



CHIEF EXAMINER REPORT

January 2025

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 2025 examinations.

The 'suggested points for responses' sections set 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

This is a practice paper and candidates have access to the pre-release case study which they should use in preparation for the exam. Candidates are advised to ensure that they have an in depth knowledge of the case studies when preparing for the examination. They should also aim to have developed knowledge of the topics across the specification and to ensure that their knowledge enables them to answer in the detail that is required at Level 6.

Candidates should also ensure that they have developed the skills necessary to provide answers to a Level 6 standard.

When answering questions it is important to read questions and answer as instructed by the command word (e.g. “Explain” or “Advise”) but also consider the marks that can be achieved – answering in great detail a question where the mark allocation is 5 marks can only achieve 5 marks and no more, whatever the extent of detail provided. However, a 20 mark question will require detailed knowledge and in depth application.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Question 1a	6 marks
Good knowledge of parental responsibility was shown.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • To be involved in decision making regarding his children, Mr Williams needs to have parental responsibility (PR) • S3(1) Children Act (CA)1989 defines PR as “all the rights, duties, powers responsibilities and authority which by law the parent of a child has in relation to the child and his property.” • Ms Clarke, as their natural mother, has automatic PR but Mr Williams, their father does not have this automatically as he was not married to Ms Clarke or named on the birth certificate • As an unmarried father, Mr Williams can acquire PR in a number of ways: <ol style="list-style-type: none"> 1. By entering a PR agreement with the mother 2. By applying to the court for a PR agreement 3. By obtaining a child arrangements order (CAO) with residence rights 4. By marrying the child’s mother 5. By re-registering the birth naming him as father • In this case, the only likely way for Mr Williams to acquire PR given Ms Clarke’s attitude is through an application to the court 	

Question 1b	5 marks
Whilst some candidates were able to provide good answers showing knowledge of the Child Abduction Act 1984 and its relevance to the case study, some candidates answers lacked relevant knowledge.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Section 1 Child Abduction Act 1984 created an arrestable offence • Committed by a person connected to the child – in this case a parent • By taking a child under 16 out of the UK without appropriate consent • Mr Williams should be advised that he should not take the children without the consent of their mother • or alternatively, the court as although a connected person there is no CAO in place • The deed must contain nothing to cast doubt on the sellers’ title... • ... There does not appear to be anything from the Conveyance to cast any doubt on the sellers’ title, however we should perform a Central Land Charges search against the sellers for their period of ownership to see if the results show anything to cast doubt on their title. 	

Question 1c	18 marks
Candidates generally answered this question well and were able to identify the relevant factors and to apply them to the case study facts. Candidates also generally also referenced the key principles under the children act although these were not always explained.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Mr Williams should apply for a specific issue order – an order to deal with an issue on which those with PR cannot agree - and ask the court to decide on whether he can take the children out of the UK despite Ms Clarke’s opposition • Mr Williams should apply for a Child Arrangements Order (CAO) to ensure that he maintains contact and sees the children regularly • In deciding whether to grant Mr Williams’ application the welfare of the children will be the court’s paramount consideration • The court will also consider the no delay and no order principles and the presumption of shared parental involvement <p>In deciding whether a Specific Issue Order and a CAO would be in the childrens’ best interests the court will apply the s.1(3) checklist:</p> <ul style="list-style-type: none"> • The ascertainable wishes and feelings of the child: the children are quite young (9 years and 8 years) so their views may not be considered to a great extent by the court • The child’s physical, emotional and educational needs: the children have a good relationship with their father and know about the trip to Trinidad and are looking forward to this. They are also missing seeing their father so the current situation will be impacting them emotionally. • The likely effect on the child of any change in circumstances: The children stay with Mr Williams every other weekend and spend some of the school holidays with him so him any change in the status quo is likely to have a negative effect on them which the court would be reluctant to see. • The child’s age, sex, background etc.: The children are 9 and 8 years old. The court will decide what weight to attach any significant weight to their views depending on their maturity. Contact with their father would be considered important, particularly for Jaden as he moves towards his teens. The court would consider it important to allow the children to experience their father’s background by visiting his family. • Any harm that the child has suffered or is at risk of suffering: it is unlikely that the court will consider the situation to be one which poses physical harm to the children, although the court may recognise the possibility of emotional harm caused by a lack of contact and by preventing a promised trip. • How capable the parents are of meeting the children’s needs: this is not an issue here. There is no suggestion that Mr Williams or Ms Clarke cannot look after he children as they have been sharing the care • The range of powers available to the court As the parties are in dispute the court will have to make an order to resolve the issue. There are a range of orders that can be made including a CAO and a Specific Issue Order. • The court will decide this application in accordance with the welfare principle and so it is highly likely that the court will feel that going on the promised trip and maintaining contact with their father is in the children ’s best interests and will make CAO and a SSO in Mr Williams favour. 	

