



GENERAL INSTRUCTIONS FOR THE ASSIGNMENTS

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A. Competencies

After studying Appendix A the student should be able to:

1. “CARTWHEEL” a set of facts so that you can increase the likelihood that you will be able to find research material in the law library on these facts.
2. find family law statutes in your state code.
3. identify and handle ambiguity in a rule.
4. break a rule into its elements.
5. distinguish the two major kinds of disagreements that opposing parties can have about an element.
6. phrase a legal issue.
7. identify the format of an interoffice memorandum of law.
8. provide legal analysis in an interoffice memorandum of law on a family law problem.
9. draft a complaint in a family law case.
10. draft an agreement on a family law matter.
11. locate court opinions of your state on Family law topics.
12. locate court opinions through the key topic and number system of any West Group digest.
13. translate any rule into a practical checklist.
14. “particularize” a fact for purposes of giving direction to the fact gathering process.
15. design an investigation strategy.
16. conduct a preliminary client interview.
17. prepare an intake memorandum.
18. draft interrogatories.
19. construct a flowchart on the procedural components of a legal proceeding.
20. collect data on the system that a law office uses in handling a particular kind of case.

The student should also know:

1. To know how to analyze a problem when you need additional facts.
2. avoid abusing a standard form.
3. To know the distinction between procedural law and substantive law.

B. Assignment A.1 (cartwheel)

a. Cruelty

BROADER WORDS: conduct, treatment, behavior, inhumanity, mistreatment, ignoble conduct, disagreeable conduct, etc.

NARROWER WORDS: child cruelty, child abuse, animal cruelty, violence, brutality, harshness, lack of consideration, severe cruelty, intolerance, atrocious conduct, hard-heartedness, sexual cruelty, etc.

SYNONYMS: barbarity, ruthlessness, meanness, heartlessness, rancor, fiendishness, etc.

ANTONYMS: kindness, love, family harmony, consideration, sensitivity, etc.

CLOSELY RELATED WORDS: malice, outrage, physical health, mental health, divorce, child placement, custody, separation, imprisonment, base, malicious, carelessness, hatred, pain, enmity, prosecution, savagery, torture, sternness, victim, hospitalization, doctors, barbarous act, malnutrition, battered spouse, implacable, suffering, insensitivity, unnatural, etc.

PROCEDURAL TERMS: procedure, civil procedure, criminal procedure, injunction, case, action, statute of limitations, court, superior court, county court, supreme court, municipal court, petition, defense, jurisdiction, affidavit, complaint, etc.

AGENCIES: child welfare department, office of child support services, department of social services, society for the prevention of cruelty to children, police department, child protection agency, justice of the peace, citizen complaint center, etc.

LONG SHOTS: religion, juvenile delinquency, kidnaping, child snatching, Human Kindness Day, etc.

b. Support

BROADER WORDS: finance, help, relief, conduct, concern, etc.

NARROWER WORDS: support payments, food, clothing, schooling, alimony, child support, contributions, livelihood, nourishment, etc.

SYNONYMS: aid, assist, maintain, provide, equip, etc.

ANTONYMS: nonsupport, neglect, abandonment, rejection, delinquency, etc.

CLOSELY RELATED WORDS: comfort, cooperation, feed, sustain, arrearage, property, cash, means, personal property, real property, assets, bonds, checks, annuities, purchases, necessities, subsistence, starvation, hunger, endowment, encouragement, pension, paternity, AFDC, food stamps, subsidy, resources, spouse, wife, children, custody, tax, etc.

PROCEDURAL TERMS: procedure, civil procedure, criminal procedure, case, divorce procedure, action for support, injunction, statute of limitations, court, superior court, county court, supreme court, municipal court, petition, defense, jurisdiction, affidavit, complaint, garnishment of wages, reciprocal support act, support order, deposition, modification, etc.

AGENCIES: child welfare department, department of social services, child protection agency, parent locator service, office of support enforcement, police department, etc.

LONG SHOTS: malnutrition, illegitimacy, etc.

c. Paternity

BROADER WORDS: status, origins, ancestry, lineage, parentage, line of descent, family, etc.

NARROWER WORDS: allegation of paternity, evidence of paternity, alleged paternity, etc.

