



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

### LEVEL 3 UNIT 12 – THE PRACTICE OF FAMILY LAW

JUNE 2023

#### Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

### CHIEF EXAMINER COMMENTS

14 candidates sat the exam which is the lowest number of candidates over the last 10 sessions.

The paper was a fair assessment of candidate knowledge and understanding across the specification.



## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1 – domestic abuse

Overall performance for this question by most candidates was good.

**(a)**

Some candidates answered well, whilst others tended to simply focus on domestic abuse protection orders and notices, with in some cases limited explanation and little or no reference to other protections such as specialist police units.

**(b)** - Generally, very well answered

**(c)**

Disappointing answers. Yet again some candidates not understanding “eligibility” and simply saying that Tracey was eligible because she had suffered domestic abuse, rather than addressing the relationship between Tracey and Mike.

**(d)** - Most candidates able to show good knowledge of the relevant procedure to obtain an ex parte non molestation order.

### Question 2 – children

This question produced the weakest performance overall. A number of candidates did not have the relevant knowledge re the position of grand-parents wanting to have some contact with grandchildren which is an area of increasing interest.

**(a)** - Generally good performance by the majority of candidates.

**(b)**

Some candidates appeared to lack a full understanding of the case study. They referenced s10 (5B) Children Act 1989 which states that a relative of a child can apply, only where a child has lived with that person for at least a year immediately preceding the application.

Those candidates did not therefore recognise that Carole and David as grandparents did not fit any of the categories in s10(4) and s10(5) and so needed to apply to the court for leave to apply.

The CS did refer to the child, and mother, returning to live with grandparents “a year ago.” But it also stated that 6 months later (so just after Christmas 2022) the father had taken the child away to live with his paternal grandparents.

Hence, s10(5B) was not applicable as Nathan would not have been living with Carole and David for at least a year **immediately preceding the application**.

**2(c)**

Performance of a number of candidates who showed a lack of the MIAM requirement was disappointing.

**2(d)**

Some candidates with good preparation and good exam skills were able to produce good answers – identifying a principle, explaining it and applying it to case study. Others either did not explain, or did not apply and so did not achieve all marks available.

**Question 3 – divorce**

This question produced the best performance overall. Candidates showed evidence of good knowledge of the Divorce, Dissolution and Separation Act 2020 and of the changes made.

**(a)**

The majority of candidates were able to achieve full marks (2 marks). A few did not as they either did not provide citation or referenced the Matrimonial Causes Act rather than the Divorce, Dissolution and Separation Act.

**(b)**- Good answers from all candidates.

**(c)** - The majority of candidates showed good knowledge of the new procedure for divorce.

**Question 4 – financial settlement**

This question produced a range of responses across the grades achievable.

**(a)** - Generally good knowledge of the various property orders shown.

**(b)** - Generally good knowledge of the various financial orders shown.

**(c)(i)**

A significant number of candidates were able to show knowledge of the First Appointment, although a few were lacking in knowledge. This is a practice paper, so knowledge of the various procedures is important.

**4(c)(ii)**

Level of knowledge shown varied with 50% of candidates showing a good level of knowledge, while 50% were not able to show this. This is a practice paper, so knowledge of the various procedures is important.

**SUGGESTED POINTS FOR RESPONSE****LEVEL 3 UNIT 12 – THE PRACTICE OF FAMILY LAW**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<b>Protection by police and criminal justice system</b> Specialist domestic violence units Bail conditions can be imposed by the court if an offence has been committed and perpetrator has been charged and released on bail Breach of bail conditions can be dealt with by simply referring to the police Police can issue a domestic abuse protection notice to provide immediate protection Police can apply to magistrates for domestic abuse protection order to allow victim to obtain advice/support Domestic Violence Crimes and Victims (DVCV) Act 2004 makes a breach of non-molestation order a criminal offence Credit reference to Domestic Abuse Act (DAA) 2021	4
1(b)	<b>Explain the purpose of a non-molestation order</b> Under s42 Family Law Act 1996, a non-molestation order is an order to prevent the respondent from molesting the applicant or any relevant child. Molestation includes physical behaviour e.g. physical violence and threats of violence and also Action which harasses the applicant e.g. nuisance phone calls, loitering near the applicant's home. Credit reference to power of arrest In this case Mike's verbal threats and the incidents of violence are affecting both Tracey and Fern and could be sufficient to amount to molestation. AORP.	4
1(c)	<b>Eligibility to apply for a non-molestation order</b> s62 FLA 1996 The applicant and the respondent must be "associated persons" This includes a range of relationships including spouses, ex-spouses, civil partners, co- habitants Here Tracey and Mike have been co-habiting, so they are associated persons and Tracey can apply for an order Credit reference that Fern is a relevant child	3

