



## CHIEF EXAMINER REPORT

**JANUARY 2024**

**LEVEL 6 UNIT 20 – The Practice of Family Law**

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

## Chief Examiner Overview

Well prepared candidates who had knowledge of the topic across the specification, a good working knowledge of the case study materials and the necessary study skills, particularly those relating to providing responses at Level 6, were able to achieve good marks as they were able to show:

- preparation for the exam through work on the case study resulting in them being able to identify potential issues for the client and ensure that they had relevant knowledge, and
- knowledge of the topics across the specification in an appropriate level of detail for Level 6, and
- understanding through application using facts within the case studies, and
- a good level of exam skills.

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

**Question 1 (divorce)**

This was the question that produced the best candidate performance.

Examining this topic has proved more challenging since the Divorce, Separation and Dissolution Act (DDSA) 2020 which introduced no fault divorce, as the topic no longer allows the breadth of questioning that previously existed.

This paper had 4 questions on aspects of divorce.

Qn 1a and 1b Performance for the questions on the ground for divorce (1a) and an aspect of procedure (1b) was very good.

Qn 1c and 1d however, performance on the issue of the impact of a Jewish marriage on a divorce application (1c) and also on inheritance and pension issues (1d) was average. This was disappointing as the case study contained information that should have led students to ensure they had knowledge of these areas.

Question 1a	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020</li> <li>• The ground for divorce is irretrievable breakdown of marriage</li> <li>• The DDSA 2020 introduced the concept of “no fault” divorce – there is no longer a requirement to satisfy a “fact”</li> <li>• Mrs Hoffmann simply needs to state that her marriage has irretrievably broken down</li> <li>• Mr Hoffmann can no longer object</li> <li>• Reference to background to DDSA 2020 ie Owen v Owen, Reducing Family Conflict: Reform of the legal requirements for divorce</li> </ul>	
Question 1b	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Can apply via on-line portal or by post to HMCTS Divorce &amp; Dissolution Service</li> <li>• Complete and submit application form – Form D8 if using post</li> <li>• Must support with a statement that marriage has broken down irretrievably</li> <li>• Must provide a certified copy of marriage certificate</li> <li>• Pay fee of £593</li> <li>• Can’t apply within first year of marriage</li> <li>• Mrs Hoffmann will need to wait until March 2024 to submit application</li> <li>• Applications can be made solely or jointly, though not likely in this case</li> <li>• Credit reference to mediation prior starting the process</li> </ul>	

Question 1c	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Mr and Mrs Hoffmann’s faith is Jewish. She would need to obtain a “Get” in order for her divorce to be recognised in Jewish law, as under Jewish law an individual cannot be married or divorced against his or her will</li> <li>• Mr Hoffmann can no longer offer a defence if Mrs Hoffmann applies for a divorce but</li> <li>• He can delay the finalising of an application because of his Jewish faith</li> <li>• Section 10A of the MCA applies where the parties have been married according to particular religious usages and provides that the court may order on application by either party that the conditional order should not be made final, until both parties have produced a declaration to the court confirming that they have taken the necessary steps to dissolve their marriage in compliance with the relevant religious usages</li> <li>• Mr Hoffmann would therefore need to go before a Beth Din court for divorce and deliver this to Mrs Hoffmann who would be obliged to accept it</li> <li>• As Mr Hoffmann is reluctant to divorce, he may not wish to go before the Beth Din court</li> </ul>	
Question 1d	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S18A Wills Act 1837 – subject to any contrary intention in a will, the final order will result in the appointment of the former spouse as Executor and in any bequest to that spouse automatically lapsing</li> <li>• The Final Order will not affect the validity of the will, apart from sections relating to the ex-spouse</li> <li>• The final order also affects a former spouse’s rights on intestacy as they are no longer a spouse.</li> <li>• But it may be possible for them to claim under the Inheritance (provision for Family and Dependents) Act (IPFDA) 1975</li> <li>• Benefits under pension scheme for a surviving spouse will be lost when the Final Order is made</li> <li>• Credit reference to the need to make a new will ASAP</li> <li>• Mrs Hoffmann should review her financial position and take necessary action before applying for the final order</li> <li>• In Mrs Hoffmann’s case, divorce would result in her will being invalid as her will appoints Mr Hoffmann as executor and as sole beneficiary so she would be intestate</li> <li>• Pensions – reference to Mrs H contacting pension provider to change payment details</li> </ul>	

## Question 2 (financial matters)

**Qn 2a** The first question required candidates to explain procedure to **commence** and application for a financial remedy, with reference to **documents required** and relevant **time frames**. Candidate knowledge was very variable.

