



2023 UNIT SPECIFICATION

Title:	(Unit 7) Family Law
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1. Understand the legal sources, legal classifications and social relationships that make up Family Law	1.1 Describe the main sources of Family Law 1.2 Identify the court that hears Family Law cases	1.1 Outline of relevant statutes and case law, eg: <ul style="list-style-type: none">• Marriage Act 1949 and 1994, Matrimonial Causes Act 1973, Civil Partnership Act 2004, Gender Recognition Act 2004, Children Act 1989, Marriage (Same Sex Couples) Act 2013. Crime & Courts Act 2013 and Children & Families Act 2014; Civil Partnerships, Marriages and Deaths (Registration) Act 2019; Divorce, Dissolution and Separation Act 2020.• Relevant case law as detailed in this document 1.2 The Family Court as provided for in s.17 Crime & Courts Act 2013.

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	<p>1.3 Identify the legal and other personnel that deal with Family Law cases</p> <p>1.4 State the social relationships that are the concern of Family Law</p> <p>1.5 State which members of the family are the concerns of Family Law</p>	<p>1.3 Examples such as:</p> <ul style="list-style-type: none"> • Judges and magistrates, • solicitors, chartered legal executives, barristers, legal advisers in divorce centres (role in outline only), • mediators and CAFCASS officers. <p>1.4 Overview of:</p> <ul style="list-style-type: none"> • marriage & marriage breakdown; • cohabitation & cohabitation breakdown; • civil partnerships & civil partnership breakdown; • public and private child matters. <p>1.5 Outline, including but not limited to:</p> <ul style="list-style-type: none"> • Husbands and wives; • cohabittees; • civil partners; • transsexuals; • children and their parents and their extended family; • grandparents.
<p>2. Understand the consequences of the Human Rights Act 1998 for Family Law</p>	<p>2.1 Explain the effect of the Human Rights Act 1998 on Family Law</p>	<p>2.1 Key provisions of the Human Rights Act 1998; outline of the incorporation of the ECHR by the Human Rights Act 1998 and consequent implications for family law in England and Wales, eg,</p> <ul style="list-style-type: none"> • Art 6 ECHR – right to a fair hearing; • Art 8 ECHR – right to respect for private and family life; • Art 12 ECHR – right to marry and found a family; • Art 14 -prohibition of discrimination; <p>Impact on UK law e.g. Gender Recognition Act 2004, Civil Partnerships, Marriages and Deaths (Registration) Act 2019.</p>

	<p>4.2 Explain in outline Cohabitation Contracts</p> <p>4.3 Describe in outline the law as it relates to property rights on cohabitational breakdown</p> <p>4.4 Apply this understanding of the legal difference to a given situation</p>	<p>4.2 Types of cohabitation contract; requirements of a valid cohabitation contract; <u>Sutton v Mishcon de Reya and Another</u> (2004) Advantages of cohabitation contracts e.g.,</p> <ul style="list-style-type: none"> • shows evidence of ‘common intention’; • provides a framework for use if the relationship breaks down; • certainty; • issues of validity. <p>4.3 Trusts of Land and Appointment of Trustees Act 1996 s.14 & s.15; relevant case law, e.g:</p> <ul style="list-style-type: none"> • <u>Lloyds Bank v Rosset</u> (1990); • <u>Jones v Kernott</u> (2011); • <u>Stack v Dowden</u> (2007); • <u>Oxley v Hiscock</u> (2004) • other current and relevant decisions. <p>Property rights depend upon the ordinary law of property; outline requirements of and appropriate application of resulting trusts and constructive trusts using key cases.</p> <p>4.4 Application to a scenario.</p>
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<p>5.Understand the consequences of the Civil Partnership Act 2004</p>	<p>5.1 Explain what is meant by civil partnership</p> <p>5.2 Describe the legal consequences of civil partnership</p> <p>5.3 Describe the legal consequences of the breakdown of a civil partnership</p>	<p>5.1 Civil partnership registration and formation requirements, Civil Partnership Act 2004.</p> <ul style="list-style-type: none"> • Capacity and formalities • Equality Act 2010 and religious premises; • Marriage of Same Sex Couples (Conversion of Civil Partnerships) Regulations 2014 • Civil Partnerships, Marriages and Deaths (Registration) Act 2019 • Civil Partnership (Opposite Sex Couples) Regulations 2019 • <u>R (on the application of Steinfeld and Keidan) v Secretary of State for International Development (2018)</u> and declarations of incompatibility under s4 HRA 1998. <p>5.2 Civil partners have legal rights similar to those of married couples, eg:</p> <ul style="list-style-type: none"> • property rights, inheritance provisions, pension rights; • voidable civil partnership s.50 & s.51 CPA 2004. <p>5.3 Available orders:</p> <ul style="list-style-type: none"> • Conditional and Dissolution orders ss.37 and 44 Civil Partnership Act 2004; • Parties must be married 1 year before applying for dissolution order s 41 CPA 2004 • Separation order, s.56 Civil Partnership Act 2004; • Nullity s.49-s.54 Civil Partnership Act 2004. • Distinguish from corresponding orders for married couples
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	<p>5.4 Apply an understanding of the consequences of the Civil Partnership Act to a given situation</p>	<ul style="list-style-type: none"> • financial and property awards on breakdown of civil partnership, s.72 schedule 5 & schedule 6 Civil Partnership Act 2004; • Understanding of the changes which have been implemented under the Divorce, Dissolution and Separation Act 2020 <p>5.4 Application to a scenario.</p>
<p>6. Understand the legal provisions that enable a marriage to be ended</p>	<p>6.1 Outline the key features of voided marriages</p> <p>6.2 Explain that the irretrievable breakdown of marriage is the only ground for divorce</p> <p>6.3 State the requirements under s1(2)-(5) MCA 1973</p>	<p>6.1 Outline of void and voidable marriages;</p> <ul style="list-style-type: none"> • s11 MCA 1973; • s.12 MCA 1973 • Marriage (Same Sex Couples) Act 2013); • annulment of marriage; • bars to obtaining declaration of nullity s.13 MCA 1973; • relevant case law including <u>Szechter v Szechter</u> (1970) <u>Hirani v Hirani</u> (1983); <u>Singh v Singh</u> (1971) • Financial and property awards available • Corresponding provisions CPA 2004 <p>6.2 S.1(1) MCA 1973.</p> <p>6.3 S.1(2)-(5) MCA 1973 (as amended by Divorce, Dissolution and Separation Act 2020);</p> <p>Including but not limited to:</p> <ul style="list-style-type: none"> • Changes to terminology: application, applicant and respondent • Statement of irretrievable breakdown