1(d)	<b>Procedure to obtain an ex parte non-molestation order</b> Prepare the application (FL401) Prepare the supporting statement which must include the reason for the urgent application Arrange for the statement to be signed There is no court fee for ex parte applications Issue the application with copies of the above documents at court Court will allocate a hearing date Prepare and attend the without notice hearing Application considered and order issued Order served on police Arrange service of the order and notice of the full hearing on the Respondent Service must take place a minimum of two days before the final hearing Credit any other relevant point e.g. explanation of when <i>ex parte</i> appropriate.	7
<b>Question 1 Total: 18 marks</b>		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<b>Child arrangements order (CAO)</b> s.8 Children Act (as amended by s.12 Children and Families Act 2014) The order that will allow Carole, David and Lucy to see Nathan is a Child Arrangements Order (CAO) A CAO regulates who a child should live with, and with whom a child should have contact In this case, the court could decide how often and how, e.g. face to face, or by phone, or by letter, Carole and Lucy should have contact with Nathan.	4
2(b)	<b>Eligibility to apply for a CAO</b> s.10(4) Children Act 1989 Only the parent or guardian or those with parental responsibility have an automatic right to apply for S8 CA orders S10(5) Children Act 1989 Lists others who can apply for a CAO of right including a relative with whom the child has lived for at least a year immediately preceding the application All others need leave of the court to apply, including grandparents who do not normally have an automatic right to apply Carole and David as grandparents will need to apply to the court for leave to apply for a CAO (1) as Nathan has not lived with them for 6 months The Court will consider a number of factors including their relationship with Nathan As Carole and David have had a close relationship with Nathan, caring for him when his mother became ill, this will be a factor to be considered. When an application is made for a CAO it should be served on everyone with parental responsibility	6

	In this case, it should be served on Winston. Although he was not married to Stella, he does have parental responsibility as he was named on birth certificate and Nathan was born after 1 December 2003.	
2(c)	<p><b>Mediation, Information and Assessment meeting</b></p> <p>Before Carole and David make an application for a CAO, a Mediation, Information and Assessment Meeting (MIAM) must be arranged</p> <p>The parties must attend</p> <p>The aim of this meeting is for the parties to try to resolve matters without the need for court action.</p> <p>Here Carole and David and Winston should attend a MIAM to try to agree on contact for Carole and David with Nathan</p> <p>Credit any other relevant point e.g. rationale underpinning MIAM's.</p>	4
2(d)	<p>Explain any <b>two</b> of the following:</p> <p><b>s.1(1) CA 1989 Child's welfare is paramount</b></p> <p>The welfare of the child should come before and above any other consideration in deciding whether to make an order.</p> <p>Application – e.g. the welfare of Nathan should come before and above any other considerations, including the wishes of Winston and of Carole and David and Lucy, in deciding whether to make an order.</p> <p><b>s.1(2) CA 1989 No delay principle</b></p> <p>Issues involving the children should be resolved as soon as possible since a child will settle in a particular home and be distressed if has to move.</p> <p>Application – e.g. issues involving Nathan should be resolved as soon as possible so that any distress caused is kept to the minimum, particularly as his father has removed him from relatives he knew - his sister Lucy and Carole and David</p> <p><b>s.1(5) CA 1989 No order principle.</b></p> <p>The court should not make the order(s) unless it considers that doing so would be better for the child than making no order at all. The court must be assured that there will actually be a benefit to the child if the order is made.</p> <p>Application – e.g. the court would prefer Carole and David agree arrangements with Winston rather than the court making an order. It seems this may be unlikely in this case as Winston is not responding to phone calls.</p> <p><b>Shared parenting principle</b></p> <p>s.1(2)(A) CA 1989 (as amended by s.11 CFA 2014) There is a presumption, subject to evidence to the contrary, that involvement of a parent in the life of a child will further the child's development.</p> <p>Application – credit any relevant application.</p>	6
<b>Question 2 Total:20 marks</b>		

