



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 7 – 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

Candidates performed well on this Question Paper. Candidates demonstrated familiarity with the Unit Specification and had clearly reviewed past papers and Chief Examiner reports. Candidates demonstrated knowledge and understanding as well as ability to apply the law relevant to Level 3 standard.

Candidates should continue to note the following points:

- Be prepared to use case law. Key cases are noted in the Unit Specification.
- Key statutes should be known, with accurate dates noted. Key legislative provisions should also be precisely remembered, including definitions of legal concepts.
- Application of the law is of great importance when answering a problem scenario. Be prepared to discuss the facts of the case when applying the law.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Most candidates were able to state the consequences of an order for judicial separation. Some candidates discussed the requirements to obtain a judicial separation order, which was not the question. Remember to read the question carefully.

Question 2

Most candidates could answer this question accurately, noting that the protection from discrimination under Article 14 ECHR applies to the enjoyment of the other rights contained in the ECHR. Candidates who simply stated that Article 14 ECHR protects people from discrimination, without more explanation, did not receive the 1 available mark.

Question 3

Candidates understood the law here and could cite the Civil Partnership Act 2004 and the Matrimonial Causes Act 1973. Candidates who cited The Marriage (Same Sex Couples) Act 2013 received credit. The key point – that same sex couples can choose either marriage or civil partnership – was understood by nearly all candidates.

Question 4

Most candidates could provide a satisfactory definition of a cohabitation contract as well as two advantages of forming one. Some candidates provided full and interesting explanations of the advantages, demonstrating good understanding.

Question 5

Some candidates found this a challenging question in terms of providing a detailed answer. A good answer noted that a Mesher Order is one of several property orders a court can make on divorce or dissolution. Candidates who noted three basic elements of the order (that it centres on the family home, is for the benefit of children of the family, and how the order comes to an end) received full marks.

Question 6

This straightforward question was answered well by some. Credit was given to candidates who made sensible suggestions that matched the factors noted in case law. A significant number of candidates simply did not know the answer to the question.

Question 7

Many candidates were able to provide a precise definition of marriage from one of the two relevant cases. Full marks required a full and accurate definition as well as precise identification of the case name.

Question 8

Most candidates demonstrated understanding of the grounds for a voidable civil partnership citing the CPA 2004. Candidates should be aware that if, at the time of the civil partnership formation, the respondent was suffering from a sexually transmitted disease without the applicant's knowledge, this is not a ground for the civil partnership to be voidable. Some candidates presumed that the provisions under s12 MCA 1973 were repeated in full in the CPA 2004.

Question 9

Most candidates were able to identify two of the four principles in s1 CA 1989 correctly. A few candidates cited elements of the welfare checklist which was not correct. Note that the question asked you to explain the principles. Where candidates stated the principle in full, credit was awarded. Where candidates attempted to explain the principles in their own words, credit was similarly awarded where this successfully expressed the essence of the principle.

Question 10

The majority of candidates answered this question accurately, though not all were able to cite s1(1) MCA 1973.

Question 11

This is a challenging question, requiring detailed knowledge of s10(4) CA 1989. Very few candidates achieved full marks as a result. However, many candidates were able to achieve some of the marks available.

Section B

Scenario 1

Question 1

This question was very well done by candidates, with some achieving full marks. The key fact in this case is that Anne is the sole legal owner of the family home, and so it is presumed that she holds the entire beneficial interest. It is therefore up to Ben to rebut this presumption if he is to acquire a share in the property. This would allow him to attempt to block the sale of the house, or to acquire some of the proceeds of its sale. Strong answers cited key cases such as Stack v Dowden (2007) and Lloyd's Bank v Rosset (1990) and cited the test of common intention plus

detrimental reliance as well as Ss14 and 15 TOLATA 1996. Application was also key, and the best answers made full use of the available facts.

Question 2(a)

This question required knowledge of cohabitation agreements and what is required for the agreement to have a chance of being upheld as valid and binding. Candidates generally did a good job on this question.

