



## **CHIEF EXAMINER REPORT**

**JANUARY 2025**

**LEVEL 6 UNIT 7 – 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 sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

## Candidate Performance and Suggested Points for Responses

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 may be limited.

### Section A

Question 1	25 marks
<p>This question required critical evaluation of how the family court deals with applications for child arrangement orders requesting contact when there have been allegations of domestic abuse. Most candidates could identify that the focus of the question should be S.8 CA 1989 and the key principles in S.1 CA 1989. Strong answers then went on to consider relevant case law and Practice Direction 12J regarding fact-finding hearings</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"><li>• Identify that child arrangements orders are dealt with under Section 8 Children Act 1989.</li><li>• Explain that the child's welfare will be the court's paramount consideration – s1(1) CA 1989</li><li>• Explain the relevant principles that the court will apply in section 1 CA 1989 when deciding what outcome will be the child's best interest – no delay principle; no order principle; welfare checklist</li><li>• Discuss the introduction of the presumption of parental involvement in section 1(2A) CA 1989 by the Children and Families Act 2014</li><li>• Explain that the presumption of parental involvement can be rebutted where there is a risk of harm with reference to s1(2B) CA 1989</li><li>• Discuss the definition of domestic abuse under s1 Domestic Abuse Act 2021</li><li>• Discuss the leading case of Re L, V, M and H (2000)</li><li>• Discuss how the evidence of domestic abuse will be considered by the court with reference to Practice Direction 12J and relevant case law such as Re B-B (Domestic Abuse Fact-Finding) [2022] and Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021].</li><li>• A reasoned conclusion in answer to the question posed.</li></ul>	

Question 2a	12 marks
This question focussed on the law of child maintenance, focussing first on biological children. Good answers required knowledge of specific legal provisions, the meaning of a 'qualifying child', and the jurisdiction of the Child Maintenance Service, and could analyse whether the system is 'fit for purpose.'	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discuss the 'duty to maintain' under s1 Child Support Act 1991.</li> <li>• Discuss the definitions of 'qualifying children', 'absent parent' and 'person with care' under sections 3(1)-(3) Child Support Act 1991</li> <li>• Identify that the CMS will usually have jurisdiction to deal with child maintenance.</li> <li>• Briefly explain how child maintenance is calculated by the Child Maintenance Service.</li> <li>• Explain that reductions can be made for any time that the children spend overnight with the non-resident parent.</li> <li>• Discuss the duration of the child maintenance obligation: until the children reach 16 or 19 if they remain in further education.</li> <li>• Explain the limited circumstances in which the court can become involved in child maintenance disputes.</li> <li>• A reasoned conclusion in answer to the question posed.</li> </ul>	

Question 2b	13 marks
This question moved the focus of child maintenance to step-children. Answers occasionally lacked the necessary statutory detail.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identify that the Child Support Act 1991 only applies to legal parents (usually the biological parents), not step parents – s54 Child Support Act 1991</li> <li>• Discuss the possibility of an application for periodical payments order under s23(1)(d) Matrimonial Causes Act 1973</li> <li>• Discuss the definition of 'a child of the family'</li> <li>• Discuss the factors that will be applied in s25(3) and s25(4) MCA 1973, including consideration of any payments being made by the biological parent.</li> <li>• Discuss the duration of periodical payment orders with reference to s29 MCA 1973</li> <li>• Discuss the possibility of an application under Sch 1 Children Act 1989 and the factors which would be considered.</li> <li>• A reasoned conclusion in answer to the question posed.</li> </ul>	

Question 3	25 marks
<p>Most candidates who answered this popular question were able to identify the key differences between judicial separation and divorce. Unfortunately, very few candidates were aware that removal of the 'facts' by the Divorce, Dissolution and Separation Act 2020 applies to both divorce and judicial separation. Candidates were generally able to argue the reasons for retaining judicial separation as an option for couples.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Set out the legal basis for a judicial separation under s17 MCA 1973 compared to the ground for divorce under s1 MCA 1973 (no need to state that the marriage has irretrievably broken down)</li> <li>• Explain that there is no need to attribute fault under either route following the Divorce, Dissolution and Separation Act 2020 .</li> <li>• Explain the judicial separation is just a 1 stage process, whereas divorce is a 2-stage process (conditional and final order).</li> <li>• Explain the effects of judicial separation regarding intestacy rights and the marital obligation to cohabit – s18 MCA 1973</li> <li>• Explain that the court can make similar financial orders on judicial separation to divorce, save for pension sharing orders which can only be made on divorce – ss23, 24 and 24A MCA 1973.</li> <li>• Examples of arguments against judicial separation: it is now very difficult to defend a divorce so there are less people trapped in unhappy marriages who may turn to the JS process instead; judicially separating prior to a divorce adds in an extra set of proceedings, thereby increasing costs unnecessarily; it is not possible to obtain a 'clean break' order as part of JS because it is possible for further financial orders to be made on a later divorce so it continues the financial ties between the parties - s25A MCA 1973 and AR V JR (2018); parties cannot remarry whilst judicially separated.</li> <li>• Examples of arguments for maintaining JS as an option: the time bar for initiating divorce proceedings remains under s3(1) MCA 1973 so divorce can't be applied for within the first year of marriage; cultural or religious reasons; can be used where the parties haven't yet made a final decision about whether they want to divorce; inheritance tax benefits compared to divorce.</li> <li>• A reasoned conclusion in answer to the question posed.</li> </ul>	

