



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 7 – 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 of 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 7 – FAMILY LAW

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	S11 MCA 1973	1
1(b)	Removed parties not being respectively male & female as a ground for a void marriage	1
2(a)	Domestic Proceedings and Magistrates Court Act 1978 Matrimonial Causes Act 1973	2
2(b)	Two from: <ul style="list-style-type: none"> • all the circumstances of the case, first consideration being given to the welfare of any child of the family under 18 • current & future financial resources of each party • current & future financial needs of each party • standard of living enjoyed by family before breakdown of the marriage • Age of the parties and duration of marriage • any physical or mental disability of either of the parties to the marriage • contributions to the welfare of the family] • conduct if it would be inequitable to disregard it 	2
3	<ul style="list-style-type: none"> • Child arrangements order • Specific issue order • Prohibited steps order 	3
4	Three from: <ul style="list-style-type: none"> • judges • solicitors • chartered legal executives • barristers • <u>legal advisers</u> • mediators • CAFCASS officer • <u>Magistrates</u> • any other reasonable alternative 	3
5	s.24 Matrimonial Causes Act 1973 Three from: <ul style="list-style-type: none"> • transfer of property • settlement of property <u>(or a description of a Mesher or Martin order)</u> May cite <u>Mesher v Mesher (1980)</u> or <u>Martin v Martin (1977)</u> • sale of property 	3

Question Number	Suggested Points for Responses	Marks (Max)
6	<p>Two from:</p> <ul style="list-style-type: none"> • Article 1 (right to peaceful enjoyment of property) • Article 6 (right to a fair hearing) • Article 8 (right to a private family life) • Article 12 (right to marry) • Article 14 (prohibition on discrimination) <p>Candidates may cite Article 3 (freedom from torture) in the context of domestic abuse and care proceedings – though this is not expected as neither are on the Unit Specification for Level 3.</p>	2
7	<ul style="list-style-type: none"> • Not too closely related • Age 18 or over • Not already married or in a civil partnership • s.11 MCA (Matrimonial Causes Act) 1973 	4
8	<p>Four from:</p> <ul style="list-style-type: none"> • Cohabitees do not have a duty to financially support the other party during the relationship • Married couples have a duty to provide each other with financial support during the marriage. • When a cohabitation relationship breaks down the court's powers to deal with property are limited - can only apply property and trusts law to decide who owns what • When a marriage breaks down the court has wide powers to deal with property. • If a cohabitee dies intestate the other has no automatic right to inherit • If a married partner dies intestate, the other partner has the right to inherit some, or all, of the estate • A cohabitee has no statutory right to occupy the family home • A married partner has the right to occupy the family home unless this is ended by a court order • A cohabitation relationship can be terminated by either party without any formalities • A marriage can only be terminated by complying with the required formalities 	4

Question Number	Suggested Points for Responses	Marks (Max)
9	<p>The legal relationship between two parties of the same sex or opposite sex.</p> <p>S 1 CPA 2004</p>	1
10	<p>Differences:</p> <ul style="list-style-type: none"> • divorce legally ends a marriage, while after an order of judicial separation the couple are still legally married; • an applicant for divorce needs to prove that the marriage has irretrievably broken down whereas applicant for judicial separation only has to request a separation order. • Divorce is a two-stage process (conditional order and final order), judicial separation is a one-stage process. • Application for divorce cannot occur within the first year of marriage, whereas application for judicial separation can occur at any time. • Party who is divorced can remarry; parties who are separated cannot remarry. • Provisions in a will benefitting the other spouse lapse on divorce; but do not lapse on judicial separation • Pension orders and clean break orders are available on divorce; neither is available on judicial separation <p>Similarities:</p> <ul style="list-style-type: none"> • Both are formal court orders • Both remove the parties' obligation to live together. • Both can be followed with court orders regarding finances and property 	4
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • s.2 MCA 1973 • As amended by the Divorce, Dissolution and Separation Act 2020 • Irretrievable breakdown – sole ground • Chung 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 order made 	9
2	<p>Max three from:</p> <ul style="list-style-type: none"> • maintenance pending suit -PPs to be paid by one party to the other up to the date of the final order - Chung has no financial resources pending final order • periodical payments order - one party to pay a specified sum at regular intervals to the other. Here Chung has no income to maintain himself • settlement of property order setting out parties respective shares in the property & decide who should continue to live there pending 'trigger event'; could state that Chung should live there & property be sold e.g. on his remarriage, and then proceeds divided between them (Martin type order) • transfer of property order - the court could order that the property be transferred into either party’s sole name. • order for sale of property and distribution of proceeds e.g. order for sale of house and immediate division of proceeds between Chung and Annette so could each buy another house • pension sharing order - ie give Chung a share of Annette's pension pot so he has his own pension provision • attachment order - as Chung has no pension of own this would give him a pension when Annette retires 	6