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<b>The ground for a divorce</b> Irretrievable breakdown of marriage S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020 .	2
3(b)	<b>Who can apply for a divorce</b> Under DDSA 2020 one or both parties can apply for a divorce. Either Mollie or Imran can apply for a divorce under this Act A joint application is also possible.	2
3(c)	<b>The process for obtaining a divorce</b> An application for a divorce order (must be completed and submitted Submission may now be submitted on-line The marriage certificate must be submitted and a fee paid A statement that the marriage has broken down irretrievably must be submitted Where application is a sole application – service on other party After 20 weeks the applicant, Mollie or Imran or both, can apply for a conditional order (former decree nisi) This period is to allow parties to consider their position and to withdraw the application if they wish to do so After 20 weeks the applicant(s) will apply for a conditional order Applicant(s) must then wait 6 weeks before applying for a final order Court will issue final order and marriage is terminated. Credit AORP e.g. introduces “no fault” divorce procedure simplified, terminology modernised, divorce should be obtained within 6 months.	7

**Question 3 Total:11 marks**

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<b>Orders dealing with the family home</b> An order to transfer the matrimonial home, subject to mortgage, into the name of one party only An order for the sale of the matrimonial home and the division of the proceeds between the parties  A trust of land order, either a Mesher or a Martin order With a Mesher order, the property is retained for the occupation of one party until a trigger date, e.g. when a child becomes 18 or the occupant re-marries. It is then sold and the proceeds divided With a Martin order, the property is retained by the occupant for life, or until re-marriage Here, a Mesher order would be appropriate as it would preserve a home for Mollie and the children, but would allow Imran to recover some benefit in the future Credit any other suggestion with a reasoned rationale.	7

4(b)	<p><b>Financial orders</b></p> <p>Any <b>two</b> from the following:</p> <p><b>Maintenance pending suit</b> – an order to make regular payments until the decree absolute, when periodical payments become effective Here, this order would provide Millie with an income during divorce proceedings as she has no income of her own</p> <p><b>Periodical payments order</b> – an order to pay a specified sum on a regular basis Here, this order would provide Mollie with a regular income as she is not earning.</p> <p><b>A pension sharing order</b> – an order to create a separate pension fund for the applicant from the existing pension fund Imran has good pension provision but Mollie has none. This would provide Mollie with a pension</p> <p><b>A lump sum order</b> – an order to pay a stated capital sum Imran has an ISA and receives bonuses, and it may be possible compensate Mollie for loss of pension rights.</p>	4
4(c)(i)	<p><b>The First Appointment</b></p> <p>The First Appointment is a review appointment to save time and costs The judge will decide to what extent questionnaires should be answered and what documents should be provided The judge may give further directions and will direct referral to a financial dispute resolution appointment or a final hearing An interim order may be made.</p>	3
4(c)(ii)	<p><b>The Financial Dispute Resolution Hearing (FDR)</b></p> <p>A meeting for the purpose of conciliation and to seek a settlement It is conducted on a “privileged basis” The parties are encouraged to lay their cards on the table Nothing said here can be repeated in court at a later date 7 days before the appointment the applicant must file details of offers and proposals The parties must attend with their legal advisers The parties must make their best endeavours to reach a settlement If a settlement is reached then the judge will make an order If no agreement is reached then the judge will set the date for a final hearing and will issue directions.</p>	7
<b>Question 4 Total: 21 marks</b>		