Question 4	25 marks
<p>Many candidates performed well on this question. Good answers were able to consider the issue from the perspective of the law of nullity as well as the criminal law. The best answers could identify statutory sources as well as relevant case law and go on to critically assess whether the law is sufficient.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Discuss the definition of forced marriage in section 63(4) of the Family Law Act 1996.</li> <li>• Identify that forcing someone to marry is a criminal offence under s121 Anti-social Behaviour, Crime and Policing Act 2014</li> <li>• Discuss Forced Marriage Protection Orders under s63A-S Family Law Act 1996, as introduced by the Forced Marriage (Civil Protection) Act 2007</li> <li>• Discuss some of the arguments for and against criminalising forced marriage, compared to the protection offered through the civil/family courts.</li> <li>• Identify that the marriage is potentially voidable under s12(c) Matrimonial Causes Act 1973 due a lack of valid consent.</li> <li>• Discuss how the court's interpretation of 'duress' has developed with reference to relevant case law such as Singh v Singh [1971], Szechter v Szechter [1971], Hirani v Hirani [1982] and P v R (Forced Marriage: Annulment: Procedure) [2003]. Analyse whether the current interpretation of 'duress' is sufficient.</li> <li>• Discuss the relevant time bars under s13 MCA 1973. Analyse the issues that these time bars can potentially cause for a victim of forced marriage.</li> <li>• Identify that if someone domiciled in England is taken abroad and forced into a marriage overseas, the courts of England and Wales will have jurisdiction to grant a decree of nullity with reference to s5(2) Domicile and Matrimonial Proceedings Act 1973.</li> <li>• A reasoned conclusion in answer to the question posed.</li> </ul>	

## Section B

Question 1A	10 marks
<p>While some candidates correctly identified that this question required focus on occupation orders under the Family Law Act 1996, several candidates completely misconstrued the question. This underscores the importance of reading the question carefully. Good answers identified that S.36 FLA 1996 was the correct provision under which Carla would apply to be able to remain in the family home with Kylie.</p>	
<b>Suggested Points for Response:</b>	
<ul style="list-style-type: none"><li>• Identify that Carla could seek an occupation order under section 36 Family Law Act 1996 as her and Liam are cohabitants and Liam has a right to occupy.</li><li>• Identify that they are associated persons under s62</li><li>• Identify that the order would apply to Kylie too as a 'relevant child'</li><li>• Apply the factors in section 36(6) and questions in section 36(8) (balance of harm test) to the scenario</li><li>• Include a conclusion about whether Carla is likely to succeed in obtaining this order – likely to get a temporary order for her and Kylie to remain for a maximum of 6 months (possibility for one extension to an absolute max of 12 months)</li></ul>	

Question 1B	15 marks
<p>Most candidates who attempted this question performed well and demonstrated understanding that Carla would need to establish a beneficial interest in order to have a chance of recovering the money she paid for the extension. Candidates knew the case law well, and were able to apply it competently to this sole-legal ownership scenario.</p>	
<b>Suggested Points for Response:</b>	
<ul style="list-style-type: none"><li>• Liam owns all the beneficial interest in the property because it is in his sole name – Stack v Dowden</li><li>• Set out the 2 elements needed to establish a constructive trust with reference to Lloyds Bank v Rosset (1990)</li><li>• Identify and apply relevant comparable case law around express common intention</li><li>• Identify and apply relevant comparable case law around implied common intention</li><li>• Identify the contributions that Carla has made and whether they will be considered relevant to common intention and/or acting to her detriment.</li><li>• Identify that an application would be made under s14 of the Trusts of Land and Appointment of Trustees Act 1996</li><li>• Explain and apply the factors in s15 TOLATA</li><li>• Discuss how the beneficial interest would be quantified with reference to Jones v Kernott (2011) or other relevant case law</li><li>• A reasoned conclusion in answer to the question posed.</li></ul>	

