

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 – UNIT 7 – FAMILY LAW

JUNE 2022

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 2022 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

A fairly even split of questions answered in Section A and Section B.

In terms of general feedback on section A, these were mainly answered well but some candidates failed to answer the actual question posed and instead chose to just outline everything they knew about a particular area. This meant that a lot of time was wasted including information that attracted little to no marks. Some candidates also forgot to include a conclusion at the end of their answer which meant missing out on up to 2 marks depending on the question.

In section B, most of the candidates answered these questions fairly well but some candidates failed to apply the law sufficiently to the scenario and reach a conclusion based on that application. For example, some candidates would list the factors that the court would consider but then not address how they could be applied in the case scenario.

Particular areas where candidates showed confusion over the legal position:

- Financial orders available for children, in particular Sch 1 Children Act 1989 claims
- Occupation order sections and the application of the balance of harm test to sections other than s33.

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Question 1

This was generally answered quite well. Most candidates were able to identify the relevant statutory provisions and case law. Most were able to discuss the different types of arrangements and orders required. Some candidates forgot to discuss the second parent/legal father. There were also quite a number of candidates who were unaware of the changes to the law to allow single parent applicants. Very few candidates discussed the Law Commission proposals for reform.

Question 2

This question was answered very well by most candidates. Most candidates were able to give a detailed description of how the law in this area has developed. Better candidates also remembered to discuss the nullity provisions in section 12 MCA (quite a lot of candidates ignored this).

Question 3(a)

This was answered reasonably well by most candidates. Some weaker candidates provided a more general discussion of the difference in legal rights for cohabitants and married couples, rather than focusing on financial assets. This meant that they wasted a lot of time discussing irrelevant information that didn't attract many (if any) marks. A lot of candidates provided an imbalanced discussion of either married couples or cohabitants rather than a direct, balanced comparison, which again limited the marks awarded.

(b)

There was mixed success with this question. Some candidates answered it very well, but other candidates struggled with it. In particular, a lot of candidates ignored Sch 1 CA 1989 claims. Some candidates only discussed the child maintenance service, which meant that they were awarded limited marks. This appears to be an area of law that confuses some candidates.

Question 4

This was answered fairly well by candidates. Most candidates were able to provide a detailed explanation of section 8 orders and the principles in section 1 CA 1989. However, many candidates forgot to also discuss enforcement options which was crucial for this question.

SECTION B

Question 1

This question was answered well by most of the candidates who picked it. Most of the candidates were able to identify the relevant section 8 orders which could be used in this case and discuss the relevant statutory principles that would be applied. Most candidates were also able to apply the welfare checklist well to the question. Some candidates assumed that the father had PR, which wasn't set out in the question and was an area that merited discussion.

Question 2(a)

Most candidates were able to identify the relevant orders, but some forgot to discuss ex parte orders in this part of the question. Some candidates focused their answers on the new orders available under the Domestic Abuse Act 2021, despite those orders not being in place yet. Most candidates identified that an application for an occupation order would be under s36, but some candidates mistakenly thought s33.

(b)

Most candidates were able to identify the relevant factors/criteria that would be applied. However, some candidates then failed to actually apply those to the scenario, limiting the marks awarded. Some candidates identified the correct occupation order section in part (a), but then went on to consider the factors in the incorrect section in this answer. Quite a number of candidates also appeared to misunderstand the application of the balance of harm test to an application under s36.

Question 3

This was answered well by most of the candidates who selected it. Candidates appeared very comfortable with the case law in this area and were able to apply it well to the scenario. Overall, candidates showed a very good understanding of the concept of a constructive trust and the test underpinning that. Some candidates fell down by failing to reach a balanced conclusion or by being too vague in their conclusion.

Question 4(a)

Most candidates were able to identify that DNA testing could be ordered in this scenario. However, some forgot to support that answer with reference to the statutory provisions and case law. Most were able to discuss consent, but some forgot to discuss the inferences that could be drawn if consent was not provided (again with reference to the statutory provisions).

