



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 7 – 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

Candidates performed very well on this Question Paper. It was clear that candidates were prepared on the Unit Specification and had consulted both past papers and Chief Examiner reports. The performance demonstrated knowledge and understanding and ability to apply the law to the scenarios.

Candidates should continue to note the following points:

- Case law is important and will help you to gain marks. Key cases are noted in the Unit Specification and should be noted.
- The Divorce, Dissolution and Separation Act 2020 has significantly reformed the law on divorce, dissolution of civil partnerships and judicial separation. All candidates should be aware of the detailed changes to the law it makes.
- Key legislative provisions should be known. Where possible try to learn the exact words of the provision as opposed to paraphrasing it.



- With regards to the welfare checklist (S.1(3) Children Act 1989) and the statutory guidelines in S.25 Matrimonial Causes Act 1973 (and Sch. 5 Civil Partnership Act 2004), be sure to apply the factors thoroughly using as many relevant facts as possible to demonstrate how the factors will be relevant to a court.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Most candidates were able to identify the three requirements for the validity of a civil partnership. Candidates should avoid using phrases such as “not too closely related” as opposed to “not being within the prohibited degrees of relationship”. This was noted in the June 2022 Chief Examiner comments.

Question 2

Candidates generally did well on this question and were able to identify five ways that a father can acquire parental responsibility. Note that parental responsibility will only result from a Child Arrangements Order under S.8 Children Act 1989 if the order specifies that the child will ‘live with’ the father.

Question 3

Most candidates could state that judicial separation is often sought for religious or cultural reasons. Other reasons were less successfully cited, for example, that the couple may feel their relationship has not yet irretrievably broken down, or they want to formally separate within the first year of the marriage or civil partnership.

Question 4

This was a challenging question for many candidates who were not familiar with S.10 (4) and S.10 (5) Children Act 1989. Note that the child’s father is entitled to apply for any S. 8 Children Act 1989 order, regardless of whether or not he has parental responsibility.

Question 5

Candidates performed well on this question overall. However, it is necessary to be precise in the words used. For example, it is not sufficient to state that one ground is ‘non-consummation of the marriage.’ A better answer would note that non-consummation due to the incapacity of either party, or non-consummation due to the wilful refusal of the respondent are sufficient grounds to make a marriage voidable.

Question 6

This was a very straightforward question, and most candidates were able to say that the European Convention on Human Rights is incorporated into domestic law by the Human Rights Act 1998.

Question 7

Some candidates struggled to identify 'relationships' that are addressed in Family Law. Examples might have included children and parents, married couples, and those who choose to cohabit.

Question 8

Most candidates were able to cite the definitions of marriage in either Hyde v Hyde (1866) or Bellinger v Bellinger (2001). Some candidates citing Hyde v Hyde omitted parts of the definition such as 'for life.'

Question 9

This question was answered well, and candidates showed a strong knowledge overall of the rights and obligations for those in legally formal relationships which are not always available for those who cohabit.

Question 10

Strong answers focussed on specifically property-related orders: sale of property, transfer of property and settlement of property. Credit was given for those candidates who cited 'Mesher' or 'Martin' orders.

Section B

Scenario 1

Question 1(a)

Candidates who answered this scenario were generally able to identify that the civil partnership will be void if Eddie is, in fact, still married. Candidates should have made some reference to the Civil Partnership Act 2004 as the source of the law. If Eddie is still married the civil partnership will be void *ab initio* and will never have existed.

Question 1(b)

Candidates should have noted that David will need to apply for a nullity order or decree of nullity under the Civil Partnership Act 2004. David can also apply for financial orders.

Question 2

Candidates did well to identify a prenuptial or postnuptial agreement and cite Radmacher v Granatino (2010) as the key source of law on such agreements. Candidates struggled to identify all conditions for such an agreement to be upheld, though ‘fairness’ was generally cited. Some candidates omitted to apply this to the facts, for example noting that Eddie’s accident has marked a substantial change in their circumstances since the agreement was made.

Question 3(a)

Candidates generally do well on financial orders, though application is sometimes less detailed than it could be. Most candidates were sensitive to the fact that the flat had been adapted for Eddie, making sale of the property a questionable option.

Question 3(b)

Candidates did a generally good job to identify factors that would be relevant to financial orders in Eddie’s case. However, some candidates cited S.25 Matrimonial Causes Act 1973 as the source of law – rather than Schedule 5 Civil Partnership Act 2004.

Question 3(c)

This question was not well answered, with many candidates unable to identify and explain a case that provides judicial guidance on the making of financial orders. Strong answers would have cited cases such as White v White (2000), Miller v Miller; McFarlane v McFarlane (2006) or Charman v Charman (2007).