**Qn 2b** The second question required candidates to **explain the factors** that would be considered in relation to an application for financial remedies, including the **pre-marital agreement**.

S25 factors are a key topic. At Level 6 candidates need to be able to identify clearly and explain, and then to apply to situation in the case study. Again, a range of answers seen with a number of candidates finding it difficult to make relevant application points.

Question 2a	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• S10 Children and Families Act 2014</li><li>• Before applying to the court for an order Mrs Kaur must attend a Mediation, Information and Assessment Meeting (MIAM), or certify why she is exempt</li><li>• Here it seems that the parties are may not be able to reach agreement at a MIAM, so Mrs Kaur will need to submit an application, Form A, to apply for financial orders and pay fee</li><li>• Court will set a date for First Appointment between 12 and 16 weeks of the date of filing Form A</li><li>• Form A will be served on Mr Kaur with the timetable that sets out date of first Appointment</li><li>• Mrs and Mr Kaur will then need to complete Form E (a financial statement) and exchange within 35 days of attending First Appointment</li></ul>	

## Suggested Points for Response:

- s25 Matrimonial Causes Act (MCA) 1973 - court must consider all the circumstances of the case, with the first consideration being any minor children
- Here there are 2 minor children, Baljit and Anika, who will be living with their mother and their needs must be considered
- All the circumstances will include consideration of a the “pre marital” or pre-nuptial agreement, although these are not legally binding and cannot prevent a court from making financial orders (Radmacher v Granitino (2010))
- The agreement must not prejudice the reasonable requirements of any child
- The court will uphold an agreement that has been freely entered into by each party (without pressure or undue influence) with full appreciation of its implications (must be relevant disclosure of financial information) unless there are circumstances where it would be unfair to do this
- In Mrs Kaur’s case there appear to be circumstances that would make it unfair to uphold the agreement as it could prejudice the requirements of the children if Mrs Kaur is unable to apply for a lump sum order and the agreement was not entered into freely by Mrs Kaur as she did not have relevant information and there appears to have been some pressure from her father
- Credit reference to independent advice
- If the court decides that it will consider making financial orders it must also consider other factors including those listed in s25(2) (1 mark)

- **S25(2)(a) Resources**

**Realisable capital resources:**

- 18 Ash Grove in Mr Kaur’s sole name - £400,000 net equity)
- 5 Potters Close in Mr Kaur’s sole name - £255,000 (net equity)
- Investments in Mr Kaur’s sole name £120,000
- Savings in Mrs Kaur’s sole name £70,000

**Total £845,000**

**Unrealisable capital resources:**

- Mr Kaur’s pension CE: £245,000
- Mrs Kaur’s pension CE: £87,000

**Total £332,000**

**Earnings**

- Mr Kaur earns £110,000 gross per annum, plus bonuses so has a higher earning potential compared to Mrs Kaur.
- Mrs Kaur works part-time and earns approximately £32,000 gross per annum.
- **Note:** Mrs Kaur has further earning potential when both the children are at secondary school.

**s25(2)(b) Needs**

- Mrs Kaur will continue having the children live with her and will need suitable accommodation.
- The court would accept that Mr Kaur needs his own accommodation and ideally this should also be a 3-bedroom property so that the children can stay with him.
- Both parties have mortgage capacity, but Mr Kaur’s will be significantly better than Mrs Kaur’s as he earns more than she does.
- The court would expect the parties to use this mortgage capacity.
- Both parties and the children also need sufficient income to live on.

**s25(2)(c): Standard of living**

- Considering the parties' income and assets they have had a good standard of living during the marriage. The court will attempt to ensure that both parties bear any reduction in their standard of living post-divorce equally.
- However, as Mrs Kaur has the children living with her, and their interests must be considered first, it is likely her standard of living will be reduced less than Mr Kaur's.