(b)

Candidates were largely able to cite advantages to cohabitation contracts. However, full marks were not available unless these were explained in the context of Anne and Ben and the facts of the scenario.

Question 3(a)

Most candidates were able to state a definition that covered most of the elements in s3(1) CA 1989. Credit was given where candidates were able to explain that parental responsibility includes both rights and responsibilities towards the child and the child's property. Full marks required the statutory citation.

(b)

Most candidates stated correctly that Ben has parental responsibility as he is named on the children's birth certificates. Fewer candidates could cite s4 CA 1989 or explain that this is because the children were born after 1 December 2003.

(c)

Marks were awarded here for general points (e.g., that Ben has the right to be involved in decision-making for the children along with Anne) or for more specific aspects of parental responsibility (e.g., giving consent to standard, reversible, medical treatments).

Question 4

Most candidates correctly stated that Anne will apply for child arrangements order under s8 CA 1989. Not all candidates went on to state that the facts lead towards an application by Anne for an order that the children live with both her and Ben.

Question 5

Most candidates correctly stated that Ben will also apply for a child arrangements order under s8 CA 1989. However, in this case Ben wants the order to state that the children live with him and (presumably) have contact with Anne. Candidates were then required to apply three elements of the welfare checklist to the facts: most candidates could identify factors from the checklist, but in many instances, application could be more thorough and detailed.

Scenario 2

Question 1(a)

Candidates who did well on this question were able to identify the law on void marriage with a statutory citation. Application of this should have gone on to note that the marriage between Kara and Jamal might be void on the basis that they are within the prohibited degrees of relationship and too closely related to each other. Because they have the same mother, their marriage is void under s11 MCA 1973.

(b)

Candidates should have identified that Kara will need a decree of nullity to confirm that her marriage to Jamal is void. Obtaining such an order can provide certainty for both parties and make it possible to apply for financial orders.

Question 2

Most candidates who answered this question were able to identify five relevant financial orders. Candidates are reminded to use the facts to discuss the relevance of each order. For example, if a lump sum order is suggested, candidates should explore where the lump sum will come from. In this scenario, Jamal could sell his investments to provide a lump sum payment to Kara.

Question 3

Most candidates are aware of the case of Radmacher v Granatino (2010) and the fact that prenuptial agreements are not automatically legally binding. Many candidates were able to discuss the criteria that the Supreme Court set down in that case, focussing on the issues of duress, fairness and the possibility that circumstances might have changed since the agreement was first made. Candidates found it difficult to achieve full marks, as this required describing the law accurately but also applying it to the scenario.

Question 4

This was a straightforward question and was well-answered. Most candidates were clear that Kara could either marry Nicola or form a civil partnership with her and could cite the relevant statutes.

Question 5

This question was answered well by some candidates. Candidates should note that there are many legal advantages to a formalised relationship (e.g., the ability to seek financial orders, the right to inherit in case of intestacy) in addition to consortium issues. Some candidates only noted consortium points, which did not achieve full marks.

Scenario 3

Question 1

Candidates who answered this question showed good understanding of the new procedure for dissolution of a civil partnership. The key point is that 'irretrievable breakdown' remains the sole ground for dissolution, but no longer needs to be supported by evidence of one of the four facts. The new time limits should be noted along with the possibility of a joint application.

Question 2

Candidates demonstrate good understanding of the financial orders post-dissolution. The key to gaining full marks is to ensure that the orders are discussed in the context of the parties. Where an order is suggested, it is essential to make sure that it could actually be made in the circumstances. For example, if a lump sum order is suggested, where will the lump sum come from? If Tim applies for a pension order, does Zak actually have a pension?

Question 3

Most candidates were able to identify a prohibited steps order under s8 CA 1989 as the appropriate order for Tim to apply for. Candidates are reminded to provide a definition of the order and its statutory citation.