Scenario 2

Question 1

Those who answered this question mostly demonstrated a good understanding of changes to divorce law brought about by the Divorce, Dissolution and Separation Act 2020. Particularly good answers noted that while there is no longer a need to prove the irretrievable breakdown of the relationship, a statement by the applicant (or applicant and respondent if applying jointly) is sufficient to demonstrate this breakdown. Some candidates were able to apply good detail on the process of divorce, including the 20-week period before a conditional order is made, and the fact that Ben would not be able to contest the application if made solely by Jogeeta.

Question 2

Candidates did well on the financial orders and were able to apply the order to the facts of the case.

Question 3(a)

This question required knowledge of S.25(1) MCA 1973. Candidates who received full marks noted that the court must consider all the circumstances of the case, with first consideration given to the welfare of any minor children of the family.

Question 3(b)

Candidates did well on this question, with some achieving full marks. Remember that it is essential to link the factor to the facts of the case. For example, when considering financial resources, it is essential to consider the resources of both parties, taking into account their income, pensions, property and any other assets. Some candidates only consider the assets of the applicant which is not the correct approach.

Question 4

Candidates are generally good at discussing whether a clean break is appropriate in a particular case. However, this question focussed on the law regarding clean breaks, particularly the duty to consider whether a clean break is appropriate, and, if not, a second duty to consider whether periodical payments for a limited period of time are appropriate.

Scenario 3

Question 1

This question was very well done by candidates with some candidates achieving full marks, or nearly full marks. This is a very pleasing result. The key fact in this case is that the house is registered in Victor's sole name and so Charlene will have to rebut the presumption that Victor also holds the entire beneficial interest if she is to achieve a share of the proceeds of sale. Some candidates omitted to note that Charlene will have to apply under S.14 TOLATA 1996, with the court applying factors under S.15 TOLATA 1996.

Question 2

Candidates did well on this question explaining whether Victor had parental responsibility. Candidates are reminded that when discussing a legal concept, such as parental responsibility, a definition of that concept is important to note.

Question 3

Candidates were mostly able to identify a Child Arrangements Order as the most appropriate for Victor to apply for. However, many candidates did not apply this well. For example, it is likely that Victor will seek to have contact with the children, as this will provide him a relationship with the children. However, he could also apply for the children to live with him. Some candidates discussed types of contact, which was also a good way to discuss this question.

Question 4

Candidates struggled to identify 5 factors from the welfare checklist AND apply each one to the facts. Candidates are reminded to read the question carefully and make use of as many facts as possible.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 3 UNIT 7 – FAMILY LAW

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	Parties must be: <ul style="list-style-type: none"> • Over the age of 16 • Not already married or in a civil partnership • Not within the prohibited degrees of relationship 	3
2	Five from: A father can acquire parental responsibility by: <ul style="list-style-type: none"> • Being married to the child's mother when the child is born • Marrying the mother after the child's birth • Being registered on the child's birth certificate (births after 1/12/2003) • By parental responsibility agreement with the child's mother • By obtaining a parental responsibility order from a court • By obtaining a Child Arrangements Order as the person with whom the child is to live. 	5
3	Two from: <ul style="list-style-type: none"> • The marriage has not irretrievably broken down. • Parties have not yet been married for 1 year. • For religious or cultural reasons 	2
4	Three from: <ul style="list-style-type: none"> • Child's legal parents (including unmarried father) • Guardian or special guardian • Step-parent who has parental responsibility • Any person who is named in child arrangements order as the person the child is to live with • Anyone with whom the child has lived for the past 3 out of 5 years 	3

	<ul style="list-style-type: none"> • Anyone with consent of those with PR • Spouse or civil partner in relation to whom the child is a child of the family 	
5	<p>S12 MCA 1973</p> <p>Four from:</p> <ul style="list-style-type: none"> • Marriage has not been consummated due to the incapacity of one of the parties. • Marriage has not been consummated due to the wilful refusal of the respondent. • One party did not validly consent to the marriage due to duress, mistake, unsoundness of mind. • One party was suffering from a mental disorder. • At the time of the marriage one party was suffering from a sexually transmitted disease and the other party was not aware of it • At the time of the marriage the wife was pregnant by some person other than the spouse • One of the parties has an interim GRC after the marriage <p>One of the parties legally acquired a gender before the marriage under the GRA 2004</p>	5
6	European Convention on Human Rights	1
7	<p>Three from:</p> <ul style="list-style-type: none"> • Marriage and marriage breakdown • Cohabitation and cohabitation breakdown • Civil partnership and civil partnership breakdown <p>Public and private children matters</p>	3
8	<p><u>Hyde v Hyde</u> (1866): voluntary union for life of one man and one woman to the exclusion of all others</p> <p>OR</p> <p><u>Bellinger v Bellinger</u> (2001): a contract that affects legal status and for which the parties elect</p>	2
9	<p>Three from:</p> <ul style="list-style-type: none"> • Married couples have legal obligations to support each other and live together – consortium. • Upon divorce, parties have a right to make applications to the court regarding finances and property and the court can divide these using statutory powers – cohabitants can only rely on trusts and property principles. • When a party to a marriage dies without a will, the other spouse has an automatic right to inherit, whereas a cohabitant will have to make an application to court. 	3