Question 2ai	5 marks
This question produced some very good answers showing knowledge and understanding.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Non-molestation order under section 42 of the Family Law Act 1996 (FLA) – an order prohibiting a person from molesting another or a relevant child • Molestation covers a range of behaviours including physical abuse, threatening behaviour, verbal and financial abuse and harassment, • To qualify Ms Ford must establish that Mr Harris is an associated person under s62 FLA 1996 – covers a range of relationships e.g. spouse, ex-spouse • She can establish that she and Mr Harris are cohabitants • A non-molestation order has a power of arrest attached and breach is an arrestable offence for which the police can take action and which is punishable with up to five years' imprisonment. 	

Question 2aii	5 marks
The process of a without notice application has been regularly examined. Candidate responses to this question were disappointing. Credit was given where candidates referred to domestic abuse protection notices and orders although these are still in the pilot stage in limited locations.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • To make the application without notice under section 45 FLA the court must be satisfied that it is just and convenient to do so taking into account all the circumstances of the case • Must also satisfy court that Ms Ford and Flora are at risk of significant harm if the order is not made immediately • Alternatively can rely on the fact Ms Ford will be deterred or prevented from pursuing the application if the order is not made immediately or • That Mr Harris will evade service • If an order is made and breached then the respondent (Mr Harris) can be arrested for a criminal offence and he can be convicted of a criminal offence but only if he has notice of the order • Application 	

Question 2aiii	5 marks
Responses to this question were very disappointing. It was one of a group of 3 questions that were linked – what order should be applied for, why should the application be without notice and lastly what needs to be done if the order is approved – notify the respondent, notify the police etc. However, only a few well-prepared candidates were able to answer appropriately.	
Where candidates made other relevant suggestions, such as apply for an occupation order, was given.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The duration of a without notice order should not exceed 14 days and the order should specify a return day for a further hearing (with notice) • Notice of the order should be served on Mr Harris • Mr Harris may wish to challenge the order before the return hearing date and if he does then a date for a hearing must be set as a matter of urgency • Notice of the order should also be given to the police • This will then enable them to take effective action if a potential breach is reported 	

Question 2b	8 marks
This is an area that has appeared in previous papers so candidates should have an appropriate level of knowledge. Again, it was generally the well-prepared candidates who understood the question and provided relevant answers.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • In Re H (Contact: Domestic Violence) [1998] the Court of Appeal stated that domestic violence was not of itself a bar to contact • The cases of Re L (Contact: Domestic Violence); Re V (Contact: Domestic Violence); Re M (Contact: Domestic Violence); Re H (Contact: Domestic Violence) [2000] set out some principles to consider namely: <ul style="list-style-type: none"> • the conduct of both parties towards each other and the child • the effect of the violence on the child and the parent caring for the children • the motivation of the parent seeking contact and • in cases of serious domestic violence, the ability of the offending parent to recognise his past conduct, be aware of the need to change and to make genuine efforts to do so • In addition to the case law there is the <i>Practice Direction (Residence and Contact Orders: Domestic Violence and Harm)</i> [2009] as supplemented by Family Procedure Rules 2010 Practice Direction 12J which requires numerous steps to be taken, including the prompt sending of the documents to CAFCASS for screening, consideration of the need for an initial fact-finding hearing to determine the issue of violence and the consideration of separate representation for the child. 	

Question 3a	5 marks
Most candidates were able to answer this question appropriately	
Suggested Points for Response:	
<ul style="list-style-type: none"> • S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020 • The ground for divorce is irretrievable breakdown of marriage • The DDSA 2020 introduced the concept of “no fault” divorce – there is no longer a requirement to satisfy a “fact” • Philip Amos simply needs to state that the marriage has irretrievably broken down • Ben Amos can no longer object 	

Question 3b	8 marks
This question was poorly answered on occasions and these particular candidates were unable to evidence knowledge of the process of serving the application and of discussing the issues raised in the case study, the respondent having gone travelling, and suggest how this might be satisfactorily dealt with.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Service of the application on Ben (the respondent) is required to inform them of the application • Service normally effected by the divorce centre, by post • Ben (the respondent) will also receive an acknowledgement of service which must be returned within 7 days <p>If the acknowledgement is not received, or normal service is problematic, alternative methods can be used:</p> <ul style="list-style-type: none"> • Personal service – court bailiff etc, or Philip’s (applicant’s) solicitors • Deemed service – evidence provided that respondent has received e.g. correspondence referencing the application • Service at another place/by another method (substituted service) e.g. place of work • As a last resort, Philip can request that service is dispensed with • In this case, with no forwarding address the only options are to try service at Ben’s place of work but if he has gone travelling then may have to request that service is dispensed with 	

Question 3c	7 marks
Candidates knowledge of professional responsibility relating to costs was also disappointing.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • SRA Code of Conduct – must give client best possible information about likely overall cost of the matter and as the matter progresses • Should carry out a cost/benefits analysis at the start the consider whether it is in client’s best interests to employ yourself • In this case, Philip could make the application himself via the online divorce portal • Advise that a fee of £593 will be payable on application whether personal or via a solicitor • Provide a clear statement in writing of fees and other costs e.g. VAT and disbursements and court fees • Explain that family matters cannot always be predictably costed • Should provide regular updates • Discuss payment methods – here Philip appears to have the funds necessary to pay 	

