JULIE SMITH, declare as follows:

1. I am the named Respondent in this case. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this Declaration is based on my personal knowledge.
2. DENIAL OF STATE OF ORANGE JURISDICTION: I firmly deny that the State of Orange has jurisdiction over me in this matter, for the following reasons:
 - a) I live with my child, TS, in West Metropolis, State of Yellow.
 - b) I never lived in a marital relationship with Jerry Jonas in the State of Orange or anywhere.
 - c) All the time that Jerry Jonas' and I lived together as roommates, I was married to Howard True.
 - d) I am engaged to be married to Ben Logan and we will permanently live together in State of Purple.
 - e) I do not consent to State of Orange jurisdiction.
 - f) I was never stationed in the State of Orange as a military member.
 - g) Jerry Jonas and I have no children that could have been conceived in the State of Orange.
3. PARENTAGE CLAIM OBJECTION: Without waiving my defense of lack of jurisdiction by the State of Orange, I respond:
 - a) I was legally married for the entire time of my non-marital relationship with Jerry Jonas.
 - b) My child has a legal parent: Howard True.
 - c) Jerry Jonas has no legal claim to my child.
4. *DE FACTO PARENTAGE COMPLAINT RESPONSE*: Without waiving my defense of lack of jurisdiction, I respond as follows:
 - a) Jerry Jonas is not the biological parent of TS. Howard True is the biological and legal parent of TS.
 - b) Jerry Jonas cannot be the de facto parent because my child has two legal parents, myself and Howard True.
 - c) I lived with Jerry Jonas like roommates. He did not assume the parenting functions of my child on a regular basis.

- d) Like any other roommate, when he was making dinner for his children, he would make enough to feed my child as well.
 - e) I never asked him to parent my child.
 - f) I always reimbursed him for any money he outlaid for my child in the course of daily activities.
5. VISITATION COMPLAINT RESPONSE: Without waiving my defense of lack of jurisdiction, I respond as follows:
- a) I will shortly remarry, marrying Ben Logan, who will be the stepfather to my child. I also have an ex-husband, Howard True, who is the other parent to my child. There is no room in my child's life for an additional adult.
 - b) Jerry Jonas did not develop the kind of parent-child relationship that would warrant granting visitation rights.
 - c) There is no harm to my child if Jerry Jonas does not maintain a parenting-type relationship. As a newly blended family with my soon-to-be husband, Ben Logan, we will develop new and different family traditions.

Under penalty of perjury, I declare that the foregoing statements are true and correct to the best of my knowledge.

Dated May 28, 2025

/s/ Julie Smith
Julie Smith

CITY OF EAST METROPOLIS
STATE OF ORANGE

JERRY JONAS,

Petitioner,

vs.

JULIE SMITH

Respondent.

NO. 24 CIV. 1918 (TM)

DECLARATION OF HOWARD TRUE IN OPPOSITION OF JERRY
JONAS' PETITION FOR DE FACTO PARENTAGE AND VISITATION

I, HOWARD TRUE, declare as follows:

1. I am the biological father of TS, my child with Julie Smith.
2. I am on the birth certificate for TS as "father."
3. Because my child, TS, has two biological parents, I oppose Jerry Jonas' Petition for parentage, *De facto parentage* and visitation.

Under penalty of perjury, I declare that the foregoing statements are true and correct to the best of my knowledge.

Dated May 28, 2025

/s/ Howard True

Howard True

In re de facto Parentage of AB
State of Orange Supreme Court 2025

AB is six years old. Her mother, BB, conceived her using sperm from a fertility clinic. She was assisted by her partner, DD, who has been in a romantic relationship with BB for ten years. DD never pursued a second-parent adoption but did undertake all the parental functions (making meals, driving to school, trips, attending parent-teacher conferences, etc.).

Over the last year, relations between BB and DD have deteriorated. DD finally moved out but has continued to parent AB. Sometimes BB has an overnight business trip, and DD takes AB to her house for a night or two and makes sure AB gets to school prepared and on time.

BB has decided that DD is not a good influence on her child and has stopped allowing contact. DD petitions this court for a determination that she is the *de facto* parent or stands in *loco parentis*.

Analysis:

Legal parentage is traditionally through biological connection or through adoption. The law has additionally always presumed that a child of a marriage is the legal child of the married parties. Here, DD has no biological connection to AB, never adopted AB, and BB and DD were never married. These traditional methods of determining legal parentage are not useful in this context.

DD requests that the court determine that they are *de facto parent* of, or stand in *loco parentis* to, the child. Other jurisdictions have adopted the *de facto parentage* standard in common law, using the following criteria:

- (1) that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
- (2) that the petitioner and the child lived together in the same household;
- (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation, and
- (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Elements (2), (3), and (4) are easily met. Regarding the first element, BB argues that, as the legal parent, she has the constitutional right to care, custody, and control of her child. This would exclude any rights to DD. We disagree.

