

## **COLLABORATIVE LAW FACT PATTERN**

### **Jack and Jill and Up The Hill**

Jack Crown and Jill Waters were classmates at the College of Engineering at the University of Utah. They became fast friends when they discovered a mutual love for the outdoors and especially mountain climbing. Their curious minds and adventurous spirits had them always looking for new and better ways to get up a mountain. They began designing improvements to mountain climbing gear for their personal use, and this hobby later turned into a grad school project for which they received much praise and attention.

After graduation in 1999, Jack and Jill continued designing climbing equipment primarily for themselves and their group of climbing friends. As other climbers became interested in their gear, they began a side business designing and fabricating the climbing equipment. Within a few years, they had a reliable enough customer base that they began to make a solid profit. On the advice of an accountant friend, in 2005 they formed an S-Corp and put together a basic operating agreement so that they could register their new LLC with the state and get a federal tax ID number.

After being “just friends” for several years, Jack and Jill began dating and eventually moved in with each other in 2003. Jack and Jill married 2006. Jack and Jill had twins in 2009 – Jack Jr. and Mary – and both were equally involved in raising them.

Jack and Jill’s business – Up the Hill – kept growing after their marriage. Eventually, the business was solid enough so that Jill quit her corporate job in 2007 and focused on UTH full-time. A year or two later, Jack was able to quit his job and work full-time for UTH although he continued to consult with his former employer to supplement his income. They enjoyed the flexible schedule that allowed at least one of them to be with the children at all times.

Equipment was purchased, employees were hired and by 2015, Up the Hill was an industry leader and a very successful company. They even patented a few of their innovations. Jack and Jill were ideal business partners with complementary skills. Jill was excellent at building the UTH brand and is very involved in the business community and the outdoor industry. Jack was hands-on with design and production and was still very much an innovator at heart. He continued to consult on outside projects even when money was no longer a concern for him.

One of these projects – an indoor climbing facility – sparked a passion within him and Jack began wanting to get back to his engineering roots. Without telling Jill, Jack set up a new LLC and began working on designing indoor climbing facilities, originally only on a part-time basis. When he could no longer balance his new business with full-time work at UTH and his family obligations, Jack informed Jill that he wanted to step away from Up the Hill. Jill was understandably upset and angry, especially after she learned one of Jack’s clients is an old college flame of his, and that this old flame has recently separated from their spouse. After a 25-year friendship and 20-year business relationship, and 15-year marriage Jill felt betrayed by Jack.

After emotions cooled a bit, Jack and Jill decided to work on how to dissolve their marriage and business partnership in a positive way. They realize that a litigated resolution is not in their personal or financial interests. Moreover, they know they will continue to have common social and business relationships after their divorce. They have agreed to a week-on/week-off custody schedule, and what to do with their house and personal property. Their sticking point is Up the Hill.

The simple partnership agreement that was put in place in 2005 was never amended as the business grew. Jack and Jill’s partnership agreement is silent on exactly how to dissolve the partnership except that they agreed to engage in some sort of Alternative Dispute Resolution process before filing any legal action. Knowing they would also need to engage in a similar process for their divorce, Jack and Jill are interested in options available to them.

Jill wants to keep UTH and knows she will need to buy out Jack’s interest in it, but she is also concerned about competition from Jack since they will still be in the larger climbing industry. Jack does not see his business as competition (if anything he sees it as being a complementary business that would have a common customer referral base) but is concerned about the patents in UTH’s name. He was the main designer and would like to continue to benefit from his innovations.

Issues that will need to be addressed are valuation of Up the Hill, the structure of the buyout, non-competition agreements, trade secret matters, the use of patents, and any other issues identified.