Question 4

Candidates generally do a good job remembering and stating factors in the welfare checklist. Applying the factors to the scenario is not always as well done. Many candidates are advised to discuss the facts more fully when explaining the relevance of one or more parts of the welfare checklist.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 UNIT 7 – FAMILY LAW

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	Three from: <ul style="list-style-type: none"> No longer have to cohabit Cannot remarry/remain married/are not divorced Remain a spouse for the purposes of a will A court can make some financial orders 	3
Question Number	Suggested Points for Responses	Marks (Max)
2	Right to enjoy the rights in the ECHR without discrimination	1
Question Number	Suggested Points for Responses	Marks (Max)
3	Civil partnership under CPA 2004 Marriage under M(SSC)A 2013 or MCA 1973 as amended	2
Question Number	Suggested Points for Responses	Marks (Max)
4	Agreement made by two people who are not married or civil partners regarding finances/property in the event of a relationship breakdown Two from the following: <ul style="list-style-type: none"> Creates clarity Provides certainty Provides a framework that is not available through statute Provides evidence of the parties' intentions May reduce hostility after relationship breakdown May reduce the costs of dispute resolution Other reasonable comments 	3
Question Number	Suggested Points for Responses	Marks (Max)
5	Financial order: Settlement of property order, usually the matrimonial home and its distribution on divorce Essence of the order: A percentage of the property is held on trust for one party usually until the youngest child reaches 18 years or ceases full-time education How the order ends: Property is sold and proceeds divided between the parties as per the order after a 'trigger event' Reasonable attempts to make these points.	3

Question Number	Suggested Points for Responses	Marks (Max)
6	<p>Factors:</p> <ul style="list-style-type: none"> • Father's commitment to the child • Father's attachment to the child • Father's reasons for applying. 	3
Question Number	Suggested Points for Responses	Marks (Max)
7	<p><u>Hyde v Hyde and Woodmansee</u> (1866): voluntary union for life of one man and one woman to the exclusion of all others</p> <p>OR</p> <p><u>Bellinger v Bellinger</u> (2001): a contract that affects legal status and for which the parties elect</p>	2
Question Number	Suggested Points for Responses	Marks (Max)
8	<p>Section 50 Civil Partnership Act 2004</p> <p>Three from:</p> <ol style="list-style-type: none"> 1) lack of consent 2) one party was suffering from a mental disorder 3) the respondent was pregnant by someone other than the applicant 4) an interim gender recognition certificate has been issued to either party 5) the respondent is a person whose gender at the time of the civil partnership formation is an acquired gender 	4
Question Number	Suggested Points for Responses	Marks (Max)
9	<p>Two from:</p> <p>Welfare principle: the welfare of the child is the court's paramount consideration</p> <p>No-delay: any delay in determining a question relating to a child's upbringing is likely to prejudice the welfare of the child</p> <p>No order: the court should not make an order unless making an order is better than making no order at all</p> <p>Parental involvement: the involvement of both parents in the child's life is presumed to further the child's welfare unless there is evidence to the contrary</p>	4
Question Number	Suggested Points for Responses	Marks (Max)
10	<p>That the marriage has broken down irretrievably</p> <p>S1 MCA 1973</p>	2

Question Number	Suggested Points for Responses	Marks (Max)
11	<p>S.10 CA 1989</p> <ul style="list-style-type: none"> • Parent (including unmarried father, guardian or special guardian) • Any person who has PR • Any person with a CAO which provides the child should live with them 	3
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1	<p><u>Stack v Dowden</u> (2007) <u>Jones v Kernott</u> (2011) Presumption that equity follows the law <u>Lloyds Bank v Rosset</u> (1990) <u>Oxley v Hiscock</u> (2004) Other relevant cases TOLATA 1996 S.14 court can make an order declaring interests TOLATA 1996 S.15 factors</p> <p>Application</p> <p>Anne as sole legal owner holds entire beneficial interest Ben must establish a beneficial interest</p> <p>Common intention plus detrimental reliance - Did Anne and Ben make an agreement or have conversations about Ben's sharing an interest in the property prior to his moving in?</p> <p>If so, Ben has acted to his detriment by starting up a new business with risk</p> <p>Direct contributions - Ben has used his redundancy money to renovate the outbuildings – has he also contributed to the mortgage?</p> <p>Constructive trust – resulting trust not used in such situations</p> <p>Ben will need to make an application under S.14 TOLATA 1996</p>	10