**s.25(2)(d): Ages of the parties and duration of the marriage**

- Age of parties – this is important in terms of future earning capacity and contributions to pensions and improve financial position post-divorce. Here Mr and Mrs Kaur both work and have the potential to earn for a significant number of years.
- The duration of the marriage is 15 years which makes it at the 'short end' of a long marriage.

**s.25(2)(e): Disability of the parties**

- Not applicable here.

**s.25(2)(f): Contributions to the family**

- It appears that Mr Kaur has been the main earner.
- Mrs Kaur is currently working part-time, as well as looking after the home and the children of the family. She will continue to look after the children. The court will rank her contribution of equal value to her husband's.

**s.25(2)(g): Conduct (0)**

- There is no conduct on the facts.

**s.25(2)(h): any loss of benefit.**

- Both parties have a pension, but Mr Kaur's pension CE is significantly higher than Mrs Kaur's. Mrs Kaur could apply for a pension sharing order or we could argue that she should receive a higher share of the realisable assets by way of set-off.

**Other considerations**

- Court must also consider whether the parties should have a clean break. The court could believe that an immediate clean break is acceptable here, as Mrs Kaur is working and could increase her earning capacity. If Mrs Kaur were to have a larger share of the capital from the marriage, then this would increase this possibility. However as there are young children so this may not be considered acceptable here.
- The court will also apply the principles from the case of *White-v-White* (2000) 2 FLR 981, thus the court should check any settlement proposal against the "yardstick of equality".
- Credit students where other case law been discussed e.g. *Chaman v Charman* [2207] and *Miller v Miller* [2006]

**Advice**

- A completely equal division of the total assets here would give Mr and Mrs Kaur £588,500 each
- A completely equal division of the realisable assets would give the parties £422,500 each

- Applying the yardstick of equality Mrs Kaur would be entitled to at least £588,500 As she has the children living with her the court might make a slightly higher award
- Mrs Kaur might also obtain a periodical payments order to enable her to have a reasonable level of income until she is able to increase her working hours.

### Question 3 (children)

**Qn 3a** The candidates were required in question 3a to advise on the **s8 order** required to resolve **difficulties** (case study described difficulties re where 1 child should live and re contact of father with both and re a possible name change) being experienced, with reference to the **principles** and **factors** to be considered.

More limited responses often failed to advise re the name change, failed to reference the s1 principles, failed to clearly identify the factors with an explanation and/or to apply to come to a conclusion.

**Question 3b** required knowledge of **family assistance orders**. This has not been a topic recently examined, but is one of the support mechanisms available to resolve issues between parents.

Question 3a	19 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Mr Williams should apply for a child arrangements order (CAO) – an order identifying who child will live with and have contact with – to formalise arrangements regarding who Holly, and Poppy, should live with and also regarding arrangements for contact – and an order that Laurette must comply with.</li> <li>• A CAO will also address his concerns re the possible change of name as whilst a CAO is in place no-one can change surname of child, s13 CA 1989</li> <li>• The paramount consideration for the court will be the welfare of Holly and Poppy s1 CA 1989, rather than the wishes of their parents</li> <li>• The court will also consider the no delay principle, the no order principle and the presumption of shared parental involvement</li> <li>• In deciding whether a CAO would be in Holly and Poppy’s best interests the court will apply the s.1(3) checklist: <ul style="list-style-type: none"> <li>• <b>The ascertainable wishes and feelings of the child, considered in the light of their age and understanding)</b></li> <li>• at 13, Holly is probably old enough to be able to express her wishes and for these to be considered. Poppy, at the age of 6 would be considered too young for her wishes and feelings to be given any weight.</li> <li>• <b>The child’s physical, emotional and educational needs:</b></li> <li>• as Holly and her father have a good relationship and share a passion for football it would appear that living with her father is the best option for her. Poppy is quite young, so remaining with her mother, which is not in dispute, remains the best option but with regular visits to see her sister and father</li> <li>• <b>The likely effect on the child of any change in circumstances:</b></li> <li>• The court will not want to upset the status quo. Holly has chosen to live with her father and has settled, so the court would not want to change this.</li> <li>• Holly and her sister have become used to meeting up at their father’s until recently, and the court is likely to want these visits to continue.</li> <li>• <b>The child’s age, sex, background etc.</b></li> <li>• Holly is 13 years old and the court is likely to attach significant weight to her views although it may also consider whether it is better for a girl in her teens to live with her mother.</li> <li>• <b>Any harm that the child has suffered or is at risk of suffering</b></li> </ul> </li> </ul>	

