

# LLLT FAMILY LAW II COURSE OUTCOMES

## I. COMMUNITY PROPERTY

Upon completion of the unit on community property, students will have the skills and confidence to analyze the property and debts of parties and determine their character, the ability to characterize property accurately, and the capacity to complete forms regarding property.

In particular, students will be able to:

### GENERAL COMMUNITY PROPERTY CONCEPTS / CHARACTERIZATION

1. Apply the Wastebasket Theory to identify separate property (that property acquired before the marriage or acquired by gift, inheritance, and income from all such property) RCW 26.16.010, and community property (generally everything else) RCW 26.16.030.
2. Apply the Industry Theory in characterizing community property that is acquired through a party's efforts. *Brown v. Brown*, 100 Wn. 2d 729, 737-38 (1984).

### TRANSMUTATION BY GIFT, COMMINGLING

3. Determine whether separate property has been converted to community property through transmutation and/or commingling.
4. Explain how a presumption of community property may be rebutted (tracing).

### AGREEMENTS

5. Identify the three prongs of a community property agreement.
6. Evaluate agreements as to whether they must be in writing under RCW 19.36.010, RCW 64.04.010, .020.
7. Evaluate whether agreements that convert community property to separate property are enforceable by applying the "substantive" fairness test and/or "procedural" fairness test to determine.

## **MANAGEMENT**

8. Apply the factors under RCW 26.16.030 to ascertain the method of management of property, whether equal, joint, or exclusive.
9. Determine whether joint management of property exists by analyzing the factors of consent, authorization, ratification, and estoppel.
10. Apply the Elam Rule regarding appreciation of separate property.

## **INTERSTATE CONSIDERATIONS**

11. Determine the character of out-of-state real property.
12. Determine the character of out-of-state personal property using the most significant relationship factors under Restatement (Second) of Conflicts § 258.
13. Analyze the parties' domicile at the time property is acquired, and determine character based on the parties' moves between community property and common law states.
14. Analyze how parties' moves between community property and common law states affects debtor/creditor obligations and determination of the character of those obligations.

## **DEBTOR/CREDITOR ISSUES**

15. Describe how debts are characterized under the Community Debt System in Washington.
16. Analyze contract claims made against parties during a marriage to determine separate and community liability of the parties.
17. Summarize the Family Expense Doctrine under RCW 26.16.205.
18. Identify the factors that must exist to establish debt as separate debt under RCW 26.16.200.
19. Analyze tort claims made against parties during a marriage to determine whether separate and community liability of the parties.

## II. RELOCATION ACTIONS

Upon completion of the unit on Relocation Actions students will have the skills and confidence to identify a relocation action case, the ability to apply the applicable statutes, and the capacity to define the scope of services permitted for an LLLT under APR 28.

In particular, students will be able to:

1. Explain the elements of RCW 26.09.405-915.
2. Identify and apply REGULATION 2.B(3)(b)(xi) and (xii):
  3. *Prohibited Acts*. In addition to the prohibitions set forth in APR 28(H), in the course of rendering legal services to clients or prospective clients, LLLTs licensed to practice in domestic relations:
    - b. shall not render legal services in:
      - xi. objections or responses in contested relocation actions.
      - xii. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.
3. Describe when a notice of an intended relocation must be provided (26.09.440(1)(b)) and when limitations regarding notice may apply (26.09.460).
4. Describe how notice must be provided (RCW 26.09.440-450).
5. Select and draft the appropriate court form(s) (Notice of Intent to Move with Children - FL Relocate 701, Proof of Service, etc.).
6. Assist a client with service of the Notice in compliance with RCW 26.09.440.
7. Assist a client in obtaining an order to waive notice in compliance with RCW 26.09.460(4) (FL Relocate 702 and 703).
8. Discuss the anticipated course of a legal proceeding following service of a Notice of Relocation.

