



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 12 – THE PRACTICE OF FAMILY LAW

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 January 2023 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

The performance of candidates in this exam series was very good with a high pass rate being achieved. However, quality of responses did vary across all grades.

Candidates who achieve high marks do so because they have:

- Relevant current knowledge of all the topics in the specification, and
- A good working knowledge of the pre-release case study.
- The necessary exam skills developed working through previous exam papers and referencing both the relevant mark schemes and Chief Examiners Reports.

With reference to exam skills candidates are reminded to:

- Read the question carefully and answer as instructed. If the instruction is to "Explain..." then some detail is required – see comments below on questions about factors.
- Remember that this is a professional exam on an aspect of legal practice and so citation of key sections of statutes is expected.



- As a practice exam, candidates need to show:
 - 1 - relevant **knowledge**, but then need to show
 - 2 - **understanding through application**, that is reference to the relevant case study scenario.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1 Children

(a) - Parental Responsibility (PR)

Most candidates were able to show knowledge and understanding of parental responsibility. Where marks were not achieved this was generally due to either a lack of citation or a failure to apply appropriately to the scenario.

(b) – Who has PR?

The majority of candidates were able to provide advice on the position of the unmarried father in relation to PR. However, some failed to select the best method and/or to support choice with a justification.

(c) – Child arrangements order (CAO)

Candidates were able to identify and explain a CAO. Some failed to apply to the scenario.

(d) – Welfare Checklist factors

Candidates were able to show knowledge of the factors. Where marks were not achieved this was due to either a failure to clearly identify the factor, or a failure to explain or a failure to apply.

Question 2 Domestic violence

(a) – Non-molestation order

Candidates were able to provide an explanation of this order and its purpose, although some descriptions of the types of behaviour that are considered molestation could have been developed. And some candidates failed to show understanding through application to the case study.

2(b)(i) – Occupation order

Candidates were able to provide an explanation of an occupation order in varying levels of detail. Good candidates were able to identify a s33 order as relevant here and to explain why.

(b)(ii) – Eligibility for an occupation order

Not all candidates were able to show knowledge of the eligibility criteria (being an “associated person” and the dwelling being the “family home”) and some candidates failed to apply to the scenario.

2(c) – s33 factors

Most candidates were able to show knowledge. Some candidates failed to achieve marks because they did not clearly identify the factor or did not apply.

Question 3 Divorce

(a) – Ground for divorce

The majority of candidates were able to state the ground for divorce, although a significant number failed to achieve 2 marks as they referred to the Matrimonial Causes Act (MCA) 1973 rather than the Divorce, Dissolution and Separation Act (DDSA) 2020, or did not provide any citation.

(b) – Procedure to obtain a divorce

Disappointingly, a significant number of candidates answered with reference to the procedure and terminology under the MCA 1973 rather than the new procedure and terminology for ‘no fault’ divorce under the DDSA 2020.

Question 4 Financial settlement

(a) – Financial orders

Although candidates were able to identify relevant orders they did not provide an explanation as instructed “Explain any two financial orders” In other cases, there was no justification for the choice through application to the scenario.

(b) – s25 factors

The majority of candidates were able to identify factors relevant to the scenario. However, in some cases an explanation was not given as the question had instructed or justification for the choice through application was lacking.

Several candidates however wrote about the “clean break” and *White v White* and the yardstick of equality. These are not factors.

4(c) – Procedure for financial orders

Candidate performance in this question was disappointing with knowledge of the procedure in some cases being very limited.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 3 UNIT 12 – THE PRACTICE OF FAMILY LAW

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	Parental Responsibility <ul style="list-style-type: none"> • s3(1) Children Act CA) 1989 • All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property • Examples e.g. decisions re education, religion, medical treatment. • Credit reference to natural mother having PR automatically, whilst fathers may in certain circumstances, have to acquire it 	4
1(b)	Who has parental responsibility (PR) <ul style="list-style-type: none"> • An unmarried father does not have automatic PR. • He has PR if named on the birth certificate of children born after 1 December 2003. • Divit does not have PR as he is not named on the birth certificate and is not married to Janice. • There are a number of ways a natural father can acquire PR – marrying the child's mother, entering a PR agreement with the mother, obtaining a court order etc. • In this case, Divit could apply to the court for an order as he and Janice are no longer speaking and it appears unlikely that Janice will enter a PR agreement. 	5
1(c)	Child arrangements order (CAO) <ul style="list-style-type: none"> • Child arrangements order • An order which decides who a child will live with and who a child will have contact with • Contact options include face to face contact, or contact by phone or letter <p>In this case, the order will identify the contact that Divit should have and Janice will have to comply with the court order</p>	3