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	<p>6.4 Explain how a divorce can be prevented or delayed</p> <p>6.5 Explain the process of mediation for family disputes</p> <p>6.6 Apply an understanding of the main requirements for establishing divorce to a given situation</p>	<ul style="list-style-type: none"> • Sole and joint applications • Conditional and final divorce orders • Statement of intention to continue with application • Time limits <p>6.4 Relevant statutory provisions:</p> <ul style="list-style-type: none"> • Parties must have been married for a year before an application is presented, s.3 MCA 1973; • S.10 MCA 1973; allows a court to consider the financial provision for one party before making the final divorce order. • Corresponding provisions Civil Partnership Act 2004. • Availability of financial and property awards <p>6.5 In outline:</p> <ul style="list-style-type: none"> • the importance of mediation in family matters • Mediation Information and Assessment Meetings ('MIAM') • Family Procedure Rules 2010 requirements. <p>6.6 Application to a scenario.</p>
<p>7. Understand the relevance of judicial separation</p>	<p>7.1 State the ground for seeking a judicial separation</p>	<p>7.1 S.17-18 MCA 1973, s56 CPA 2004</p> <ul style="list-style-type: none"> • Judicial separation order s17 MCA 1973 • Separation order s56 - 57 CPA 2004 • Application by one or both parties to the marriage • Ground for judicial separation established by statement that the party/parties seek judicial separation

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	<p>7.2 State the consequences of judicial separation</p> <p>7.3 Apply an understanding of judicial separation to a given situation</p>	<ul style="list-style-type: none"> • circumstances where appropriate: often used where one-year time bar applies, where objection to divorce by one or both parties on religious or social grounds. • Financial orders available • Understanding of the changes that have been implemented under the Divorce, Dissolution and Separation Act 2020. <p>7.2 Examples from but not limited to:</p> <ul style="list-style-type: none"> • Marriage still valid; • Parties cannot remarry; • Financial relief can be granted as on divorce; • Obligation to cohabit ceases; • cannot succeed on intestacy; • an existing will is not affected. • Corresponding consequences for civil partnerships <p>7.3 Application to a given scenario.</p>
<p>8. Understand financial provision during marriage and after divorce</p>	<p>8.1 Explain the circumstances in which a party to marriage might be eligible for financial provision during marriage and state the legal sources for doing so.</p>	<p>8.1 Examples such as:</p> <ul style="list-style-type: none"> • Where the parties are separated but still married • In cases of domestic abuse where one party has been ordered to leave the family home • S.s1-3 Domestic Proceedings and Magistrates Court Act 1978 ('DPMCA 1978') • s.27 MCA 1973 • Appropriate venues for each • Limitations on orders.