	<ul style="list-style-type: none"> married fathers have parental responsibility automatically where an unmarried father does not. Married partners have automatic statutory 'home' or occupation rights where cohabitants do not 	
10	MCA 1973 Sale of property Transfer of property Settlement of property - candidates may cite Mesher Order or Martin Order	3
Section A total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	s3 CPA 2004 (eligibility) – neither party is already married or in a civil partnership s49 CPA 2004 (void partnership) – if one party is already married, civil partnership is void Application to Eddie and David Civil partnership will be void ab initio	4
1(b)	Decree of nullity (or nullity order) S49 CPA 2004 Financial orders under CPA 2004 (full marks require some ref to CPA 2004)	2
Question 1 total: 6 marks		
2	Max 6 marks from: Pre-nuptial agreement Definition of prenuptial agreement <u>Radmacher v Granatino</u> (2010) Prenuptial agreements are normally binding. Conditions: <ul style="list-style-type: none"> no evidence of duress, aware of all the circumstances, fair in all the circumstances Application: <ul style="list-style-type: none"> is it fair to uphold? Change in circumstances since Eddie's accident. 	6
3(a)	Schedule 5 CPA 2004. Candidates should choose three that are relevant:	6

	<p>Periodical payment – Eddie only works part-time, additional financial needs eg, transportation.</p> <p>Lump sum – Eddie will need accommodation.</p> <p>Transfer of property – the flat has been adapted for Eddie’s needs and he may want to stay there, David will need to be compensated</p> <p>Sale of property – flat is worth a lot but has a mortgage; Eddie’s contribution would have to be considered on assessing proceeds of sale.</p> <p>Pension sharing – both have pensions, but Eddie’s will have been affected by his move to part-time work</p> <p>Maintenance pending suit – to provide Eddie with support pending decree absolute.</p> <p>Settlement order – to allow Eddie to remain living in the apartment as it has been adapted to his needs.</p>	
3(b)	<p>Schedule 5 CPA 2004</p> <p>Four that are relevant:</p> <p>Resources – both have incomes and earning capacity, though Eddie works only part-time; both have pensions, and the house is worth £1 million after mortgage</p> <p>Financial needs – housing for both; transport, medical expenses and adaptations in housing for Eddie</p> <p>Age and duration of civil partnership – 10-year civil partnership; both parties young and with many years of earning capacity.</p> <p>Standard of living before breakdown of relationship – flat indicates comfortable standard of living.</p> <p>Physical or mental disability – Eddie’s disability increases his financial needs and reduces his earning capacity.</p> <p>Contributions – parties appear to have contributed equally.</p> <p>Loss of benefit - Eddie will lose out on David’s income and full-time pension.</p>	8
3(c)	<p><u>One from:</u></p> <p><u>White v White</u> + ‘yardstick of equality’, non-discrimination towards homemakers, fairness - see below</p> <p><u>Miller v Miller; McFarlane v McFarlane</u> + principle of equal sharing, needs, compensation - see below</p> <p><u>Charman v Charman</u> + application</p> <p>Any other relevant case + application</p> <p>Application should include:</p> <ul style="list-style-type: none"> • Principle(s) established in the case • Facts of the case in relation to financial orders • Application to the scenario 	4

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>MCA 1973</p> <p>As amended by the Divorce, Dissolution and Separation Act 2020</p> <p>Identify the sole ground of divorce as irretrievable breakdown s.1 MCA 1973</p> <p>Jogeeta will be the 'applicant' (not petitioner)</p> <p>Application can be sole or joint</p> <p>Jogeeta can apply on her own or with Ben jointly.</p> <p>Statement of irretrievable breakdown must be presented in application</p> <p>No need to prove irretrievable breakdown with 'facts'.</p> <p>Statement <u>is</u> the evidence.</p> <p>20 weeks must elapse before a conditional order is made</p> <p>6 weeks after conditional order, applicant(s) may notify court of intention to proceed.</p> <p>Final divorce order made.</p>	10
2	<p>Three from the following:</p> <ul style="list-style-type: none"> - Maintenance pending suit – Jogeeta has no income whilst divorce is going ahead. - Periodical Payments order –Jogeeta will need maintenance after the divorce because she has no earning capacity/limited earning capacity. - Lump sum order – from the sale proceeds of the matrimonial home or from savings/bonuses from Ben to allow Jogeeta funds to purchase a smaller property to live in. - Property adjustment order – matrimonial home could be transferred into Jogeeta's sole name on trust on a Mesher type order until Peter leaves University then it could be sold, and the proceeds divided. - Sale of the Property – immediate sale and proceeds divided to allow Ben and Jogeeta to each purchase a property. - Pension sharing order or a Pension attachment order –Jogeeta has no future pension provision. Getting divorced in middle/late years leaves her without a pension, which Ben has. She would have benefited had she remained the spouse. 	6
3(a)	<p>The court must consider:</p> <ul style="list-style-type: none"> - 'all the circumstances of the case, - first consideration being given to the welfare of any minor children' 	2