1(d)	<p>Welfare checklist factors</p> <ul style="list-style-type: none"> • Ascertainable wishes and feelings of child (considered in light of age and understanding) • How much weight is placed on a child's wishes depends on child's age and maturity • Application – Leo is 9 years old and may be capable of expressing his wishes • Child's physical, emotional and educational needs • Court will consider a range of factors including relationship with the parents and the effect of having no contact with a parent • Application – e.g. Leo will have a close relationship with their mother and but has also developed a relationship with Divit. This factor will be considered • Likely effect on child of change in circumstances • Courts are reluctant to upset the status quo. • Application – Leo has been brought up by his mother but has maintained a relationship with Divit through regular meetings. The court would be reluctant to change to these arrangements • Child's age, sex and background • Age is relevant in weight given to expressed wishes; sex is relevant if a teenager; background increasingly important due to multicultural relationships • Application: e.g. Leo is a 9 year old boy and it would be considered important for him to retain contact with his father and to learn about his culture. • Any harm the child is at risk of suffering • Harm may be physical or emotional • Here, Leo may suffer emotional harm if he is not seeing his father • Credit any other factor identified , explained and applied 	9
	Question 1 total:21 marks	
2(a)	<p>A non molestation order</p> <p>A non-molestation order is an order designed to prevent respondent molesting the applicant or a relevant child</p> <p>Molestation includes a range of behaviour – violence and threats of violence through to pestering applicant – nuisance phone calls</p> <p>Here, Marley has been verbally abusive and has been physically violent as he has caused Katie to suffer injury (cut to her cheek) so she should apply for a non molestation order to protect herself and Ricky</p>	4

2(b) (i)	<p>An occupation order</p> <p>An occupation order is an order that deals with the occupation of the family home</p> <p>It is an order that controls who lives in the family home and can be used to exclude those who use or threaten violence</p> <p>Katie can apply for a s33 occupation order as she is entitled to occupy – the house is in the sole name of Marley but Katie has “home rights” as Marley’s <i>spouse</i>.</p> <p>As Marley has physically attacked Katie and threatened her, an occupation order would protect Katie by allowing her to live in the family home with Ricky by excluding Marley</p>	4
2(b) (ii)	<p>Eligibility for an occupation order</p> <p>s62 FLA 1996</p> <p>Eligibility requires applicant and respondent to be “associated persons”</p> <p>This covers a range of relationships including spouses, ex spouses, civil partners etc.</p> <p>Here Katie and Marley are married and so are “associated persons”</p> <p>Property must be a dwelling house and must be or must have been intended to be the family home</p> <p>43 The Green is a dwelling house and is the family home</p>	5
2(c)	<p>Factors considered by court when considering an application for a s36 occupation order</p> <ul style="list-style-type: none"> • Housing needs and resources of each of the parties • Application, e.g. Katie needs a home for herself and Ricky and Marley could live with his parents. • Financial resources of each of the parties • Application, e.g. Marley is working and owns the house. Katie has no income as a stay at home mum. • Likely effect of any order, or of any decision by the court not to exercise its powers on health, safety and well-being of the parties and of any relevant child • Application, e.g. if court does not allow Katie and Ricky to remain, they will become homeless. Marley has got his parents home nearby. • The conduct of the parties in relation to each other and otherwise • Application – here Marley is showing increasingly angry and violent behaviour towards Katie and Ricky. • The nature of the parties relationship 	6