SYNONYMS: fatherhood, male parentage, paternal origin, etc.

ANTONYMS: non-paternity, unrelated

CLOSELY RELATED WORDS: stepparent, descent, conception, heredity, maternity, family, sex, sexual intercourse, sexual relations, impotence, potency, male, female, rape, adultery, fornication, adoption, illegitimacy, legitimacy, bastard, birth, penalty, inheritance, will, child, heirs, testacy, intestacy, support, AID, AIH, artificial insemination, wrongful death, deceased, social security, custody, abandonment, sterility, blood group tests, doctors, gestation, access, nonaccess, etc.

PROCEDURAL TERMS: legitimation procedure, paternity proceeding, allegation, affidavit, action, case, civil case, criminal case, petition, complaint, court, trial, etc.

AGENCIES: child welfare department, department of social services, child protection agency, parent locator service, office of support enforcement, police department, etc.

LONG SHOTS: men's rights, women's rights, equal rights, etc.

d. Sex

Going over this one in class will certainly get everyone's attention!

C. Assignment A.2 (cartwheel)

Of course, the purpose of the assignment is defeated if your state code has ten or more entries on state statutes under the word "children." The same is true of the word "woman" in part (b) of the assignment. The students would not have to go through the steps of the CARTWHEEL in order to find alternative phrasings if they can find ten statutes directly under "children" for part (a), and ten statutes directly under "woman" for part (b). If this is so, you might modify the assignment as follows:

- (a) Find ten statutes on "children," but do not look up the word "children." Pretend that our code has *no* entries under "children" so that you must use the CARTWHEEL to find statutes that cover the topic of children.
- (b) Find ten statutes on "woman," but do not look up the word "woman." Pretend that our code has *no* entries under "woman" so that you must use the CARTWHEEL to find statutes that cover the topic of woman.

After the students have tried this assignment, consider having a class discussion on what they found. On the blackboard or on a flip chart, make a list of statutes that they located. If this is the first exposure of many of your students to the statutory code, they should find the discussion enlightening or perhaps frustrating if they have not been able to find as much as the more experienced fellow students.

When a student gives you an answer on this assignment, ask him or her to try to recall some of the words or phrases in the indexes that led to the answer in the code.

You may want to give them more than one opportunity to do Assignment 1.2.

D. Assignment A.3 (statutory code)

Show and Tell. It might be a good idea for you to bring some or all of the code volumes to class so that you can provide a demonstration on some major features of this critical set of books on family law. It is recommended that you go through as many parts of the assignment in class as possible. For the internet sections of the assignment, printed screen pages could be passed around.

Alternatively, if some of the students work in law offices that have the code, you might ask them to bring in selected volumes for this in-class demonstration.

E. Assignment A.4 (legal analysis: elements)

a. Elements of § 800:

- (1) The parties
- (2) By mutual agreement
- (3) Can elect to terminate
- (4) Their separation agreement

or:

- (1) The parties by mutual agreement
- (2) Can elect to terminate
- (3) Their separation agreement

b. Elements of § 52:

- (1) A court of this State
- (2) Shall not exercise its jurisdiction
- (3) Under this Act
- (4) If at the time of filing the petition
- (5) A proceeding concerning the custody of the child
- (6) Was pending

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- (7) In a court of another state
- (8) Exercising jurisdiction substantially in conformity with this Act
- (9) (a) Unless the proceeding is stayed by the court of the other state because this State is a more appropriate forum, or (b) Unless the proceeding is stayed for other reasons

c. Elements of § 10.2:

- (1) With respect to a child
- (2) Who has no presumed father
- (3) Under Section 4
- (4) An action
- (5) May be brought:
 - (a) By the child, or
 - (b) By the mother of the child, or
 - (c) By the personal representative of the child, or
 - (d) By the appropriate state agency, or
 - (e) By the personal representative of the mother if the mother has died, or
 - (f) By the parent of the mother if the mother has died, or
 - (g) By the man alleged to be the father, or
 - (h) By the man alleging himself to be the father, or
 - (i) By the personal representative of the alleged father if the alleged father has died, or
 - (j) By the personal representative of the alleged father if the alleged father is a minor, or
 - (k) By a parent of the alleged father if the alleged father has died, or
 - (l) by the parent of the alleged father if the alleged father is a minor.

d. Elements of § 107(b):

The two sentences of § 107(b) can be examined as two rules (or two subrules).