Question 2	25 marks
<p>This was a typical problem scenario on financial orders following divorce, and most candidates who attempted it performed well. Some specific issues that were discussed by the better answers included the inheritance Aliya used to pay off the mortgage and the relevance (or not) of Brian's adultery to a financial package. Strong answers considered a range of orders and considered whether a clean break order is appropriate and whether offsetting might work for this couple.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Explain that Brian can proceed with an application for financial relief under the Matrimonial Causes Act 1973.</li> <li>• Identify the potential financial orders that the court could make: a property adjustment order, pension sharing order, periodical payments order and lump sum order with reference to the relevant sections of the legislation, as well as Mesher order</li> <li>• Discuss relevant case law setting out the starting point for division of assets such as Miller v Miller.</li> <li>• Discuss s25(1) and s25(2) MCA 1973 and apply to the facts of the scenario.</li> <li>• Discuss how inheritance might be approached with reference to relevant case law such as White v White.</li> <li>• Identify that Brian's adultery will not be relevant conduct with reference to relevant case law such as Wachtel v Wachtel.</li> <li>• Discuss clean break orders under s25A MCA 1973 and identify whether a clean break is possible here (probably given the assets available).</li> <li>• Reach a reasoned conclusion about a potential package of orders that the court may make here e.g. each retain their own pensions and savings; assuming Aliya can obtain a small mortgage, Brian receives his £50k deposit back with the property being transferred to Aliya; time limited periodical payments until the youngest child is in school full time and Aliya can increase her hours to full time.</li> </ul>	

Question 3	25 marks
<p>Candidates who attempted this question were generally well-prepared on the law relating to surrogacy. The strongest answers were able to identify the risks of a 'do-it-yourself' surrogacy as opposed to surrogacy via a licensed clinic. Answering questions on this topic well involves knowledge of key legislative provisions as well as understanding of key issues such as the commercialisation of surrogacy.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identify that this is a partial surrogacy arrangement.</li> <li>• Identify that the relevant legislation is The Human Fertilisation and Embryology Act 2008 (HFEA) which governs these cases along with The Surrogacy Arrangements Act 1985 (SAA).</li> <li>• Advise that Una would be the legal mother of the child until a parental order is made – section 33 HFEA 2008.</li> <li>• Discuss the presumption of legitimacy with reference to ss35 and 38 HFEA – advise that it is likely that Victor will be the legal father of the child, not Matthew, even though Matthew's sperm has been used.</li> <li>• Explain the requirements for a parental order including the time limits with reference to section 54 HFEA 2008</li> <li>• With reference to case law such as <i>Re X and Y (Children)</i> [2012] and the provisions in the Surrogacy Arrangements Act, discuss the prohibition of commercial surrogacy in relation to the gift that the couple has proposed and the payment for private healthcare. Advise against providing this gift.</li> <li>• Discuss the difficulties in enforcing a surrogacy arrangement – section 1A Surrogacy Arrangement Act 1985.</li> <li>• A reasoned conclusion.</li> </ul>	



Question 4	25 marks
<p>This question focussed on child arrangements orders applied for by grandparents. Good answers explained that grandparents will need leave of the court under S.10(9) CA 1989 to apply for this order. While many candidates were able to list the principles (e.g., the welfare principle) and could set out the welfare checklist, the strongest answers explained and applied each principle and element of the checklist to the facts. The complicating feature of this scenario is the evidence of domestic abuse, and candidates were expected to discuss this using relevant legislation and case law.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identify that if they can't agree contact with Harriet the relevant court order to apply for would be child arrangements order under Section 8 Children Act 1989.</li> <li>• Identify that grandparents require leave of the court before they can apply for a CAO.</li> <li>• Discuss the test for leave in s10(9) Children Act 1989 and apply it to the scenario</li> <li>• Explain that if they are given leave the court will then go on to consider whether contact with them is in the children's best interests – s1(1) CA 1989</li> <li>• Explain the relevant principles that the court will apply in section 1 CA 1989 when deciding what outcome will be the child's best interest – no delay principle; no order principle; welfare checklist</li> <li>• Explain that the presumption of parental involvement in section 1(2A) CA 1989 doesn't apply to grandparents.</li> <li>• Apply the factors in the welfare checklist to the scenario.</li> <li>• Discuss the potential conditions that could be attached to an order with reference to s11(7) CA 1989 or relevant case law – identify that this could include not allowing contact with Graham once he is released from prison.</li> <li>• A reasoned conclusion in answer to the question posed.</li> </ul>	