Question 4a	7 marks
Candidates were generally able to identify and explain negotiation, mediation (including Mediation, Information and Assessment meetings) and arbitration. Some description was required and was not always provided. And candidates did not always discuss the benefits of these methods over litigation as instructed by the question.	
Suggested Points for Response:	
<p>There are a range of Non Court Dispute Resolution (NCDR) alternatives to litigation:</p> <ul style="list-style-type: none"> • Negotiation - write to Mr Main's lawyers to put forward proposals regarding the parties' finances ie negotiate. If agreement can be reached, then it can be put into a Consent order for the court to approve • Mediation - use a mediator to assist in agreeing the division of assets. A mediator is neutral and cannot make the parties reach agreement. Any agreement reached is not binding unless it is incorporated in a Consent Order and approved by the court • Collaborative method – method commonly available to family clients needing to resolve the division of their assets. Involves a series of meetings to discuss division. Mrs Main needs to be made aware that if this method is unsuccessful she and Mr Main must engage new solicitors if they are going to pursue the matter to court • Family Law Arbitration – if both parties consent a trained arbitrator will be appointed . The arbitrator will prepare a written “award” which will be converted into a Consent order by the court. <p>Key benefits:</p> <ul style="list-style-type: none"> • Speed – NCDR likely to be quicker than litigation and parties able to control timetable • Cost – NCDR should be cheaper than litigation which can be very costly so NCDR costs are generally more proportionate to the assets involved. Costs of litigation likely to reduce value of assets • The parties can control the process and agree a timetable etc that suits them 	

Question 4b	5 marks
Answers were disappointingly lacking in the detail required, and the 35 day deadline was not always included.	
Suggested Points for Response:	
Mrs Main will need to provide:	
<ul style="list-style-type: none"> Financial information e.g. income, including pensions, and capital assets e.g. savings and investments and liabilities e.g. mortgage, loans Evidence to support must be provided and can include – last 3 payslips and P60, a mortgage valuation, a property valuation, current pension statement (CEV), bank statements (must identify at least two) A statement of her financial needs – income needs and capital needs e.g. a home Other relevant information – e.g. potential changes in income/assets, standard of living, contribution to the family property and assets, earning ability, disability, inheritance prospects, redundancy, retirement, plans to remarry (must provide at least 2 examples) Must be filed not less than 35 days before the first appointment 	

Question 4c	16 marks
This question was generally well answered. Candidates were able to identify the s35 factors with varying levels of explanation and were able to comment on the proposed settlement and to suggest adjustment	
Suggested Points for Response:	
<ul style="list-style-type: none"> s25 Matrimonial Causes Act (MCA) 1973 - court must consider all the circumstances of the case, with the first consideration being any minor children. There are no minor children to consider here If the court decides that it will consider making financial orders it must also consider other factors including those listed in s25(2) S25(2)(a) Resources <p>Realisable capital resources:</p> <ul style="list-style-type: none"> Cherry Tree Cottage - £680,000 (net equity) Savings and investments in joint names £35,000 Investments in Mr Main's sole name £625,000 Investments in Mrs Main's sole name £450,000 Vehicles £29,000 <i>Total £1, 819,000</i> <p>Unrealisable capital resources:</p> <ul style="list-style-type: none"> Mr Main's pension CE: £270,000 Mrs Main's pension CE: £90,000 <i>Total £360,000</i> <p>Earnings</p> <ul style="list-style-type: none"> Mr Main earns £45,000 gross per annum, so has a higher earning potential compared to Mrs Main. Mrs Main works and earns approximately £25,000 gross per annum. <p>s25(2)(b) Needs</p> <ul style="list-style-type: none"> Both parties will need accommodation and both have mortgage capacity, but Mr Main's will be significantly better than Mrs Main's as he earns more than she does. 	

- Both parties also need sufficient income to live on.

s25(2)(c): Standard of living

- Considering the parties' income and assets they appear to have had a good standard of living during the marriage. The court will attempt to ensure that both parties bear any reduction equally

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 Main both work and have the potential to earn for a significant number of years, although Mrs Main's capacity is considerably lower than Mr Main's
- The duration of the marriage is 25 years which makes it at the '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 Main has been the main earner.
- Mrs Main is working but will also have been the home maker

s.25(2)(g): Conduct

- There is no conduct on the facts.

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

- Both parties have a pension, but Mr Main's pension CE is significantly higher than Mrs Main's. Mrs Main 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.

Advice

- A completely equal division of the total assets here would give Mr and Mrs Main £1,089,500 each
- A completely equal division of the realisable assets would give the parties £909,500
- Applying the yardstick of equality Mrs Main would be entitled to at least £1,089,500
- Mrs Main's suggested settlement appears to be a fair one that would achieve a clean break by enabling a fair division of the assets.