Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2014 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

1. (a) the Matrimonial Causes Act 1973.
   (b) the Civil Partnership Act 2004.
   (c) the Gender Recognition Act 2004.

2. Any 5 points from: S10 Children Act 1989; Civil Partnership Act 2004; parent or guardian; anyone with parental responsibility; anyone with a residence order; any party to a marriage or civil partnership where the child is a child of the family; anyone that the child has lived with for at least 3 years or any reasonable alternative.

3. The right to marry and found a family.

4. Marco can claim for financial support under Domestic Proceedings Magistrates Court Act 1978 or s27 Matrimonial Causes Act 1973 if Francesca has failed to provide reasonable maintenance for him. This could take the form of periodical payments or a lump sum.

5. It is possible to seek a judicial separation using any one of the five facts used to prove irretrievable breakdown under s1(2) Matrimonial Causes Act 1973
   (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
   (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
   (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
(d) that the parties to the marriage have lived apart for a continuous
period of at least two years immediately preceding the presentation of
the petition and the respondent consents to a decree being granted;
(e) that the parties to the marriage have lived apart for a continuous
period of at least five years immediately preceding the presentation of
the petition.

6. (a) A void marriage is void ab initio and never existed,
(b) whereas a voidable marriage exists until annulled under s11 or s12

Any reasonable alternative including discussion of the section contents
would be acceptable within this response.

7. Cohabitation contract can provide evidence of common intention between
the parties about their belongings and could provide a framework for
distribution if the relationship breaks down.

8. Any case relating to the definition of marriage and will define marriage as
the voluntary union for life between one man and one woman to the
exclusion of all others.

9. Civil partners, like married couples will have rights on inheritance, to
pensions and for financial provision.
SECTION B

Scenario 1

1. Divorce is dealt with under s1 Matrimonial Causes Act 1973 which states that the only ground for divorce is the irretrievable breakdown of the marriage. This must be proven by one of five facts. Here Heidi could rely on s1 (2) (b) that Konrad has behaved in such a way that Heidi cannot reasonably be expected to live with him. Heidi has evidence for this because Konrad ignores her feelings and concerns, he prevents her from working and from visiting friends and family. Konrad also withholds money from Heidi.

2. Under s25 (a) Matrimonial Causes Act 1973 the court has a duty to consider a clean break. This is a once and for all settlement, usually where there are sufficient assets and no children, this would probably not apply here as there are children. There are many cases candidates could use to illustrate this point. Candidates may then go on to discuss other orders. The maintenance pending suit could help support Heidi while awaiting the decree as she has no income. Periodical payments would maintain Heidi and the children as Konrad has regular income but Heidi has none. A lump sum could be granted as it is likely Konrad has savings from his substantial income. No property orders would be made here as the home belongs to Konrad’s employers. The court may grant pension orders as Heidi is unlikely to have a pension but Konrad might.

3. (a) Any five points from a list of factors:

   s1(1) CA 1989 Welfare principle
   • The welfare of the child is the court’s paramount consideration
   s1(2) The no delay principle
   • Unplanned delay in resolving the issues before the court is generally bad for children
   s1(5) No order/non-intervention principle
   • Court shouldn’t make an order unless it is better than making no order at all or words to that effect

   (b) All parties with parental responsibility will need to agree in relation to the emigration of children. Under s8 Children Act 1989 the court can decide an issue on which parents can’t agree, like this. Konrad could apply for a prohibited steps order to try to prevent Heidi from taking the children so far away.

Scenario 2

1. Pavel and Nadya are not married but cohabiting as there is no capacity or formality to form a valid marriage within the definition of ‘the voluntary union for life of one man and one woman to the exclusion of all others.’ In the case of Pavel and Nadya parental consent to marry would have been required under Matrimonial Causes Act 1973 as both parties were only 17. No formalities were indicated in the scenario in relation to the ceremony so we cannot assume these took place.

2. Pavel and Nadya are cohabiting rather than married, courts would look to the ordinary law of property in relation to their property. Candidates may discuss that Trusts of Land and Appointment of Trustees Act 1996 can apply to the property of cohabitants and could illustrate this with any
relevant case indicated in the unit specification. Candidates may also note that contribution to a mortgage and deposit is likely to lead to a resulting trust. Any relevant case could be credited here.

3. (a) Parental responsibility under s3(1) Children Act 1989 as all the rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to the child and his property. This could include upbringing, name, property, education, religion, medical treatment, marriage etc.

(b) Nadya has parental responsibility as Sasha’s mother but as an unmarried father Pavel would only have this if he had his name on the birth certificate, a court order or a formal agreement with Nadya.

4. (a) Under s8 Children Act 1989 a residence order decides with whom a child will live and this may be with either parent or jointly. A contact order will provide contact with a non resident parent, this could be visits, letters or phone calls. When deciding what to do courts will consider the paramountcy, non intervention and no delay principles under s1 Children Act 1989.

(b) Under s10 Children Act 1989 as Pavel is a parent he can apply for any s8 order and will not need parental responsibility in order to make an application.

Scenario 3

1. Under s3 Matrimonial Causes Act 1973 there is a one year bar to divorce but Ben and Salina have been married for just over one year so they can divorce. So under s1 Matrimonial Causes Act 1973 Ben must show irretrievable breakdown proven by one of five facts. There doesn’t appear to be any proof under the facts here yet. So candidates may advise that Ben would have to wait 2 years with consent or five years if Salina refuses to give her consent under s 1(2)(d) or s1(2)(e). Ben and Salina can still be separated despite living together for the purposes of these facts. They can prove separation by sleeping separately, living separate lives, eating apart and conducting household duties separately. Candidates could evidence this with any relevant case. Candidates may also note that there is insufficient evidence here to rely on the behaviour fact.

2. Under s5 Matrimonial Causes Act 1973, which applies to petitions under the five years separation fact, a respondent can rely on grave financial or other hardship as a reason to delay divorce and this could ultimately stop the divorce. This could be used by Salina in relation to her financial or religious objections. Under s10 Matrimonial Causes Act 1973, which applies to the 2 or 5 year’s separation fact, Salina could prevent a decree being made final until all finance and property issues were settled. Candidates could illustrate this with any relevant case.

3. Five of the factors relevant to this case under s25 Matrimonial Causes Act 1973. They will apply here by noting that Ben and Salina are young and have not been married long. Salina has no income and no potential for any whereas Ben has a good income and may be expected to provide some support. Ben may also have a pension which Salina will not but the marriage is short and her contribution minimal. There may be other examples of application which would also be credited.