Elements of rule in first sentence:

- (1) (a) When the mental condition, or (b) When the physical condition (including the blood group)
- (2) Is in controversy
- (3) It is the condition (a) Of a party, or (b) Of a person in the custody of a party, or (c) Of a person under the legal control of a party
- (4) The court in which the action is pending
- (5) (a) May order the party to submit to a physical or mental examination by a physician, or (b) May order the party to produce for physical or mental examination the person in his custody or legal control

Elements of rule in second sentence:

- (1) The order may be made
- (2) Only on motion
- (3) For good cause shown
- (4) Upon notice to the person to be examined
- (5) Upon notice to all parties
- (6) The notice shall specify the time of the examination
- (7) The notice shall specify the place of the examination
- (8) The notice shall specify the manner of the examination
- (9) The notice shall specify the conditions of the examination
- (10) The notice shall specify the scope of the examination
- (11) The notice shall specify the person or persons by whom the examination is to be made

F. Assignment A.5 (legal analysis: issues)

a. ISSUE: Does “college expenses” in § 49(g) include graduate school expenses?

Alternate phrasing: Does a parent’s obligation under § 49(g) to pay a child’s “college expenses” include graduate school expenses when the child has been accepted into law school and the parent has the resources to pay for this graduate school?

b. ISSUE: Does Jack “reside” with Jane under § 11351?

Alternate phrasing: When an adult traveling salesman stays in the apartment of an unrelated woman receiving public assistance for five to ten days a month on his business trips, does he “reside” with the woman’s family under § 11351?

Assumptions made about this issue:

- Jack is an adult
- Jack and Jane are not related

G. Additional Issue Exercise

Here is an *additional* issue exercise like those in Assignment A.5:

FACTS: Smith files a complaint against Jones at the Board on Wednesday. On the following Tuesday, the board serves a copy of the complaint against Jones and begins its investigation. Jones claims the investigation is improper.

STATUTE: § 31(b) No investigation can be commenced by the Board until it has served a copy of the complaint on the person against whom the complaint is directed within five days after the complaint has been filed with said board.

Suggested Response:

ISSUE: Does the requirement of serving a complaint “within five days” of the date filed include weekend days under § 31(b)?

Alternate phrasing: Does the Board lose its power to investigate when it serves a complaint six days (including weekend days) after the complaint is filed, but four days (excluding weekend days) after it is filed in view of the requirement of § 31(b) that it be served “within five days”?

H. Assignment A.6 (legal analysis: memos)

INTEROFFICE MEMORANDUM

TO: [name of your supervisor]
 FROM: [your name]
 DATE: April 15, 1996
 NAME OF CASE: State B vs. Bill’s Estate
 OFFICE FILE NO.: 95-421
 COURT DOCKET NO.: No court action has yet taken place

RE: Domicile in state B for purposes of inheritance tax liability under § 14

Statement of Assignment

You have asked me to prepare a memorandum on whether Bill’s estate is liable for inheritance taxes in state B. This will depend on whether Bill was domiciled in state A or in state B at the time of his death.

Issue

Under § 14, has a person shown an “intent” to make a state a “permanent home” when he contemplates living and working in this state soon after bitterly moving out of his home in another state from which he removed all of his clothes and books but not all of his belongings?

Facts

The tax department in state B is arguing that Bill’s estate owes inheritance taxes because Bill was domiciled in state B at the time of his death.

