



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 12 – THE PRACTICE OF FAMILY LAW

### 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 November 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

5 candidates or fewer completed this exam. For this reason, Chief Examiner comments on overall and question-specific performance has not been included as the data is too limited for meaningful trend analysis.



**SUGGESTED POINTS FOR RESPONSE**

**NOVEMBER 2023**

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

<b>Question Number</b>	<b>Suggested Points for Responses</b>	<b>Marks (Max)</b>
1(a)	<p><b>Parental responsibility</b></p> <ul style="list-style-type: none"> <li>• s3(1) Children Act CA) 1989</li> <li>• 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</li> <li>• This covers all aspects of a child’s life</li> <li>• Credit examples e.g. decisions re education, religion, medical treatment</li> </ul>	4
1(b)	<p><b>Who has parental responsibility (PR)</b></p> <ul style="list-style-type: none"> <li>• The natural mother has PR automatically</li> <li>• Barbra as natural mother of David and Naomi has PR</li> <li>• As an unmarried father Reuben has PR as he was named on children’s birth certificates, and they were born after 1 December 2003</li> <li>• Credit: Tracey does not have PR <u>as</u> not married to Barbra</li> </ul>	3
1(c)(i)	<p><b>Child arrangements order (CAO)</b></p> <ul style="list-style-type: none"> <li>• Child arrangements order</li> <li>• An order which decides who a child will live with and who a child will have contact with</li> <li>• Examples of contact – direct or indirect etc</li> <li>• In this case, the order will ensure Reuben spends time with children and Barbra will have to comply</li> </ul>	4
1(c) (ii)	<p><b>Specific issue order</b></p> <ul style="list-style-type: none"> <li>• A specific issue order</li> <li>• An order where those with PR cannot agree on a major aspect of a child’s life</li> <li>• Here, court will make the decision as Barbra and Reuben cannot agree how the children should be educated</li> </ul> <p>Alternatively can credit a Prohibited Steps Order</p> <ul style="list-style-type: none"> <li>• A prohibited steps order</li> <li>• An order to stop a party taking actions outlined in order</li> <li>• Here, a PSO could stop Barbra from making decisions regarding the children’s education without Reuben’s consent</li> </ul>	3



Question Number	Suggested Points for Responses	Marks (Max)
1(d)	<p><b>Procedure to obtain a s8 Children Act order</b></p> <p>Attendance at a MIAM            Complete Form C100 and file with court            Court will issue a hearing date or directions appointment            Serve C100 on respondent at least 14 days before hearing            Respondent to file and serve Form C7 acknowledgement of service            CAFCASS to be informed within 48 hours in order to do necessary checks            FHDRA for court to investigate issues            Court will consider a timetable for proceedings            Court direction on filing of documents            Court may require a CAFCASS report            Final hearings and orders</p>	9
<b>Question 1 Total:23 marks</b>		
2(a)(i)	<p><b>Purpose of a non-molestation order</b></p> <p>s.42 FLA 1996</p> <p>To prevent the respondent from molesting the applicant or relevant child            Molestation includes physical behaviour e.g. physical violence and threats of violence and also action which harasses applicant e.g. nuisance phone calls, loitering near applicant’s home            In this case Kingston has been physically (shaking and throwing to the ground) and verbally abusive and sending threatening texts            Shaniyse is scared for the safety of herself and the children  <b>Credit:</b> The children are distressed and are having nightmares and have said Kingston scares them  <b>Credit:</b> Breach of a non-molestation order is a criminal offence so the police could arrest Kingston if this occurs</p>	4
2(a)(ii)	<p><b>Key considerations for the court</b></p> <ul style="list-style-type: none"> <li>• All the circumstances of the case</li> <li>• Including the health, safety and welfare of the applicant and of any relevant child</li> </ul>	2
2 (b)(i)	<p><b>An occupation order</b></p> <ul style="list-style-type: none"> <li>• s33 Family Law Act (FLA) 1996</li> <li>• An occupation order</li> <li>• An order that deals with the occupation of the family home</li> <li>• Here Shaniyse wishes to prevent Kingston excluding her from the family home and wishes to remain with the children in the home</li> <li>• Credit AORP</li> </ul>	3