- on the facts as presented, it is unlikely that the court will consider the situation to be one which poses physical harm to Holly or Poppy, although the court may recognise the possibility of emotional harm that may be caused if the sisters do not regularly see each other and their mother, in Holly's case, and father, in Poppy's case.
- **How capable the parents are of meeting the children's needs**
- this is not an issue on the facts. There is no suggestion that Mr Williams cannot look after Holly or that Mrs Williams cannot look after Poppy.
- **The range of powers available to the court**
- There are a range of orders available to the court if an order is considered necessary.
- The court will decide this application in accordance with the welfare principle. As the parents are in dispute It is likely that the court will make an order (no order principle) and issue a CAO to confirm that Holly will live with her father, and Poppy with her mother and to confirm the arrangements for visits
- An order should be applied for as soon as possible to minimise the uncertainty which will affect the children (no delay principle)
- It is likely that the court will agree to issue a CAO and to ensure the involvement of both parents in the lives of both children (principle of parental involvement)

Question 3b

5 marks

Suggested Points for Response:

- Court may decide to make a family assistance order, s16 CA 1989 in this case in order to assist the parties in reaching an effective resolution
- A CAFCASS officer can be instructed to advise, assist etc any person named in the order e.g. Laurette, Elton and the children
- This is a voluntary order and cannot be made unless all the parties agree
- It normally lasts for a maximum of 6 months but can be extended.
- In this case, it appears that Elton and Laurette are not able to work together to find a solution regarding residence of Holly and contact - this order would put in place an arrangement that should help them

#### Question 4 (domestic abuse)

Performance for this question was reasonable. The law on domestic abuse is currently undergoing a change which is occurring over a period of time, much like the no fault divorce changer. So the MS was drafted to allow credit for relevant comments regarding the changes under the Domestic Abuse Act (DAA) 2021.

**Qn 4a** The first question regarding **the orders** that might be applied for was well done.

**Qn 4b** The second question, again regarding an application, factors to be considered and **likely outcomes**, was not always answered well. Some candidates focussed on occupation orders and failed to explain considerations re non-molestation order.

Question 4a	6 marks
<b>Suggested Points for Response:</b>	
<ul style="list-style-type: none"><li>• A non-molestation order ( s42 Family Law Act (FLA) 1996) which will prohibit the Mr Fox from molesting the M/s Beynon or Tom and</li><li>• An occupation order under s36 FLA to prohibit Mr Fox from being in the flat and allow M/s Beynon to return with Tom</li><li>• S36 occupation order required as flat is in sole name of Mr Fox, but M/s Beynon is a co-habitant with no existing right to occupy</li><li>• In M/s Beynon’s case, she needs protection from Mr Fox who has been physically violent and has also been threatening (phone messages) and M/s Beynon s increasingly fearful for her own safety and that of the Tom and she also needs somewhere to live</li><li>• An occupation can have a power of arrest attached if there has been violence or threats of violence, s47 FLA 1996</li><li>• The application should be applied for without notice as there is concern that M/s Beynon and Tom will be at significant risk of harm from Mr Fox if he learnt of an application</li><li>• An application form FL401 should be completed and filed with the Family court together with</li><li>• A statement by M/s Beynon justifying without notice</li><li>• Domestic abuse is defined in the Domestic Abuse Act (DAA) 2021 and covers a wide range of behaviour e.g. physical abuse, threats, controlling behaviour, economic abuse, psychological abuse etc</li><li>• A non-molestation order can have conditions attached + examples</li><li>• A financial order being made under s40 FLA 1996 for the payment of rent and other outgoings given the client isn't currently working.</li><li>• Credit reference to Domestic Abuse Protection Orders (DAPO's)– a new protection under Domestic Abuse Act 2021 – although only pilots currently scheduled for Spring 2024 – credit knowledge of DAPO's (2) and how they will be initiated</li><li>• Credit reference to M/s Beynon and Mr Fox having a “personal connection”</li><li>• Credit discussion of desirability of Mr Fox moving to his parents as they live “nearby”</li><li>• Credit reference to Local Authority and duty to house victims of domestic abuse</li></ul>	

