

Family Law Education Reform Project

Dissolution of Marriage Negotiation Exercise – Teaching Notes

OVERVIEW

One purpose of the exercise is to show students that there is no cookie-cutter outcome to this problem. This can be shown by, among other things, comparing the range of outcomes the students come to in this exercise.

EXPLANATION AND COMMENTS

In this exercise, students are directed to represent either the husband or wife and are to consider what the probable range of outcomes for their client would be in the jurisdiction if this case goes to trial. Questions are posed to the students to aid in understanding and identifying possible problems and outcomes that result during dissolution negotiations.

ABOUT THE AUTHOR

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Professor Oldham received his J.D. in 1974 from UCLA, and came to the University of Houston Law Center as Associate Professor in 1980.

Professor Oldham has also been elected to the American Law Institute, and is an active member of the law faculty, serving on numerous committees. He is a recognized expert in community property, family law, partnership, agency and business organizations law. He has been chair of the AALS Family Law Section and is a member of the Board of Editors for the American Bar Association, Family Law Quarterly.

In recognition of his accomplishments for the UH Law Center, Professor Oldham received the UH Excellence in Research and Scholarship Award in 2000.

NEGOTIATION EXERCISE TEACHING NOTES

One purpose of the exercise is to show students that there is no cookie-cutter outcome to this problem. This can be shown by, among other things, comparing the range of outcomes the students come to in this exercise.

1. Property

Most jurisdictions provide for “equitable” distribution of property accumulated during marriage from efforts, based on a consideration of numerous factors. Some states permit a court to consider, among other things, fault. Here W is at fault but will be the primary custodial parent and has the lower income. What range of outcomes in your jurisdiction seems reasonable in this situation?

2. Child Support

Both spouse work in this hypothetical. In an income shares jurisdiction, both spouses’ incomes need to be considered. Here each spouse’s gross income is set forth; is the relevant data gross income or net income? Also, H makes \$13,000; does this amount exceed any maximum amount set forth in the jurisdiction to which the guideline applies?

Creative ideas:

- a. In most states, the primary custodian must sue the obligor to revise the amount due if his income significantly increases after the date of the initial order. Here the child is only 6; child support will be due for many years. Would H agree to some more automatic adjustment procedure?
- b. In many states, a court cannot order support in college. Would H be willing to commit to pay a certain monthly amount as a contribution to a college fund?
- c. spouses sometimes disagree regarding how child support will be spent. Would H be willing to pay more if W and H had to mutually agree how it was spent? Or would H be willing to pay additional child support for specific things related to the child, such as child care, health insurance, lessons, therapy, summer camp or private school tuition?

3. Spousal Support

Here H and W had a relatively long marriage. What are the standards in your jurisdiction regarding spousal support? Is W’s fault relevant? Here, due to W’s fault and the fact that W does work, H may be reluctant to agree to pay much if any spousal support.

4. Creative Ideas about Custody

H might be induced to make additional financial concessions if W will make some concessions regarding custody. Of course, as lawyer for W whether those concessions would be appropriate or desirable would depend upon our client’s wishes and the situation, such as the relationship between the parties and H’s relationship with the child. H might be interested in any of the following:

- a. more visitation time on a regular basis throughout the year.
- b. more visitation time in the summer.
- c. W's agreement not to relocate for a certain period.
- d. Joint legal custody