Question Number	Suggested Points for Responses	Marks (Max)
2 (b)(ii)	<p><b>The “balance of harm” test</b></p> <ul style="list-style-type: none"> <li>• The balance of harm test</li> <li>• Considers the harm that would be suffered by applicant and relevant child and whether they are likely to suffer significant harm if an order <b>IS NOT</b> made , balanced against</li> <li>• The harm that would be suffered by respondent and relevant child if an order <b>IS</b> made</li> <li>• Here Shaniyse has suffered significant harm (e.g. kicking) and is likely to suffer further due to the conduct of Kingston if an order is not made and has nowhere else to live</li> <li>• Kingston is unlikely to suffer significant harm if an order is made – he can move in with his parents</li> <li>•</li> </ul>	5
<b>Question 2 Total:14 marks</b>		
3(a)	<p><b>Ground for divorce</b></p> <ul style="list-style-type: none"> <li>• Irretrievable breakdown of marriage</li> <li>• S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020</li> <li>• The DDSA 2020 introduced “no fault” divorce</li> <li>• Morna simply needs to state that the marriage has irretrievably broken down</li> <li>• With very limited exceptions, the Paul, the respondent, cannot object to the divorce</li> </ul>	4
3(b)(i)	<p><b>Commencing divorce proceedings</b></p> <ul style="list-style-type: none"> <li>• Morna must complete and submit an application for a divorce order – form D8</li> <li>• The application can be submitted online</li> <li>• Under the DDSA it is now possible to make a joint application</li> <li>• Morna will need to submit her marriage certificate and pay the fee</li> <li>• Morna also needs to include a statement that the marriage has broken down irretrievably</li> <li>• AORP e.g. refence to statement of reconciliation</li> </ul>	4

Question Number	Suggested Points for Responses	Marks (Max)
3(b)(ii)	<p><b>Service of application</b></p> <ul style="list-style-type: none"> <li>• Personal service via a process server</li> <li>• First class post, or other service (that provides next day delivery)</li> <li>• Email service</li> <li>• Where a solicitor is instructed to accept service, document exchange</li> <li>• Service should be within 28 days of issue</li> </ul>	3
3(c)	<ul style="list-style-type: none"> <li>• There is a 20 week “cooling off” period following the application for divorce to allow the party/parties to consider their position and to withdraw the application if they wish to do so</li> <li>• If applicant does not withdraw the application, the conditional order can be applied for (formerly the decree nisi)</li> <li>• After a further 6 weeks a final order (formerly the decree absolute) can be applied for</li> <li>• The final order ends the marriage</li> </ul>	3
<b>Question 3 Total:14 marks</b>		

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p><b>Financial orders</b></p> <p><b>Maintenance pending suit</b></p> <ul style="list-style-type: none"> <li>• Maintenance pending suit</li> <li>• An order for one party to make periodical payments to the other party to provide regular income up to the date of the final order</li> <li>• Morna appears to have no money of her own so would need help with living, legal costs etc</li> </ul> <p><b>Periodical Payments</b></p> <ul style="list-style-type: none"> <li>• Periodical payments</li> <li>• An order for one party to make periodical payments to the other party to provide regular income</li> <li>• Here, it appears that Morna has no income but will require money to live</li> </ul> <p><b>Lump sum</b></p> <ul style="list-style-type: none"> <li>• A lump sum order</li> <li>• An order for one party to pay the other party a lump sum</li> <li>• Here, Morna will require a home and a lump sum could pay for this</li> </ul> <p><b>Property transfer/sale</b></p> <ul style="list-style-type: none"> <li>• A property transfer/sale order</li> <li>• An order to deal with property by transfer, sale etc</li> <li>• Here, both parties will need a home. Court might order sale of family home and proceeds split</li> </ul> <p><b>Pension sharing order</b></p> <ul style="list-style-type: none"> <li>• A pension sharing order</li> <li>• an order that part of pension to be paid to former spouse which can be made in relation to a pension in payment</li> <li>• Here Paul has a pension, but Morna does not</li> </ul> <p><b>Pension attachment order</b></p> <ul style="list-style-type: none"> <li>• A pension attachment order</li> <li>• An order where the court set aside a portion of Paul 's pension, which Morna will receive when Paul retires</li> <li>• Here Paul has a pension, but Morna does not</li> </ul>	6

Question Number	Suggested Points for Responses	Marks (Max)
4(b)	<p><b>The 'clean break principle' s.25 A MCA 1973</b></p> <ul style="list-style-type: none"> <li>• s25A MCA 1973</li> <li>• Clean break principle provides that the parties should be financially independent of each other after divorce, if possible</li> <li>• Could apply here because parties are older and there are sufficient assets to divide</li> <li>• But might not apply because Morna has no income and may require periodical payments</li> </ul>	3
4(c)	<p><b>Procedure for obtaining a financial order</b></p> <ul style="list-style-type: none"> <li>• Form A is served on the respondent</li> <li>• With the notice of first appointment</li> <li>• Applicant and respondent complete and exchange Form E no less than 35 days before 1st appointment</li> <li>• Questionnaires, statement of issues and chronology, Forms G and H filed and served</li> <li>• First appointment takes place to define issues</li> <li>• May be used as a FDR appointment</li> <li>• FDR appointment for conciliation and settlement</li> <li>• Parties should place all their cards on the table</li> <li>• Court can make consent orders if agreement reached</li> <li>• If no agreement reached then date set for final hearing and directions given</li> <li>• Parties file open proposals and responses</li> <li>• If no agreement, go to final hearing where orders will be made</li> </ul>	10
<b>Question 4 Total:19 marks</b>		