Question Number	Suggested Points for Responses	Marks (Max)
2(a)	Any two from the following: <ul style="list-style-type: none"> • In writing • Parties have received independent legal advice • Contract relates to property and finance (not living arrangements) • Parties intend to create legal relations • Contract must be freely and willingly entered, no evidence of duress 	2
2(b)	Any two advantages of cohabitation contracts to Ben and Anne: <p>Certainty or clarity in how to manage their break-up</p> <p>Flexibility – gives Anne and Ben the flexibility to make arrangements for their money and property</p> <p>Possibility of financial and property provision for Anne and Ben similar to what is available to married couples</p> <p>With correct legal advice, can provide protection for the financially weaker party (Ben in this case)</p> <p>Can save on legal costs of dispute resolution</p>	2
Question 2 Total: 4 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	Definition: all the rights, duties, powers, obligations, authority that a parent has in relation to a child's upbringing or administration of child's property <p>S. 3 Children Act 1989</p>	2
3(b)	Ben has parental responsibility because he is named on the birth certificates as father <p>S. 4 Children Act 1989</p> <p>Children are born after 1 December 2003</p>	2
3(c)	Ben has the right to be involved in decisions about the children along with Anne. <p>Ben has responsibilities regarding their upbringing which he shares with Anne.</p> <p>Specific examples of parental responsibility</p>	2
Question 3 Total: 6 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4	<p>S. 8 Children Act 1989 Child Arrangement Order</p> <p>Establishes who the child will live with and who the child will have contact with, and when this will happen</p> <p>Anne will apply for 'shared residence' or shared lives with order as she would like the children live equal amounts of time with her and Ben</p>	3
Question Number	Suggested Points for Responses	Marks (Max)
5	<p>S.8 Children Act 1989 Child Arrangement Order for Christopher and Danielle to live with Ben and have (substantial) contact with Anne (</p> <p>Application of any three factors from the welfare checklist relevant here:</p> <ul style="list-style-type: none"> the children's ages, sex and background – both children are young (6 and 4) and have lived all their lives with both parents wishes and feelings – differentiate Christopher and Danielle and their ages. Both children are likely too young for their wishes and feelings to carry weight with a court Capability of Anne and Ben to meet their needs how Christopher and Danielle react to change, the fact that they have lived in the family home all their lives with both parents Physical, emotional and educational needs – both children need security at home and a peaceful relationship between their parents. 	7
Scenario Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>s.11 Matrimonial Causes Act 1973</p> <p>Prohibited degrees of relationship – too closely related</p> <p>A marriage is void if parties are too closely related</p> <p>Kara and Jamal are half-brother/sister so too closely related and so their marriage is void</p>	4
1(b)	<p>Decree of nullity</p> <p>One from:</p> <ul style="list-style-type: none"> Certainty Can apply for financial orders under MCA 1973 	2
Question 1 Total: 6 marks		



Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Maintenance pending suit: PPs to be paid by one party to the other up to the date of the divorce order – Kara currently does not have an income whereas Jamal has a good income and could support Kara until final order is made and may help with cost of legal fees</p> <p>Periodical payments: one party to pay a specified sum at regular intervals to the other. Kara currently has no income but likely to have good income soon. May need some financial support until able to start working again.</p> <p>Settlement of property: sets out parties' respective shares in the property and decides who should live there pending a 'trigger event'. Unlikely in this case because there are no children and the couple are young.</p> <p>Transfer of property: the court could order that the property be transferred into either party's sole name; e.g., the investments to reimburse Kara for the £75,000.</p> <p>Sale of property: sale and distribution of proceeds. E.g., order for sale of house and immediate division of proceeds between Jamal and Kara.</p> <p>Lump sum: order Jamal to pay Kara a lump sum from his investments or sale of the house.</p>	10
Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> • s.25 MCA 1973 • The court will take account of 'all the circumstances of the case' • <i>Radmacher v Granatino</i> (2010) • a pre-nuptial is not automatically legally binding • a pre-nuptial agreement should be given effect by the court unless it would be unfair to do so • Court will look for evidence of duress and whether the agreement has been freely entered • Whether the parties have taken independent legal advice • short time that they have been married may make it more likely that the agreement will be taken into account • and no significant change in circumstances may make it more likely that the agreement will be taken into account 	6
Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> • civil partnership • Civil Partnership Act 2004 • same sex marriage • Marriage (Same Sex Couples) Act 2013 	4

