

Foundational Concepts and Principles: Family Law

First Administration: July 2028

Family law will be included in the NextGen bar exam's Foundational Concepts and Principles beginning with the July 2028 exam administration. From July 2026 through February 2028, legal resources will be provided whenever family law concepts are tested. Beginning in July 2028, family law will be tested following the guidelines below.

Topics in this outline will be tested using tasks from the Foundational Skills outline. Questions may test topics from more than one subject area.

Examinees may expect that some questions will be presented with legal resources. When legal resources are provided within the test, the examinee will be expected to demonstrate their ability to efficiently analyze and apply the legal resources to answer the question or questions.

Within this outline, there are two types of topics:

Topics with a star symbol ★

Topics followed by a star symbol ★ require an examinee to rely solely on recalled knowledge and understanding of the topic; they will be tested without provision of legal resources.

Topics without a star symbol

Topics without a star symbol may be tested with or without provision of legal resources. When these topics are tested without legal resources, the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario.

Where the applicable law is noted in this outline, that law is controlling. In all other cases, if specific statutory rights and remedies are tested, the applicable legal resources will be provided.

If a particular topic's scope is described in this outline, that does not indicate greater importance or testing frequency of the topic.

I. Marriage requirements and limitations

A. Limitations on who may marry

This topic includes the prohibition of bigamy and awareness of jurisdictional variations in restrictions based on age and consanguinity. This topic may overlap with section V.B.1. of the Constitutional Law outline (the right to marry).

B. Procedural requirements

This topic includes the requirement of, and method for, obtaining a marriage license, residency requirements, and the authority to perform a marriage ceremony.

C. State-of-mind requirements

This topic includes the requirements that spouses knowingly and voluntarily enter into a marriage. This topic may overlap with sections III.A. through III.F. of the Contracts outline (the invalidation of agreements due to incapacity, duress, mistake, fraud, illegality, or unconscionability).

D. Common-law marriage and the putative-spouse doctrine

This topic includes the requirements for establishing a common-law marriage where such marriages are recognized and the putative-spouse doctrine (marriage by estoppel). This topic may overlap with section V.B.1. of the Constitutional Law outline (the right to marry).

E. Void and voidable marriages★

This topic includes the grounds for voiding or annulling marriages and the legal difference between the terms “void” and “voidable” as applied to marriages.

F. Interstate recognition of marriages

This topic includes the deference given, if any, to the jurisdiction of the state where a marriage occurred and interstate recognition of marriages as governed by choice-of-law principles (recognizing if a marriage is valid where celebrated and not contrary to strong public policy) and principles of full faith and credit.

II. Separation and dissolution/divorce

A. Grounds★

This topic includes basic legal differences between separation and dissolution/divorce. This topic includes the difference between fault-based dissolution/divorce and no-fault dissolution/divorce, as well as jurisdictional variations in the relevance and interpretations of fault in separation and dissolution/divorce proceedings. This topic includes the potential effect of interpersonal violence on grounds for dissolution/divorce in jurisdictions that retain consideration of fault.

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B. Jurisdiction★

This topic includes understanding when a court has jurisdiction to issue dissolution/divorce decrees and related orders such as property distribution, maintenance/alimony, and child custody and support (including the potential applicability of the Parental Kidnapping Prevention Act, Uniform Interstate Family Support Act [2008], Indian Child Welfare Act, and Uniform Child Custody Jurisdiction and Enforcement Act [1997]). This topic also includes the concept of divisible divorces. This topic may overlap with sections I.B. through I.D. of the Civil Procedure outline (personal jurisdiction; service of process and notice; venue, forum non conveniens, and transfer).

C. Preliminary and interlocutory orders or agreements

This topic includes the court's ability to enter preliminary orders or to enforce interim agreements pending a final order of dissolution/divorce and the potential impacts of preliminary and interlocutory orders or agreements on the accumulation of community or marital property, the receipt of maintenance/alimony, child support, and child custody.

D. Premarital, marital, separation, and dissolution/divorce agreements★

This topic includes the enforceability of premarital, marital, separation, and dissolution/divorce agreements, including the authority to contract with respect to child custody and support. This topic also includes agreements resulting from voluntary mediation and other collaborative processes. This topic may overlap with sections II.A. through II.F. of the Contracts outline (the invalidation of agreements due to incapacity, duress, mistake, fraud, illegality, or unconscionability).

E. Division of property★

This topic includes categorizations of property (community or marital property as distinct from separate or nonmarital property) and the possibility of mutation/transmutation of property. This topic also includes the different approaches used by jurisdictions as to which property can be divided (i.e., community property, marital property, the hotchpot approach), as well as whether there is equitable or equal distribution. This topic includes awareness of the different factors that jurisdictions may consider in determining distribution of property, including earning potential, contributions to the marriage, childrearing, hardship, reliance, and fault (including the potential effect of previously issued protective orders and/or interpersonal violence), and the potential for premarital or separation/marital settlement contracts to control. This topic also includes division of debts.

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F. Maintenance/alimony

This topic includes understanding of the impact of categorizing maintenance or alimony as permanent or temporary and as nonmodifiable or modifiable, as well as awareness of jurisdictional variations in when maintenance or alimony awards may be ordered. This topic includes understanding of the different factors that jurisdictions may consider in awarding maintenance or alimony, including the advancement of rehabilitative or transitional goals, a payor spouse's ability to pay, a recipient spouse's ability to provide for their own needs, and reimbursement for expenses incurred during marriage. This topic also includes awareness of the potential for statutory guidelines, premarital contracts, or separation/marital settlement agreements to control.