### III. DOMESTIC PARTNERSHIPS

Upon completion of the unit on domestic partnerships, students will have the skills and confidence to determine whether a domestic partnership or committed intimate relationship exists, the ability to apply the applicable statutes, and the capacity to apply case law in making that determination.

In particular, students will be able to:

1. Summarize the factors that create a valid marriage under Washington law.
2. Identify the parameters under which a couple may enter into a domestic partnership in Washington.
3. Identify the parameters under which a Washington court will recognize an out-of-state domestic partnership.
4. Describe the elements of the Committed Intimate Relationship Doctrine as established by Washington case law.
5. Explain the limitations on scope of LLLT practice regarding committed intimate relationships.

## IV. PARENTAGE

Upon completion of the unit on parentage, students will have the skills and confidence to determine whether parentage has been or can be established, the ability to determine whether parentage is or may be established, and the capacity to assist a client in establishing or denying paternity.

In particular, students will be able to:

1. Describe the methods by which parentage may be established.
2. Summarize the factors that create a “presumption of parentage” under RCW 26.26.116.
3. Identify the time limits on establishing parentage when there is no presumed or adjudicated second parent and no acknowledged father.
4. Identify the time limits on establishing parentage when there is a presumed parent.
5. Identify the time limits on establishing parentage when there is an acknowledged father or adjudicated parent.
6. Indicate the mandatory parties to a parentage action.
7. Describe the relief available pursuant to a parentage action.
8. Identify, select, and complete the family law forms needed for a petition to establish or deny parentage.

## V. MODIFICATION ACTIONS

Upon completion of the unit on modification actions, students will have the skills and confidence to identify the issues that may be addressed by modification actions and to analyze and apply the relevant statutes for such modifications.

In particular, students will be able to:

1. Identify, select, and complete the forms needed and the procedures required for a motion for adequate cause to modify a parenting plan.
2. Summarize the statutory factors that may warrant a modification of a parenting plan.
3. Summarize the statutory factors that may warrant an adjustment of a parenting plan.
4. Identify, select, and complete the family law forms needed for a petition to modify parenting plan.
5. Explain the limitations on scope of LLLT practice regarding parenting plan modifications.
6. Summarize the statutory factors that warrant the modification of a child support order.
7. Identify, select, and complete the family law forms needed for a petition to modify child support.
8. Identify the grounds for modification of a spousal support order.

## VI. INTERNATIONAL ISSUES

Upon completion of the unit on international issues, students will have the skills and confidence to recognize when international issues may affect resolution of a domestic relations matter and to apply the relevant international treaties and Washington law when analyzing a case.

In particular, students will be able to:

1. Summarize Washington law as to recognition of marriage.
2. Identify the requirements for jurisdiction over children under the Uniform Child Custody Jurisdiction and Enforcement Act.
3. Identify the circumstances for which the Hague Convention on the Civil Aspects of International Child Abduction may be invoked subsequent to abduction of a child, and describe the procedure for seeking return of a child to the location where a custody decision may be made.
4. Explain the meaning of judicial notice to under Article 14 of the International Child Abduction Remedies Act.
5. Summarize the defenses to return of a child under the Hague Convention.
6. Summarize the elements required to confirm validity of prenuptial and postnuptial agreements entered into outside of the United States.
7. Explain the circumstances under which a foreign child support order may be enforced under Uniform Interstate Family Support Act.
8. Describe the circumstances under which a foreign judgment may be enforced under the Uniform Enforcement of Foreign Judgments Act and RCW 6.36.
9. Explain the limitations on scope of LLLT practice regarding competing jurisdiction.

## VII. MILITARY PERSONNEL ISSUES

Upon completion of the unit on military personnel issues, students will have the skills and confidence to ascertain if and how the Service Members' Civil Relief Act and Washington Service Members' Civil Relief Act apply to service members who are parties to domestic relations cases.