Bill and Pat were married in state A on March 13, 1973. They have one child. Since 1990, Bill and Pat have been having marital difficulties. He is a traveling salesman who spends a good deal of time away from state A. From 1991 to 1994, he did not spend any time with his family. He returned on February 4, 1995. He and Pat attended marital counseling sessions for about three months. By the summer of 1995, problems again arose. Bill left home. On the day he left, he said to Pat, “If you can straighten yourself out, I’ll consider coming back.” He packed all of his clothes and books, but left behind his high school trophy, which he received for swimming. Although the departure was bitter, both sides agreed to maintain their joint checking account. Bill made deposits in the account. Pat wrote checks on the account to cover house expenses. In September of 1995, Bill contacted a real estate broker in state B about renting an apartment

for six months in state B. The broker suggested tax advantages of *buying* a condominium in state B as opposed to renting. Bill was persuaded. He had been in state B only once or twice for his job, but wanted to explore the possibility of more extensive business opportunities in state B. On October 1, 1995, the broker called Bill to say that a condominium prospect had been found in state B, which he should look at. On October 5, 1995, Bill was driving to the condominium in state B for the first time. Before arriving, he was killed in an automobile accident on a state B highway.

Analysis

Section 14 of the state B code provides as follows:

§ 14. Inheritance taxes are owed by persons who die domiciled in this state, which exists when the decedent had a physical presence in the state with the intent of making the state a permanent home.

The following elements of § 14 must be shown in order for domicile to exist:

- (1) Persons
- (2) Who die
- (3) Physical presence in the state
- (4) With the intent of making the state a permanent home

The first three elements do not pose difficulties. Both sides will agree that Bill is a person who has died. Furthermore, both sides will probably agree that there was a physical presence in state B to satisfy the third element. Bill died on a highway of state B while going to look at a condominium which he was considering purchasing in state B. Physical presence means actually being in a place. This occurred here.

The parties will not agree, however, on whether Bill intended to make state B his permanent home—the fourth element.

An intent to make a place a permanent home implies the desire to live in the state indefinitely—the place to which one intends to return when away. A person can have only one permanent home. The facts are not clear on whether Bill ever made the decision to live in state B indefinitely.

The representatives of Bill's estate will point to a number of facts that will show that Bill intended to continue state A as his permanent home. At all times up to his death, he maintained substantial contacts with state A, which demonstrates this intent. The facts to be discussed below will support the argument that Bill never ceased considering state A as his permanent home. No one of these facts are conclusive on the issue. Yet, according to the representatives of Bill's estate, the cumulative effect of these facts shows that Bill continued to desire to live in state A indefinitely and that he never desired to live in state B indefinitely.

First, Bill's family continued to live in state A. (The facts do not clearly indicate that his child still lived with the mother at the time of Bill's death. This should be checked.) One indication of a person's permanent home is where his (or her) family is.

Second, Bill was married in state A.

Third, Bill lived in state A for a period of time.

Fourth, when Bill was away from state A at work or due to marital difficulty, he continued to return to state A at least through late 1995.

Fifth, on the day Bill left his home, he did not indicate that he was going to stay away permanently or indefinitely. He told Pat that he would "consider coming back" if she would straighten herself out. It was therefore only a conditional departure. He clearly communicated a desire to return. He would not have done this if he had already decided to make another state his permanent home.

The facts do not give the exact date of his departure. It was probably during the summer of 1995 when marital difficulties surfaced. Nor do the facts tell us where he went immediately after he left his wife the last time. Did he stay in state A, e.g., by renting an apartment? Was he living in another state? In state B? These facts need to be determined.

Sixth, Bill did not take everything with him on the day he left. For example, he did not take his high school trophy.

We need to determine what value Bill placed on this trophy. Was it an object that he greatly valued or did he simply ignore it as it collected dust over the years? Knowing this will help decide whether it is something he probably would have taken if he had decided to leave permanently. We also need to know whether he took anything other than his clothes and books, e.g., furniture. Finally, how many books did he take? One or two? A truckload? Was it a large task to move what he took? If so, the argument might be stronger that he was serious about not returning.

Seventh, Bill and Pat maintained their joint checking account when he left. He continued to make deposits in it, which Pat used for home expenses. (We need to find out if the bank for this account was in state A.) The fact that Bill kept this joint account is evidence of his continued strong tie to his family in state A.

Eighth, the facts do not indicate that Bill ever actually rented or purchased property in state B. He was merely *thinking* about doing this. He had not made up his mind. He first thought of renting an apartment. Renting an apartment in state B does not evidence an intent to reside in state B permanently. He did consider buying, which is more permanent, but he did so for *tax* reasons and not necessarily because he had decided to make a permanent home in state B.