G. Child custody★

This topic includes understanding of different categorizations of child custody and access rights (e.g., legal custody, physical custody, shared custody, joint custody, visitation/parenting time) and the universal presumption in favor of continuing contact with both parents in some form. This topic includes the "best interests of the child" standard and the different factors that jurisdictions may consider in determining best interests, including the wishes of the child and the parents, relationships among family members, whether parents will foster contact with one another, school and community adjustments, the child's mental and physical health, interpersonal violence, and moral and religious considerations. This topic includes parents' rights and limits on parents' rights related to the care, custody, control, medical treatment, and education of their children in the context of dissolution/divorce proceedings.

H. Child support★

This topic includes awareness of jurisdictional variations in mandatory child-support guidelines, the extent that time spent with each parent is factored into the child-support calculation, and written justification requirements for deviation from guidelines. This topic includes awareness of responsibility over and above ordered child support for the cost of extraordinary expenses or extracurricular activities, including support for college expenses and for functional needs of children with disabilities. The topic includes awareness of jurisdictional variations in when and how children are deemed emancipated and when support obligations can continue after children reach the age of emancipation.

I. Modification of dissolution/divorce decrees**1. Maintenance★**

This topic includes awareness of jurisdictional variations in the standard for modification of maintenance awards, where modifiable, based on changed circumstances (e.g., "substantial change").

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2. Child support and custody★

This topic includes awareness of jurisdictional variations in the standard for modification of child-support and custody awards (e.g., “substantial change”), including in the context of relocation, and of factors that jurisdictions may consider when modifying child support or child custody, including whether information was previously unknown and whether a parent’s actions have voluntarily contributed to a change in circumstances. This topic also includes the potential applicability of the Parental Kidnapping Prevention Act, Uniform Interstate Family Support Act (2008), and Uniform Child Custody Jurisdiction and Enforcement Act (1997).

J. Enforcement of dissolution/divorce decrees

This topic includes awareness of the use of contempt proceedings to enforce the provisions of a dissolution/divorce decree. This topic also includes deference, if any, to the jurisdiction of the decree state and the interstate recognition of divorce (and related judgments) as governed by principles of full faith and credit. This topic includes grounds for attacking final orders (e.g., collusion, fraud on the court, transfers of assets for the purpose of evading liability or obtaining benefits). This topic includes the due-process requirement that jurisdictions provide procedural safeguards to ensure fair determinations of child support and the requirement that jurisdictions work with one another to enforce child-support orders. The topic also includes awareness of a jurisdiction’s power to bring child-support-enforcement or custody-enforcement actions. The topic includes the potential applicability of the Parental Kidnapping Prevention Act, Uniform Interstate Family Support Act (2008), and Uniform Child Custody Jurisdiction and Enforcement Act (1997).

III. Determination of parentage and the rights of parents and nonparents

A. Establishment of parentage

1. Married, unmarried, and nonbiological parents

This topic includes awareness of the different factors that jurisdictions may consider in determining legal parentage, including voluntary acknowledgment of parentage, functional/equitable parenting, presumptions of parentage in relation to married parents, and the possibility of more than two parents.

2. Assisted reproductive technology

This topic includes awareness of the legal issues arising from assisted reproductive technology and the ways jurisdictions address these issues, including statutory termination of the parental status of donors and the legal significance of giving birth.

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B. Parental rights and obligations

1. Married parents★

This topic addresses the rights and limits on rights of married parents related to the care and control of, education of, and medical treatment for their children when those issues arise outside the context of dissolution/divorce proceedings. This topic may overlap with section V.B.1. of the Constitutional Law outline (the right to educate one's children).

2. Unmarried parents★

This topic addresses the rights and limits on rights of unmarried parents related to the care and control of, education of, and medical treatment for their children and related to the award, enforcement, and modification of child custody and child support. This topic may overlap with section V.B.1. of the Constitutional Law outline (the right to educate one's children).

C. Custodial disputes between parents and third parties★

This topic includes awareness of jurisdictional variations in whether the rights of parents can be subject to the award of custodial or visitation/parenting-time rights to a nonparent (e.g., grandparent, functional/equitable parent).

IV. Termination of parental rights and guardianships

A. Termination of parental rights

1. Jurisdiction★

This topic includes the jurisdiction of courts to terminate parental rights (voluntarily or involuntarily), including under the Uniform Child Custody Jurisdiction and Enforcement Act (1997) and Indian Child Welfare Act. This topic may overlap with section II.B. above (child custody jurisdiction and enforcement).

2. Voluntary termination★

This topic includes the consent requirement for voluntary termination of parental rights.

3. Involuntary termination

This topic includes the presumption of parental fitness and awareness of jurisdictional variations in the grounds for termination of parental rights.

B. Legal guardianship

This topic includes awareness of jurisdictional variations in the grounds for establishing guardianships that permit and require nonparents to provide for the care, custody, control, medical treatment, and education of children, whether by voluntary agreement or by court action.

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V. Adoption

This topic includes awareness of jurisdictional variations in the procedures and grounds for authorizing adoptions, including adoptive parent qualifications, home studies, older children's consent, issuance of amended or new birth certificates, and post-adoption rights to access information about the adoption process. This topic includes jurisdiction over adoption proceedings governed by the Indian Child Welfare Act.

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