Question Number	Suggested Points for Responses	Marks (Max)
5	Four from: <ul style="list-style-type: none"> • right to financial support during marriage or Civil Partnership • right to financial support on termination of relationship • not free to remarry/enter into another civil partnership • right to inherit in event of intestacy • pension rights • home rights • Consortium examples 	4
Scenario Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • s.44 CPA (Civil Partnership Act) 2004 • As amended by the Divorce, Dissolution and Separation Act 2020 • Irretrievable breakdown – sole ground • Tim will be the ‘applicant’ • Application can be sole or joint • No need any more to establish ground by proving one of 4 facts • Statement of irretrievable breakdown • Statement is evidence of the irretrievable breakdown • 20 weeks must elapse before a conditional order is made • 6 weeks after the conditional order, applicant(s) may notify court of intention to proceed • Final dissolution order made 	10
Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Civil Partnership Act 2004</p> <p>Three from: Answers require name of order, definition of order, application</p> <p>Periodical payments order</p> <ul style="list-style-type: none"> • An order to one party to pay the other party regular sums of money • Here Tim has no income of his own, and may not be able to earn in the future <p>Lump sum order</p> <ul style="list-style-type: none"> • An order to one party to pay the other party a substantial one-off sum • Here Zak has substantial investments (property) and so could pay Tim a reasonable amount 	9

	<p>Sale of property order</p> <ul style="list-style-type: none"> • An order to sell a property and divide the proceeds • Here Zak owns several properties but Tim owns none <p>Transfer of property order</p> <ul style="list-style-type: none"> • An order to transfer one or more properties from one party to another • Here Zak owns several properties and Tim owns none <p>Settlement of property order</p> <ul style="list-style-type: none"> • An order to settle one or more properties for the benefit of the other party and children for life, or for a specified period ie re-marriage. • Here the family home could be settled for the benefit of Tim for his life, and for the children 	
Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> • S.8 Children Act 1989 • Prohibited steps order • An order that prevents someone from taking a particular step in relation to a child who is the subject of the order 	2
4	<p>S.1 Children Act 1989</p> <p>Four from:</p> <ul style="list-style-type: none"> • The wishes and feelings of the child concerned taking into account their age and understanding <p>Here the twins are very young and will be unable to express their wishes and feelings</p> <ul style="list-style-type: none"> • The child's physical, emotional and educational needs <p>The court will consider a variety of factors, including the need for emotional contact with both parents</p> <p>Here, Zak provides the home etc, but Tim has been the children's main carer</p> <ul style="list-style-type: none"> • The likely effect on the child if circumstances were to change as a result of the courts decision <p>The court will be reluctant to remove a child from familiar surroundings where he is settled</p> <p>Here, the twins will have settled in the family home being cared for by Tim</p> <ul style="list-style-type: none"> • The child's age, sex, backgrounds and any other characteristics which will be relevant to the courts decision <p>Issues of race, religion and any special needs are taken into account</p>	9

	<p>The court might consider the children would be better cared for by a parent rather than a nanny.</p> <ul style="list-style-type: none"> Any harm the child has suffered or may be at risk of suffering <p>No evidence that the twins have come to any harm from their parents. Separation from Tim might have an emotional impact</p> <ul style="list-style-type: none"> Capability of the child's parents (or any other person the courts find relevant) at meeting the child's needs <p>Court considers which party is best able to care for a child.</p> <p>Here Tim has been responsible for the care of the children, with Zak withdrawing over a recent period. It is not clear if Tim's illness will impact on his future ability to care for the twins.</p>	
Scenario Total: 30 marks		