Ninth, the facts specify that Bill told the broker that he wanted the apartment "for six months." This certainly indicates a lack of permanence. It is logical to assume that the purchase of the condominium would also be for a temporary six-month period since he made the switch from renting to purchasing for tax purposes.

We do not know what property Bill continued to own in state A. We need to check, for example, whether he owned the home where Pat lived (or co-owned it with her). There are also other facts that we need to check concerning the period of time after he left Pat. Where did

he vote? Where did he pay income taxes? Where did he receive mail? Where did he go to church? Did he belong to any clubs? If so, where were they and how often did he attend? Did he ever change his driver's registration? Etc.

The answers to these questions will be helpful in assessing Bill's state of mind after he left Pat in order to assess the extent of his continued contacts with state A and whether he ever intended to make state B his permanent home.

The advocate for state B will argue that Bill *did* intend to make state B his permanent home at the time of his death. The following facts will be used to support this position.

First, over the years, Bill and Pat were having marital difficulties. There was bitterness the last time he left. All of this indicates that Bill was breaking away from his state A home and that this was very serious.

Second, Bill's statement when he left Pat the last time should be interpreted as a sarcastic, bitter attack on his wife. When he said he would "consider coming back," he was not realistically stating a condition of return. When he referred to his wife straightening out, he was attacking her. The comment under the circumstances was not evidence of a desire to return. Also note that his comment was to "consider" coming back and not a flat statement that he would come back if things changed. Again this shows the extreme tenuousness of the possibility of return.

Third, the facts say that he packed *all* of his clothes. If he had seriously thought about returning, he would not have taken all of his clothes.

Fourth, the fact that they kept the joint banking account is not significant. It does not show that Bill intended to stay in state A indefinitely. It simply shows that Bill was fulfilling his obligation to support his wife and child while permanently away.

Fifth, the fact that Bill considered buying or renting property in state B in which to live is a very strong indication of a desire to make state B his permanent home. The facts say he wanted the apartment to "live in." Presumably, this was also true of the condominium. Hence it is unlikely that this move was solely an investment venture, particularly in light of the other facts such as the bitter departure from his wife and the general breakdown of the marriage in state A.

Sixth, Bill was thinking of "extensive business opportunities" in state B. This again is a sign of substantial contact with state B. Bill wanted to live in state B *and* engage in extensive business activities in state B. This shows a desire to remain in state B indefinitely.

Seventh, Bill took active steps in the direction of living and working in state B. He was not simply thinking about it. These active steps included contacting a broker in state B and actually going to state B in order to examine property for purchase.

Finally, it should be pointed out that these active steps were taken soon after Bill left his wife in bitterness. Although we do not know the exact date he left, it was during, toward the end of, or after the summer of 1995. In September of 1995 he began his active steps in the direction of state B by contacting the broker. This short time indicates that there was a connection between the deterioration of his marriage in state A and his moves in the direction of state B. The latter moves were made because he no longer had any reason to return to state A. Again, they were not simply the moves of someone making a casual investment.

Conclusion

I think that there are strong arguments on both sides of the domicile issue. On balance, however, I think that state B has the stronger argument in view of Bill's arrangements to live and work in state B, coupled with the deterioration of his marriage in state A.

Nevertheless, the case is still close. Some of the missing facts (summarized below) may tip the balance the other way.

Next Steps

Find out through further interviewing and investigation:

- if Bill's child was living with the mother at the time of his death;
- the exact date Bill left the home;
- where Bill went to live the day he left home;
- what value Bill placed on his trophy;
- whether he took things other than his clothes and books;
- how burdensome it was for him to take his clothes and books;
- in what state was the bank where the joint checking account was maintained;
- whether Bill owned any property in state A,
- where Bill voted, paid income taxes, had a mailing address, went to church, attended clubs, etc.;
- whether he changed his driver's registration.

I. Assignment A.7 (court opinions)

This assignment parallels Assignment A.3 above. Both assignments cover major resources of a family law practice:

- statutory code (Assignment A.3)
- reporters and digests (Assignment A.7)

It would help the students if you could bring into class several examples of the volumes mentioned in Assignment A.7. Provide a brief presentation of the functions of the books that you pass around for examination by the students.