## Suggested Points for Response:

- To make the application without notice under section 45 FLA we must prove to the court that M/s Beynon and Tom are at risk of significant harm if the order is not made immediately. Alternatively, we can rely on the fact that M/s Beynon will be deterred or prevented from pursuing the application if the order is not made immediately, or that
- Mr Fox might try to evade service
- Given Mr Fox's behaviour it is likely that the court will grant one or both of the orders applied for without notice

**Non-molestation order:**

- under section 42 FLA the court will take into account all the circumstances of the case including the need to secure the health, safety and wellbeing of M/s Beynon and Tom . There is a history of verbal abuse, and the episodes of violence that have become increasingly serious. M/s Beynon can therefore demonstrate a genuine need for protection and in the circumstances the court will grant a non-molestation order.

**Occupation order**

The court would consider the factors in section 33(6) FLA (1):

- **the respective housing needs and housing resources of the parties and any child**
- M/s Beynon's needs are greater. She is the main carer for Tom and she has nowhere else to go as her mother's home is a one-bedroom flat. Mr Fox can stay at his parent's home
- M/s Beynon would be considered to be unintentionally homeless and would thus obtain priority on the local authority's housing list, Whilst Mr Fox would be regarded as intentionally homeless as he is employed and there appears to be no reason why he can't move in to his parents' home in the meantime
- **the respective financial resources of the parties**
- Mrs Beynon's needs are greater as she is currently not but is full time carer for Tom. Mr Fox is working
- **the likely effect of any order or of any decision by the court not to make such an order on the health, safety and wellbeing of the parties and child**
- Here if an order were not made it would have an adverse effect on M/s Beynon and Tom as they need to be protected from Mr Fox's violence and threats
- **the conduct of the parties in relation to each other and otherwise**
- Mr Fox has been verbally and now physically abusive and has threatened M/s Beynon. It is very likely that the court will grant the occupation order on the facts of this case
- Other factors to be considered are:
  - The nature of the parties commitment.
  - The length of time of co-habitation
  - Whether there are children for whom the parties have
  - responsibility, as there is here.
  - The existence of any proceedings.
- If the court believes M/s Beynon's version of events, then they **must** also grant a power of arrest under section 47 FLA to the on-notice occupation orders as Mr Fox has used and threatened violence against her
- The court must also consider the balance of harm test under section 36(8) FLA (1)
- Court will consider whether if the order was not made M/s Beynon or Tom would be likely to suffer significant harm and if the answer to this question is yes

- then the court will make the occupation order, unless the court finds that Mr Fox is likely to suffer significant harm if the order is made and that the harm suffered by him is as great or greater than the harm attributable to him and suffered by M/s Beynon if the order is not made
- Here M/s Beynon is likely to satisfy this test as if the order is not made, she will either suffer further violence or have to find somewhere else to live. This will be greater than the harm suffered by Mr Fox, as if the order is made he will simply have to find somewhere else to live and his parents live close by

Responses could include reference to DAPO'S, although they are still in the trial stage:

- Court must be satisfied on the balance of probabilities that Mr Fox has been abusive to M/s Beynon and that
- Mr Fox and M/s Beynon are personally connected (Condition A)
- An order is necessary and proportionate to protect M/s Beynon from domestic abuse, or the risk of domestic abuse, by Mr Fox

The court must consider:

- Welfare of anyone under 18 considered relevant + application
- The opinion of any person for whose protection order would be made + application
- The opinion of any other relevant occupant of the property + application
- Conclusion – whether an order is likely

For an order without notice:

- All the circumstances, including
- The risk that if an order is not made immediately, Mr Fox will cause significant harm to M/s Beynon and Tom
- Whether M/s Beynon might be deterred from pursuing an application if it were not made immediately

Whether there is concern that Mr Fox would evade service.