



CHIEF EXAMINER REPORT

JUNE 2024

LEVEL 6 UNIT 7 – FAMILY LAW

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

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

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

Chief Examiner Overview

Candidates generally identified relevant legislative principles well, with the best responses clearly explaining and applying case law.

In Section A, better answers came from directly addressing questions and applying conclusions. Section B saw strong performance in applying law to specific scenarios rather than providing general information.

Improvements are needed in understanding legislation, as some candidates confused sections and sub-sections. There was less clarity on s13 time bars and Schedule 1 claims in child maintenance discussions.

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 |
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| Most candidates successfully outlined the basis for divorce both before and after the introduction of the DDSA. While some candidates excelled in considering the arguments for and against the statement posed, others focused primarily on outlining the basics, resulting in a range of performance levels from exceptional to passing. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none">• Explain the basis for divorce prior to the 2020 Act: one ground and 5 facts for opposite sex couples – refer to the provisions in s1 Matrimonial Causes Act 1973, or one ground and 4 facts for same sex couples – refer to the Marriage (Same Sex Couples) Act 2013.• Discuss the key case of Owens v Owens.• Explain the key changes implemented under 2020 Act: removal of the facts, possibility of a joint application, s5 MCA 1973 repealed but s10 retained.• Arguments for the statement posed: less chance of a defended divorce; more amicable due to joint application possibility but still able to make a sole application if the other person does not agree; removes the difficulties faced by same sex couples in not being able to rely on the adultery fact; no longer a need to wait for 2/5 years if you do not want to apportion blame.• Arguments against the statement posed: defended divorces were rare; even where a divorce was defended this would only delay the divorce, not prevent it indefinitely because s5 was impossible to use; there is a longer waiting period between the different stages; no fault divorce was permitted under the old route through the separation facts (again meaning there was delay but not a prevention of divorce altogether); 1 year time bar remains; still some (very limited) options to dispute; delay can still be caused by s10(2).• A reasoned conclusion. | |

| Question 2a | 15 marks |
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| Most candidates answered this question very well, drawing on the leading case law in their discussions. Stronger responses also addressed topics such as special contribution and compensation. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none">• Briefly explain the factors that the court will apply when deciding what financial orders to make with reference to s25 MCA 1973• Discuss the key case law relating to the equal division of assets: White v White; Miller and McFarlane• Discuss 'exceptional contribution' case law such as Lambert v Lambert or Charman v Charman• Discuss 'career sacrifice' cases such as Miller; McFarlane;• Identify that the needs of the children will be given first consideration under s25(1) and their primary carer may therefore be prioritised | |

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| Question 2b | 10 marks |
| <p>Most candidates effectively discussed the leading case of Radmacher, though fewer referenced other relevant case law. While many candidates overlooked the relevance of s25 MCA, which they had discussed in part A, the stronger candidates included discussions on Law Commission proposals.</p> | |
| <p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • Identify that prenuptial agreements are not legally binding but that they can carry compelling weight in some cases. • Refer to relevant case law such as Granatino v Radmacher or M v M • Identify that the court will still need to apply the factors in s25(2) MCA 1973 when considering whether the agreement leads to a fair outcome. • Discuss the fact that the needs of any child will be considered first regardless of the pre/post nuptial agreement – s25(1) MCA 1973 • Discuss the use of post-nuptial agreements to reflect a change in circumstances and the weight this may carry – McLeod v McLeod | |

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| Question 3 | 25 marks |
| <p>Most candidates effectively outlined the main legislative principles. However, many did not discuss relevant case law or reference the pertinent practice directions, which limited their marks. Instead of directly answering the question posed, many candidates provided a general overview of the section 1 principles.</p> | |
| <p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • Identify that child arrangement proceedings are governed by s8 Children Act 1989 • Discuss relevant case law such as D v D (Shared Residence Order) [2001] and A v A (Shared Residence) (2004) • Explain that the court's paramount consideration will be the welfare of the children – s1(1) Children Act 1989 • Explain the presumption of parental involvement in s1(2A) and discuss the meaning of 'involvement' with reference to s1(2B) • Discuss the use of the welfare checklist to determine what 'involvement' is in the child's best interests • Explain the impact of any harm suffered or likely to be suffered with reference to relevant case law and practice direction 12J. • Briefly explain the other key s1 principles: no order and no delay | |

Question 4

25 marks

Most candidates were able to outline the main sections from the legislation. What then differentiated candidates was their application of those sections to the question and their discussion of the relevant case law.