	<ul style="list-style-type: none"> • Application – Katie and Marley have been in a relationship for 4 years. A fairly short relationship. • The length of time they have co-habited • Application – Katie and Marley have co-habited for nearly 5 years. • Whether there are any children who are children of both parties or for whom both parties have parental responsibility or have had parental responsibility • Katie and Marley both have parental responsibility. • Relating to the legal or beneficial ownership of the dwelling house. • The house is in Marley's sole name. 	
	Question 2 total:19 marks	
3(a)	Irretrievable breakdown of marriage S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020	2
3(b)	<p>Bethany must complete and submit application for a divorce order – form D8</p> <p>The application can be submitted online</p> <p>Under the DDSA it is now possible to make a joint application</p> <p>Bethany will need to submit her marriage certificate and pay the fee</p> <p>Bethany simply needs to include a statement that the marriage has broken down irretrievably</p> <p>The court will send a copy of the application to Tomasz for information and acknowledgement</p> <p>Under DDSA 2020, the respondent can no longer provide a defence, with very limited exceptions</p> <p>A 20 week “cooling off” period follows to allow party/parties to consider their position and to withdraw the application if they wish to do so</p> <p>After 6 weeks the applicant(s) can apply for a Provisional order (formerly the decree nisi)</p> <p>After a further 6 weeks a final order (formerly the decree absolute) can be applied for.</p>	8
	Question 3 total:3 marks	
4(a)	<p>Financial orders</p> <p>Maintenance pending suit</p> <ul style="list-style-type: none"> • Maintenance pending suit – periodical payments up to the date of the decree absolute • Bethany currently has limited funds of her own so would need help with living, legal costs etc. while she is developing her skills <p>Periodical Payments</p> <ul style="list-style-type: none"> • A periodical payments order - an order for one party to make periodical payments to the other party to provide regular income 	4

	<p>Here, it appears that Bethany will not be employed but will require money to live</p> <p>Pension sharing order</p> <ul style="list-style-type: none"> • A pension sharing - an order that part of one spouse's pension fund be used to create a pensions fund for the other person • Here Tomasz has good pension. Bethany has a very small pension fund. This needs to be considered <p>Lump sum order</p> <ul style="list-style-type: none"> • An order to pay a specified sum e.g. £20,000 • Here Tomasz has a significant amount of savings and so would be in a position to make a lump sum payment which Bethany could use towards funding accommodation <p>Property Adjustment Order</p> <ul style="list-style-type: none"> • An order to sell, transfer or settle the family home <p>Application e.g. Bethany could request that The Chestnuts is transferred into her name, or sold and the proceeds divided between herself and Tomasz</p>	
4(b)	<p>S25 (2) MCA 1973 factors</p> <p>Financial resources of parties</p> <ul style="list-style-type: none"> • Financial resources of parties • Income, earning capacity and property at time of order and in foreseeable future • Application – Tomasz has significant assets – a house and savings and a business while Bethany will have no income for some time but will have living costs to meet <p>Present and future financial needs obligations and responsibilities of parties</p> <ul style="list-style-type: none"> • Present and future financial needs obligations and responsibilities of parties • Includes housing, food, etc, travel expenses • Application – Bethany needs an income to cover her living costs until she is able to upgrade her skills and find a job <p>Standard of living enjoyed by family before breakdown of marriage</p> <ul style="list-style-type: none"> • Standard of living enjoyed by family before breakdown of marriage • The court will aim to maintain this if possible • if not then a fall in living standards should be borne equally • Application – Bethany and Tomasz appear to have enjoyed a good life style 	6

	<p>Age of parties and duration of marriage</p> <ul style="list-style-type: none"> • Age of parties and duration of marriage • Age is relevant to earning capacity to earn an income • Application – e.g. the marriage has lasted 6 years so is not a very long one. Bethany should be able to get work. She is still quite young <p>Contributions made by parties to the welfare of the marriage</p> <ul style="list-style-type: none"> • Contributions made by parties to the welfare of the marriage • The court will give equal weight to the party providing the income and the party managing the home and providing support • Here Tomasz has significant assets he owns their home and has savings but Bethany has provided support in other ways – she has been providing support for his new business <p>The value of any benefit that would be lost</p> <ul style="list-style-type: none"> • This factor is most frequently used when a loss of pension benefit is involved • Here, Tomasz has a good pension fund <p>Note: Factor identified, factor explained, appropriate application</p>	
4(c)	<p>Procedure for obtaining a financial order</p> <ul style="list-style-type: none"> • Form A is served on the respondent with the notice of first appointment • Applicant and respondent complete and exchange Form E no less than 35 days before 1st appointment • Questionnaires, statement of issues and chronology filed and served (all required) • Form G and Form H completed • First appointment takes place to define issues and save costs and may be used as a FDR appointment • If agreement reached, a consent order can be issued. • FDR appointment for conciliation and settlement • FDR is conducted on a “privileged basis” to encourage parties to “put their cards on the table”. • Court can make consent orders if agreement reached • If no agreement reached, then date set for final hearing and directions given • Parties file open proposals and responses • If no agreement, go to final hearing <p>Orders made</p>	10

Question 4 total: 20 marks