While it is true that the legal parent has the right to all decision-making for their child or children, once that legal parent invites someone into the relationship and consents to a parenting role for that person, they have waived their right to keep that person from the child, barring any

We hold that a parent with joint legal and physical custody may not be granted permission to move with the parties' child, unless the district court first determines the best interests of the child require a change in primary custody to that parent. A parent with joint custody who wishes to relocate with

the child, barring any allegations of abuse, neglect, or abandonment. None of those factors exist here. DD just wants to continue the parenting relationship that has existed for AB's entire life. The best interest of the child supports this continued relationship with a nurturing adult.

Conclusion:

This case is remanded to the trial court for BB and DD to work out a parenting arrangement consistent with DD as the *de facto* parent.

So ordered.

In re Parentage of MN
State of Orange, Supreme Court 2024

MN is four years old. She is the subject of a custody battle between two possible fathers, the putative biological father and the legal father. We affirm for the legal father.

FACTS

MN's mother, GN, was in two relationships at the same time. She was married to SN. She was also having an affair with VH. Meaning no disrespect, she was intimate with both men during this time.

When MN was born, SN was listed on the birth certificate as the father. VH had only intermittent contact after the baby was born. However, when the baby was about two years old, VH began to suspect that he was the biological father of MN. He discussed this with GN, but she would not agree to revisit the issue. GN would also not agree to genetic testing. VH brought this suit to establish parentage.

ANALYSIS

The State of Orange presumption of parentage statute, 26-09-540, reads as follows:

A person shall be declared the legal parent of a child if they are:

1. Legally married to the parent who gave birth to the child, unless rebutted by genetic testing prior to the child's second birthday;
2. The biological donor to the child's conception;
3. A legal parent through adoption; or
4. If they consent to parenthood via a legal affidavit.

It appears from the facts that SN qualifies as the legal father under (1), and that VH qualifies potentially under (2). However, the record is silent regarding whether genetic testing has been done. Plus, MN is more than two years old, and therefore there is no avenue under the statute to challenge parentage using genetic testing. Therefore, we hold that SN is the child's legal father.

CONCLUSION

GN and SN are the legal parents of MN. VH has no right to claim parentage.

So ordered.

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
Format of the memo/ follows directions/ organization of issues	The memo begins with a statement of the major issue and the general rule; follows with a separate explanation of each individual issue, including which facts support which parties.	The memo begins with a statement of the major issue and the general rule BUT fails to identify the individual issues and rules.	Follows different format and does not begin with the issues and rule statements.
Jurisdictional issues – the parties lived in one state together but now live in different states	The memo focuses on the words “marital relationship” in the jurisdictional statute AND analyzes whether Julie and Jerry’s relationship was “marital” even though they were not married, AND whether the laws of the State of Orange apply here.	The memo makes an assumption that the laws of the State of Orange apply here BUT the memo does not analyze the words “marital relationship.”	The memo fails to consider that there are two different jurisdictions in the problem.
Parentage – does the memo address Jerry’s claim of parentage?	The memo addresses Jerry’s claim of parentage AND identifies Parentage of MN case which forecloses that claim because two years has passed since the child was born.	The memo addresses Jerry’s claim of parentage BUT fails to identify that Parentage of MN case forecloses the claim.	The memo fails to analyze Jerry’s claim of parentage.
Parentage – does the memo address Howard’s claim to be legal father?	The memo addresses Howard’s claim to be the legal father AND identifies Parentage of MN as the legal support for Howard.	The memo addresses Howard’s claim to be the legal father BUT fails to identify Parentage of MN as the legal support for Howard.	The memo fails to analyze Howard’s claim to be the legal father.

Assessment Rubric

CONCEPT	PROFICIENT	DEVELOPING	BEGINNING
De facto parentage –separate from the jurisdictional issues, does Jerry’s situa-tion meet the statu-tory criteria?	The memo addresses Jerry’s claim that he is the de facto parent AND analyzes all the factors in the case law, par-ticularly whether the biologi-cal parent (Julie) consented to and fostered the relation-ship between Jerry and TS.	T H E M E M O ADDRESSSES JERRY’S CLAIM THAT HE IS THE DE FACTO PARENT BUT FAILS TO ANALYZE ALL THE FACTORS IN THE CASE LAW, PARTICULARLY WHETHER THE BIO-LOGICAL PARENT (JULIE) CON-SENTED TO AND FOSTERED THE RELATIONSHIP BETWEEN JERRY AND TS.	The memo fails to analyze Jerry’s claim to be de fac-to parent, AND/OR fails to consider any of the factors in the case.
Visitation – can Jerry successfully bring a claim for visitation with TS?	The memo identifies this cause of action as an alter-native to the de facto par-entage claim AND analyzes the statutory factors for vis-itation: (1) visitation rights would be in the best interests of the child; (2) the petitioner and child had established emotional ties creating a parent and child relationship; and (3) visitation rights would not interfere with the relation-ship between the custodial parent and the child. After considering the factors, the answer is yes.	The memo identifies this cause of action as an alternative to the de facto parentage claim BUT fails to analyze the statutory factors.	The memo fails to identify or analyze the factors for vis-itation.



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