(b)

Candidates appeared to struggle with this question, with many forgetting about the provisions available under the MCA 1973 and just focusing their answer on the CMS. This led to them reaching the wrong conclusion about available orders for one of the children.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 7 – FAMILY LAW

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identify the Surrogacy Arrangements Act 1985 as a key statute • Explanation of the key provisions in the Human Fertilisation and Embryology Act 2008 – sections 33, 54 and 55 in particular should be discussed • Discussion of the parental orders needed in a surrogacy arrangement • Discussion of the ban on commercial surrogacy arrangements (marks awarded as part of the enforcement discussion) • Discussion of the amendments to the law to allow single parents to become legal parents to a child conceived through surrogacy with reference to the HFEA 2008 (remedial) Order 2018 <p>Responses could include:</p> <ul style="list-style-type: none"> • Reference to relevant case law to illustrate the above points such as Re X and Y, D and L (Surrogacy) or Re Z (no 2) • Discussion on compatibility issues with the European Convention on Human Rights • Discussion of proposals for reform such as those put forward by the Law Commission 	25
Question 1 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • Explain gender certificates available under the Act. • Discuss sections 2 and 3 of the GRA 2004 • Discuss the original definition of marriage set out in <u>Hyde v Hyde</u> and the challenge brought by Corbett and Corbett. • Discuss section 11(c) MCA 1973 • Discuss the human rights violations found in the key cases of <u>Goodwin v United Kingdom</u> (2002) and <u>I v United Kingdom</u> (2002) • Explain the outcome of <u>Bellinger v Bellinger</u> (2003) <p>Discuss the grounds for voidable marriage that still relate to the GRA 2004 – sections 12(g), 12(h) and 13(2A) MCA 1973</p>	25



	<p>Responses could include:</p> <ul style="list-style-type: none"> • Discuss other case law challenges brought such as <u>Rees v United Kingdom (1986)</u>, <u>Cossey v United Kingdom (1990)</u> and <u>Sheffield and Horsham v United Kingdom (1998)</u> • Discuss the other relevant legislative amendments in this area such as the introduction of same sex marriage and civil partnerships. • Discuss whether the GRA 2004 should be amended in terms of procedure (GR panel, time limitation) and whether self-identification should be the way forward. 	
Question 2 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discuss the statutory provisions applicable to divorcing couples set out in the MCA 1973, with reference to the different orders available under Part II and the factors in section 25. • Discuss the key case law principles applied when distributing assets for divorcing or divorced couples such as <u>White v White</u>, <u>Charman v Charman</u> and <u>Miller v Miller</u> etc. • Explain the relevance of the Trusts of Law and Appointment of Trustees Act 1996 to cohabitants • Discuss the general property law/trust principles that will be applied to cohabitants with reference to case law such as <u>Gissing v Gissing (1971)</u> and <u>Pettitt v Pettitt (1970)</u>. • Cohabitants can only obtain orders relating to their property (and even then there has to be evidence of a trust) - and not financial orders unless there are children and application can be made under the CA 1989 <p>Responses could include:</p> <ul style="list-style-type: none"> • Discuss cohabitation contracts and pre-nuptial/post-nuptial agreements • Discuss Declarations of Trust • Discuss the Law Commission report 2007 	14
Question Number	Suggested Points for Responses	Marks (Max)
3(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Discussion of the provisions in section 25 MCA 1973 • Discussion of the provisions in Schedule 1 Children Act 1989 <p>Responses could include:</p> <ul style="list-style-type: none"> • Discussion of orders that can be made in relation to step-children/non-biological children 	11
Question 3 Total: 25 marks		



Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses should include:</p> <ul style="list-style-type: none"> Identify that the relevant orders are contained in section 8 Children Act 1989, the most relevant being Child Arrangements Orders Discussion of the relevant principles set out in section 1 Children Act 1989 – welfare, no order, no delay, welfare checklist and presumption of parental involvement (1 mark allocated for each) Discussion of relevant case law around enforcement such as Re C 2007, <u>V v T</u> 2007 and Re A 2009 Explanation of the warning notice with reference to s11 Children Act 1989 Discussion of the possible enforcement measures set out in s11P, as amended by the Children and Adoption Act 2006 <p>Responses could include:</p> <ul style="list-style-type: none"> Discussion of the other orders available under section 8 Discussion of other relevant case law such as Re S (Contact: Promoting Relationship with Absent Parent) 2004; (Re A (Suspended Residence Order) [2010]; Re M (Children) [2012]; Re A (a Child) [2015] Discussion of ECtHR case law such as <u>Glaser v United Kingdom</u> (2001) or <u>Nowak v Poland</u> (2006). 	25
Question 4 Total:25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses should include:</p> <ul style="list-style-type: none"> Discuss whether Ahmet has PR for Yusuf (not clear from the case study) with reference to section 3 and 4 Children Act 1989. Discuss a potential PR Order application with reference to the factors in Re H (minors) (1991) Identify that the two potential orders are a specific issue order and a prohibited steps order depending on who applies. All orders are under s 8 Children Act 1989. Discuss Ahmet’s entitlement to apply under s10 Children Act 1989 Explain the relevant principles in section 1 CA 1989 (1 mark for each) Application of the welfare checklist in section 1(3) CA 1989 to the facts (max 4 marks) Discuss the presumption of parental involvement in section 1(2A) and the impact of removal on this principle. <p>Responses could include:</p>	25