Suggested Points for Response:

- Identify the relevant legislation: The Human Fertilisation and Embryology Act 2008 and the Surrogacy Act 1985
- Discuss the two types of surrogacy arrangement: total surrogacy and partial surrogacy
- Discuss the definition of 'the mother' under s33(1) HFEA 2008
- Discuss the role of parental orders within surrogacy arrangements with reference to s54 HFEA 2008
- Identify that commercial surrogacy arrangements are not permitted in England and Wales with reference to s55(8) HFEA 2008
- Discuss relevant case law such as Re X and Y (2011), D and L (surrogacy) (2012) and Re Z (no 2) (2016)
- Discuss that parental orders are now open to single parent applicants with reference to the HFEA 2008 (remedial) Order 2018

Section B

| Question 1a | 18 marks |
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| This popular question was generally well-answered. Most candidates confidently addressed PR and the CAO application, discussing and applying the relevant section 1 principles. Fewer candidates mentioned scientific testing and relevant case law, such as Re H. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none">• Identify that paternity is in issue and will need to be determined and the role for scientific testing in determining this.• Discuss the concept of parental responsibility, identifying that Abe has PR for Thomas but not Hannah• Set out the ways in which Abe could obtain PR for Hannah with reference to s4 Children Act 1989 and Re H (minors) 1991.• Identify that a child arrangements order may be required here with reference to s8 Children Act 1989• Identify that Abe could still apply for a CAO if he is not Hannah's biological father due to s10(5) CA 1989• Discuss the principles in s1 Children Act 1989 and apply the welfare checklist in s1(3) to the scenario | |

| Question 1b | 7 marks |
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| Most candidates correctly identified the necessity of involving the Child Maintenance Service. Although only a few mentioned a Schedule 1 claim, this was a minor part of the 7-mark question, so they did not lose many marks for omitting it. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none">• Discuss that maintenance is a separate issue to child arrangements and that there is a duty to financially provide for biological children.• Identify the relevant legislation – the Child Support Act 1991• Identify the different options for child maintenance: family-based arrangement, an application to the Child Maintenance Service or potentially a Schedule 1 Children Act 1989 application. | |

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| Question 2 | 25 marks |
| Most candidates answered it very well identifying Section 33 as the relevant OO section and discussing relevant case law effectively. However, weaker responses did not adequately discuss ex parte orders and undertakings. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none"> • Identify the two orders that may be available through the family court under the Family Law Act 1996: a non-molestation order (s42) and an occupation order (s33) • Discuss and apply the 'associated person test' in s62 • Discuss the meaning of molestation with reference to relevant case law such as Vaughan v Vaughan • Apply the balance of harm test in s33(7) and the additional factors in s33(6) to the facts of the scenario • Discuss and apply relevant case law such as Chalmers v John and B v B • Consider whether an ex parte order could be granted with reference to s45 • Identify that an undertaking would not be accepted due to the physical violence. | |

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| Question 3a | 15 marks |
| Most candidates confidently discussed the grounds for divorce but were less confident when discussing jurisdiction, often confusing habitual residence and domicile. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none"> • Identify that whether there was a valid marriage will depend on the formalities of marriage in France in 2018 with reference to Wilkinson v Kitzinger (2006) • Identify that the English courts will have jurisdiction to deal with a divorce because Teresa has been habitually resident in England for more than 12 months (Brussels II revised). • Set out the ground for divorce under s1 Matrimonial Causes Act 1973 and identify that one of them making a statement that the marriage has broken down is the only proof required • They have been married for more than one year so a divorce application can be made straight away (s3 MCA 1973) • Explain that there is no need to allocate fault following the Divorce, Dissolution and Separation Act • Explain that Teresa could either apply for a divorce as a sole applicant or she and Isla could apply as joint applicants. • Briefly explain the process for divorcing in England: application, followed by conditional order, followed by final order. | |

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| Question 3b | 10 marks |
| Most candidates identified the relevant s12 nullity ground but were weaker in discussing the s13 time bars, limiting their awarded marks. | |
| Suggested Points for Response: | |
| <ul style="list-style-type: none"> • Discuss whether any of the grounds in s12 MCA 1973 apply meaning that the marriage is potentially voidable. • Identify that s12(1)(e) is the potential ground here but that this is only available if Teresa applies, not if Isla applies. • Discuss whether any of the statutory bars in s13 MCA 1973 applies: under s13(3) whether Teresa had knowledge and under s13(1) her conduct will be considered. • Discuss the statutory time bar under s13(2) but that leave to apply out of time can be granted under s13(4) | |

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| Question 4 | 25 marks |
| This question was answered reasonably well by most candidates. Most successfully identified the need to demonstrate a constructive trust and outlined relevant case law. However, many overlooked the discussion of quantification, and the application of the TOLATA factors was often weak. | |
| Suggested Points for Response: | |
| <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 Eric is the only legal owner and Belinda did not contribute to the purchase price so there is no resulting trust – Gissing v Gissing (1970) • Discuss that 'Equity follows the law' (Stack v Dowden) - starting point is the presumption that Eric holds the entire beneficial interest. Belinda will have to rebut this to gain an interest. • Consider whether a constructive trust can be established with reference to relevant case law such as Lloyds Bank v Rosset (1990), Stack v Dowden (2007) and Pettitt v Pettitt • A discussion of whether a sale could be forced if an interest is established with reference to ss14 and 15 TOLATA 1996 | |