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Max four from</p> <ul style="list-style-type: none"> • s25 MCA 1973 - all the circumstances of the case, first consideration being given to the welfare of any child of the family under 18 - no child here • current & future financial resources of each party e.g. Annette's income & pension; the equity in the house; Chung has limited earning capacity given age & lack of work experience (• current & future financial need of each party e.g. both need to house themselves. • standard of living enjoyed by family before breakdown of the marriage e.g. parties enjoyed luxurious holidays • age of the parties and duration of marriage e.g. long marriage of 30 years; parties are going to be older • contributions made by parties to the welfare of the family e.g. Chung's work improving the property • conduct if it would be inequitable to disregard it - to be taken into account conduct must be 'gross & obvious' - Annette's conduct in forming a relationship with someone else would not be considered relevant • value of any benefit lost to a party on dissolution of marriage - Chung losing spouses benefits under Annette's pension 	8
3(b)	<ul style="list-style-type: none"> • there should be no discrimination between breadwinner & homemaker • any proposed order should be tested against the yardstick of equality • here Annette is the breadwinner and Chung is the homemaker 	3
4	<ul style="list-style-type: none"> • clean break principle - court must consider whether to terminate on-going financial claims between the parties • in particular dismissal of periodical payments • difficulty here is that Chung has no income and limited earning capacity given age/lack of work history • as no children it is possible to achieve a clean-break • significant assets likely to be achievable • alternatively court may consider that insufficient capital available to achieve a clean break • AORP e.g. relevant comment re possibility of clean break being deferred 	4
Scenario 1 Total:30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • A valid marriage requires the parties to have capacity • Necessary legal formalities to be complied with • s.11 MCA 1973 • Capacity – at the time the law was that the parties had to be at least 16, and between the ages of 16 and 18 they required parental consent • Here, Ellie was 17 and does not appear to have had parental consent • <u>Lack of parental consent does not make the marriage void.</u> • No formalities are indicated in relation to the ‘ceremony’ • So Jason and Ellie are not legally married but are cohabiting 	7
2	<p>Relevant Law</p> <ul style="list-style-type: none"> • The property rights of cohabiting couples are governed by the ordinary law of property and trusts • Court will check whether the parties have a written agreement regarding the property • If there is no agreement, the court will identify if the property is held in joint names, or a sole name • If property is held in a sole name, the person who wishes to challenge this must satisfy the court that the property is held subject to an implied trust • The implied trust can be a resulting trust – where there is a direct financial contribution, or • A constructive trust where there was an agreement between the parties • <u>person seeking a share acted to their detriment</u> • <u>Could arise from an actual agreement or from the parties behaviour</u> • <u>Credit relevant cases – Stack v Dowden (2007), Lloyds Bank v Rosset (1990), Eves v Eves (1975)</u> • TLATA (Trusts of Land and Appointment of Trustees Act) 1996 gives the court powers to declare what shares the property is held in. <p>Application</p> <ul style="list-style-type: none"> • Property is held in Jason’s sole name, so Ellie has no legal entitlement • Ellie contributed to the deposit so can claim rights under a resulting trust • <u>Ellie and Jason lived in property as family home – she could claim that they had acted as if it was to be shared – a constructive trust</u> • The court can use its powers under TLATA to deal with the property 	10

Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> • s.3 Children Act 1989 • Parental Responsibility (PR) is “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 can include upbringing, name, property, education, religion, medical treatment, marriage, immunisation, circumcision, etc. 	3
4(a)	<ul style="list-style-type: none"> • If the parents are not married at birth the mother alone acquires PR automatically • An unmarried father will obtain parental responsibility if he is named on the birth certificate (after 1 December 2003) • Here, Ellie has automatic PR for Bea as her natural mother • Here Jason and Ellie are not married and Jason is not named on the birth certificate so Jason does not have PR 	4
4(b)	<p>An unmarried father can obtain PR by:</p> <ul style="list-style-type: none"> • Entering a formal agreement with the mother • By obtaining a PR court order • By obtaining a child arrangement ‘live with’ order • Here Jason should apply for a court order unless he can obtain Ellie’s agreement 	3
5	<ul style="list-style-type: none"> • s.8 CA 1989 • prohibited steps order (PSO) • A court order that prevents a parent from taking a particular step in relation to a child • Here Ellie can be prevented from taking Bea to the centre 	3
Scenario 2 Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> • Court decree/order • Releases the parties to a marriage from the obligation to live together • s.17 MCA 1973 • no need to prove irretrievable breakdown • No need to establish any facts • Statement of either or both parties that they wish to be judicially separated • Ria and Peter will remain married to each other • Either party can apply for financial orders against the other including an order for sale of the property • Neither party can remarry 	8
1(b)	<ul style="list-style-type: none"> • given religious objections JS would be suitable as does not end the marriage • can apply for financial provision if cannot resolve issue of the family home 	2
2	<ul style="list-style-type: none"> • Parental responsibility • S.3(1) CA 1989 • Definition includes rights and responsibilities • <u>Gillick v West Norfolk and Wisbech Area Health Authority (1985)</u> • Discussion of Gillick competence • PR gives way to the child's ability to make their own decisions. 	2
3(a)	<ul style="list-style-type: none"> • a specific issue order • s.8 CA 1989 	3(a)
3(b)	<p>wishes & feelings in light of the child's age and understanding/ 'Gillick competent' - Zelda saying that she does not want treatment but query her understanding given her learning difficulties</p> <ul style="list-style-type: none"> • physical, emotional & educational needs - medical advice is that should have transfusion • Likely effect of any change of circumstances - nothing apparent here • The child's age, sex, background & any relevant characteristic which the court considers relevant • Zelda is aged 14 but does have learning difficulties • Capability of the child's parents...to meet the child's needs - no suggestion that either Peter or Ria is not capable • Any harm that child has suffered or is at risk of suffering - risk to Zelda's health if treatment does not take place <u>(or reference to risk to emotional health if has to have transfusion which goes against her religious beliefs)</u> 	3(b)

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<ul style="list-style-type: none"> • Child arrangements order 	1
4(b)	<ul style="list-style-type: none"> • welfare of child is paramount • no order should be made unless court satisfied that it will be better for child to make an order than not • delay in making a decision is likely to be prejudicial to child's welfare • there is a presumption that involvement of a parent in the life of their child will further the child's welfare 	4
Question 4 Total: 5 marks		
Scenario 2 Total: 30 marks		