	<ul style="list-style-type: none"> • Discussion of relevant case law such as <u>Payne v Payne</u> (2001) • Discuss the potential need for a Child Arrangements Order 	
Question 1 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identify that they are associated persons – s62 Family Law Act 1996 • Discuss the potential to apply for an ex parte non-molestation order with reference to s42 and s45 FLA 1996 • Discuss the potential application for an occupation order under s36 FLA 1996 • Identify that the behaviour also amounts to a criminal offence, in particular controlling and coercive behaviour <p>Responses could include:</p> <ul style="list-style-type: none"> • Discuss actions under the Protection from Harassment Act 1997 • Discuss the amendments being made to this area under the Domestic Abuse Act 2021 	10
Question Number	Suggested Points for Responses	Marks (Max)
(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Set out the criteria for a non-molestation order with reference to the statute and relevant case law such as <u>Vaughn v Vaughn</u> and apply to the facts • Set out the criteria for an ex parte order under s45 and apply to the facts • Discuss the balance of harm test in s36(7) and apply to the facts • Discuss the factors in s36(6) and apply to the facts <p>Responses could include:</p> <ul style="list-style-type: none"> • Other relevant directions such as those under s42 • Duration of orders • Power of arrest – occupation order only 	15
Question 2 Total: 25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identify that, as cohabitants, any issues around the ownership of the property will be dealt with under trust and property law principles. • Identify that the relevant legislation is TOLATA 1996 • Identify Alexia is the only legal owner and Fareeha hasn't contributed to the purchase price so there is no resulting trust – <u>Gissing v Gissing</u> (1970) 	25

	<ul style="list-style-type: none"> • Discuss that 'Equity follows the law' (<u>Stack v Dowden</u>) - starting point is the presumption that Alexia holds the entire beneficial interest. Fareeha will have to rebut this to gain an interest. • Discuss whether a cohabitation contract can be established and relied on – unlikely if no written contract. • Consider whether a constructive trust can be established with reference to relevant case law such as <u>Lloyds Bank v Rosset</u> (1990), <u>Stack v Dowden</u> (2007) and <u>Pettitt v Pettitt</u> • A discussion of whether a sale could be forced in an interest is established with reference to ss14 and 15 TOLATA 1996 <p>Responses could include:</p> <ul style="list-style-type: none"> • Consider the likely value of any beneficial interest with reference to <u>Jones v Kernott</u> (2011) • Case law around cohabitation contracts vs a contract for cohabitation with reference to <u>Sutton v Mishcon de Reya</u> (2004) • The possibility of an occupation order to allow Fareeha to remain in the property temporarily under s 36 FLA 1996 	
Question 3 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identify that because Terry and Leila were married when Sophie was born, there is a presumption of parentage. • Discuss that blood tests could be used to verify parentage – s20 Family Law Reform Act 1969 • Discuss the ability of the court to order samples be taken. • Discuss the inferences that could be drawn if Leila refuses to allow the tests to go ahead – s23(1) FLRA 1969 • Discuss relevant case law e.g. Re T (Paternity: Ordering Blood Tests) (2001) <p>Responses could include:</p> <ul style="list-style-type: none"> • Discuss that Terry will have PR for Sophie because he was married to Leila when she was born – s2 and s3 CA 1989 	11
Question Number	Suggested Points for Responses	Marks (Max)
(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identify that if parentage is proven, Terry will have responsibilities to financially support Sophie. • Discuss that if an agreement can't be reached then Leila could apply to the CMS • Explain the assessment that the CMS will carry out • Discuss that the maximum sum the CMS can assess is £3,000 per week and Terry earns more than this. • Identify that the CMS cannot enforce payments from Terry for Jodie because she is not his biological child. 	14

	<ul style="list-style-type: none"> • Explain the orders that could be made in respect of the children if Leila and Terry were to divorce – top up payments for Sophie and payments under s23 MCA 1973 for Jodie such as continued payments for the school fees • Explain and apply the factors under s25(3) that the court would consider. <p>Responses could include:</p> <ul style="list-style-type: none"> • Discuss s25(1) and its impact on other orders that may be made such as orders around the ownership of the family home. 	
	Question 4 Total:25 marks	