3(b)	<p>Four from:</p> <ul style="list-style-type: none"> - Current and future financial resources of the parties – Ben has an income and a continuing capacity to earn, Jogeeta does not - Current and future financial needs of the parties – both need a property to live in. Ben has an income to live off, but Jogeeta needs one and is unable to obtain herself at the moment. - Jogeeta also has to consider Peter, although an adult, he is still in education - Standard of living before the breakdown – the parties enjoyed a good standard of living. There may not be sufficient to continue with that, and any loss must affect both. - Age of the parties – both are middle to later years, so Jogeeta will struggle to find a job, earn an income and build up a pension. - Duration of the marriage – lengthy marriage, so presumption of equal division - Contributions – Ben has contributed financially Jogeeta has been the carer of the children and the homebuilder, both are of equal value since <u>White v White</u> (2000) - Benefits lost – this refers to pension rights, which Jogeeta will lose on divorce. - Conduct – this relates to gross and obvious misconduct – Ben’s adultery would not be considered here. 	8
Question 3 total: 10 marks		
4	<p>Duty of the courts includes:</p> <ul style="list-style-type: none"> - The courts must consider whether a clean break is appropriate - REQUIRED FOR FULL MARKS - If not appropriate – the court must consider whether periodical payments can be made for a limited period of time REQUIRED FOR FULL MARKS <p>Definition of a clean break Terminates ongoing financial obligations between Jogeeta and Ben Clean break not likely here as Jogeeta has no earning capacity or very minimal and will need support. No children under the age of 18 in this case Limited periodical payment order may be appropriate</p>	4
Scenario total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • Trusts and land law principles will apply • Stack v Dowden (or Jones v Kernott) • Starting point: presumption that Victor holds the entire beneficial interest • Check no declaration in writing or cohabitation contract. • Charlene will have to rebut the presumption. • Resulting trust – where there is direct financial contribution. • Constructive trust more appropriate to family home cases • <u>Lloyds Bank v Rosset</u>: common intention and detrimental reliance • Charlene directly contributed to purchase price so could argue that there is a resulting trust. • Charlene could also argue that there was a common intention that she should have a beneficial interest in the property (a home for the children) which she then acted on to her detriment (using her savings) • Quantification of her shares • Oxley v Hiscock (2004) • Apply under s14 TLATA 1996 for a declaration of interests in the property • S15 TOLATA 1996 factors to be applied 	10
2	<ul style="list-style-type: none"> • PR: All the rights, duties, powers, responsibilities and authority that a parent has in relation to a child and the child's property • S3(1) CA 1989 • Victor will have PR if he is named on the children's birth certificates. • <p>If not:</p> <ul style="list-style-type: none"> • Victor can acquire PR by applying to court for a parental responsibility order, <p>or</p> <ul style="list-style-type: none"> • if he obtains a child arrangements order stating that they are to live with him • or by agreement with mother (which seems unlikely) 	4
3	<ul style="list-style-type: none"> • s8 CA 1989 • Child arrangements order • Sets out with whom the child is to live or have contact with and when that will happen. • • Victor could seek for one or both children to live with him • Victor could seek contact with one or both children • times of contact 	6

	<ul style="list-style-type: none"> Types of contact – direct or indirect 	
4	<p>Five from:</p> <ul style="list-style-type: none"> wishes & feeling - particularly relevant for Florence given her age - consideration of whether she is Gillick competent physical, emotional & educational needs - Florence is expressing a need to see her father; both children need a secure and conflict-free environment in which to live) Likely effect of any change of circumstances - given Charlene's objection to the children having any contact, introducing contact may cause problems The child's age, sex, background & any relevant characteristic which the court considers relevant - Florence is 15 so able to state her views; Hector is only 5 and needs consistent parenting Capability of the child's parents...to meet the child's needs - no suggestion that Victor not a capable parent; some suggestion that Charlene is affecting the children's welfare by her negativity towards Victor. Any harm that child has suffered or is at risk of suffering - Hector may be suffering emotional harm (withdrawn) 	10
Scenario Total: 30 marks		