	<p>8.2 State the grounds that must be established before a financial order can be made by the Family Court for financial provision during marriage</p> <p>8.3 State the types of orders the courts have the power to make on divorce, annulment and legal separation</p>	<p>8.2 Grounds s.1 DPMCA 1978;</p> <ul style="list-style-type: none"> • that the respondent has failed to provide reasonable maintenance for the applicant or for any child of the family; • that the respondent has behaved in such a way that the other cannot reasonably be expected to live with him • that the respondent has deserted the applicant. • Factors to apply s3 DPMCA 1978. <p>Grounds s27 MCA 1973:</p> <ul style="list-style-type: none"> • that the respondent has failed to provide reasonable maintenance for the applicant • that the respondent has failed to provide reasonable maintenance for a child of the family. <p>8.3 Financial remedies</p> <ul style="list-style-type: none"> • s.21-s.24 MCA 1973; • maintenance pending suit; • secured and unsecured periodical payment orders; • lump sum orders; • property adjustment orders; • Martin Order; • Mesher Order; • pension orders; • orders for children and s25(3) MCA 1973 • S.25A MCA 1973 clean break principle; • <u>White v White</u> (2000), <u>Miller v Miller</u>; <u>McFarlane v McFarlane</u> (2006), <u>Charman v Charman</u> (2007) and other relevant case law; • relevance of pre- and post- nuptial agreements;
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	8.4 Apply an understanding of financial provision to a given situation	8.4 Application to a scenario.
9. Understand private law orders for children under the Children Act 1989	9.1 Explain the concept of parental responsibility	9.1 Parental responsibility; <ul style="list-style-type: none"> • s.3(1) Children Act 1989 (CA 1989) all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
	9.2 Identify persons or bodies who have or can acquire parental responsibility	9.2 Including: <ul style="list-style-type: none"> • Married and unmarried parents and others including step-parents, grandparents, adoptive parents, special guardians and guardians. • parental responsibility agreement; • parental responsibility order s.4 CA 1989 • Effect of Adoption and Children Act 2002. • Sharing parental responsibility s2(7) CA 1989 • Loss of parental responsibility including Gender Recognition Act 2004.
	9.3 Explain the relevant case law relating to parental responsibility	9.3 Including: <ul style="list-style-type: none"> • <u>Gillick v West Norfolk and Wisbech Area Health Authority</u> (1985); ‘Gillick competence’ • Other relevant cases - e.g. • <u>S v R (Parental responsibility)</u> (1993) - matters to be considered on application for PR;

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	<p>9.4 State the duties that parents owe their children</p> <p>9.5 Demonstrate how the principles and factors of the Children Act 1989 are applied by the courts when making decisions about children</p> <p>9.6 Explain the meaning and scope of s8 Children Act 1989 orders</p>	<ul style="list-style-type: none"> • <u>re G (Parental Responsibility: Education)</u> (1994) - consultation on exercise of PR; • <u>Dawson v Wearmouth</u> (1999) - change of name; • <u>Re A (Children)(Specific Issue Order: Parental Dispute)</u> (2001) - education; <u>Re S (Specific Issue Order: Religion: Circumcision)</u> (2005). • <u>Re L (Contact: Genuine Fear)</u> (2002). <p>9.4 Includes: child’s upbringing, property, education, religion, surname, medical treatment, marriage.</p> <p>9.5 Key principles:</p> <ul style="list-style-type: none"> • S.1(1) CA 1989, the paramountcy principle; • s.1(5) CA 1989, the non-intervention principle; • s.1(2) CA 1989, the avoidance of delay principle; • s.1(2A) CA 1989, the presumption of parental involvement; • s.1(3) CA 1989, ‘welfare checklist’; <p>9.6 Three potential orders relating to children and their upbringing</p> <ul style="list-style-type: none"> • Child Arrangements Order, • Prohibited Steps Order, • Specific Issue Order. • Relevant case law for example: <u>Re G (Children)</u> (2006) and <u>Re B (a Child)</u> (2009); <u>Re A (Children) (Specific Issue Order: Parental Dispute)</u> (2001); <u>Re S (Specific Issue Order: Religion: Circumcision)</u> (2005); <u>Re S (Children’s Views)</u> (2002); <u>Re B (a Child)</u> (2009)
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	<p>9.7 State who can apply for s.8 orders</p> <p>9.8 Explain the meaning and scope of Family assistance orders</p> <p>9.9 Apply an understanding of private law orders to a given situation</p>	<ul style="list-style-type: none"> • Specific issues that arise (for example, contact, decisions requiring consent of all parties with parental responsibility, enforcement et al) <p>9.7 Distinguish different categories of applicant:</p> <ul style="list-style-type: none"> • S.10(1) CA 1989, • s.10(4) CA 1989; • s.10(5) CA 1989, • s.10(9) CA 1989. <p>9.8 S.16 CA 1989.</p> <ul style="list-style-type: none"> • CAFCASS officer or social worker • ‘advise, assist and ... befriend’ anyone named in the order, including the child or parent. • Short-term, and only up to 12 months • Only available when court could make a s8 Children Act 1989 order • Requires consent of every person named in the order except for the child. <p>9.9 Application to a scenario.</p>
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Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Family Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 63 First Line Family Law Advice and Unit 64 Family Law Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2011

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