In particular, students will be able to:

1. Analyze a case involving a service member for possible application of the provisions of SCRA and WSMCRA.
2. Summarize the relief available to service members under the SCRA and WSMCRA.
3. Describe the process for filing a default action against a service member who has failed to appear in an action.
4. Determine when to request a stay of proceedings on behalf of a service member.
5. Explain the process by which a court may enter temporary orders even if final proceedings are delayed under the SCRA.
6. Identify the deadlines by which a motion to set aside judgment must be filed under the SCRA and WSMCRA.
7. Summarize the provisions of RCW 26.09.260(11) and (12) regarding temporary custody orders and delegation of residential time when a military parent deploys.
8. Identify, select, and complete the family law forms needed to establish temporary custody orders and delegate residential time to family members.
9. Explain how child support and/or spousal maintenance can be established and enforced via a service member's commanding officer without a court order.
10. Identify the information needed to calculate military retired pay.

## VIII. ENFORCEMENT ORDERS

Upon completion of the unit on enforcement orders, students will have the skills and confidence to identify issues for which an enforcement actions are appropriate and determine what types of enforcement actions are permitted under the applicable statutes.

In particular, students will be able to:

1. Summarize the types of enforcement actions available for enforcing parenting plans, child support orders, payment of spousal maintenance, payment of debts, and property division.
2. Identify the elements required for a finding of contempt, the defenses to contempt, and the available remedies to a contempt action.
3. Identify, select, and complete the necessary family law forms and describe the procedures required for a contempt motion.
4. Describe the process for registering an out-of-state parenting plan and petitioning for expedited enforcement under the UCCJEA.
5. Explain the actions that the Division of Child Support may utilize in collecting child support.
6. Identify the issues that may be resolved via a DCS Conference Board.

## **IX. REFERRAL ISSUES**

Regarding the topics presented in the Family Law II course, students will have the skills and confidence to analyze case facts and identify issues that may exceed the scope of LLLT practice and that may require referral to an attorney under APR 28 Regulation 2A.

In particular, students will be able to:

1. Identify relevant RPCs governing referrals
2. Describe the elements of non-exclusive reciprocal referral agreements
3. Identify issues outside of the LLLTs scope of practice.
4. Explain how confidentiality affects client referrals to attorneys and the steps a LLLT must take to obtain client consent.

## **X. FAMILY LAW FORMS**

Regarding the topics presented in the Family Law II course, students will have the skills and confidence to analyze case facts and identify, select, and complete family law forms as permitted under APR 28F(6).

## **XI. WA LLLT SCOPE AND PRACTICE ISSUES**

Regarding the topics presented in the Family Law II course, students will have the skills and confidence to analyze case facts and identify potential services to clients that are within the scope of LLLT practice or that exceed the scope of LLLT practice pursuant to:

1. APR 28F – Scope of Practice Authorized by Limited Practice Rule;
2. APR 28G – Conditions Under Which A Limited License Legal Technician May Provide Services;
3. APR 28H – Prohibited Acts;
4. APR 28 Regulation 2A – Issues Beyond the Scope of Authorized Practice; and
5. APR 28 Regulation 2B – Domestic Relations.

## **XII. COMMUNICATION WITH OPPOSING PARTY/COUNSEL**

Upon completion of the unit on communication with opposing party/counsel, students will have the skills and confidence to define the terms by which a LLLT may communicate and/or negotiate with an opposing party or opposing counsel under APR 28F (8), (12), and (13).

In particular, students will be able to:

1. Explain when a LLLT may send a letter to an opposing party or counsel setting forth legal opinions that is intended to be read by persons other than the client.
2. Describe how a LLLT may communicate and negotiate with the opposing party or the party's representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters
3. Identify with specificity what constitutes a "procedural matter" under APR 28F(12).
4. Describe how a LLLT may negotiate the client's legal rights or responsibilities, provided that the client has given written consent defining the parameters of the negotiation prior to the onset of the negotiation.
5. Prepare a sample "consent to negotiate" letter pursuant to APR 28F(13).