

Title:	(Unit 20) The Practice of Family Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES	ASSESSMENT CRITERIA	KNOWLEDGE, UNDERSTANDING AND SKILLS
THE LEARNER WILL:	THE LEARNER CAN:	
1. Understand how to terminate a marriage and civil partnership	1.1 Explain divorce and dissolution as methods of terminating marriage and civil partnership respectively	1.1 Termination of marriage and dissolution of civil partnership: <ul style="list-style-type: none"> divorce under the Divorce, Dissolution and Separation Act 2020 (DDSA 2020); dissolution of civil partnership under the DDSA 2020 including analysis of the jurisdiction of the English Courts to deal with the matter by reference to the definition of habitual residence and domicile in the Domicile and Matrimonial Proceedings Act 1973 (DMPA 1973) and Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgements) Regulations 2014; relevant case law, eg, <u>R v Barnett LB, exp Shah (1983) 2 AC 309</u>, <u>Mark v Mark (2004) 1 FLR 1069</u>, <u>Ikimi v Ikimi (2001), EWCA Civ 873</u> and <u>M v M(2007) 2 FLR 1018</u>, <u>Z-v-Z (Divorce: Jurisdiction (2010) 1 FLR 694</u>.

This specification is for the 2026 examination sessions.

	1.2 Explain the process and effects of divorce and dissolution of a civil partnership	1.2 A description of the procedure in divorce and the procedure for dissolution of civil partnership; <ul style="list-style-type: none"> • identification of the required documentation and methods to submit; • issues arising; • consideration of the effect on inheritance e.g. under s18 A Wills Act 1837; • ownership of property, pensions entitlement etc; • effect of section 10A MCA 1973 and religious divorces eg the get • effect of section 10 MCA 1973 on obtaining a final divorce order.
	1.3 Explain the costs incurred in these proceedings	1.3 An explanation of the approximate costs and disbursements involved in the process from instructions received to final order ; <ul style="list-style-type: none"> • compliance with the requirements of the SRA Code of Conduct 2019 (“the Code”) with regard to costs, eg, ensuring clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.
	1.4 Explain best practice in this area	1.4 An explanation of the purpose of the Family Law Protocol (the Protocol); <ul style="list-style-type: none"> • its key elements: namely a commitment to conducting matters in constructive way and non-confrontational way; • best practice in this area is in Part 9 and includes giving notice before issue of proceedings.

This specification is for the 2026 examination sessions.



	1.5 Analyse a given legal situation on the termination of marriage and civil partnership in order to offer practical advice and assistance to an applicant or respondent	1.5 Analysis of a complex scenario to offer advice and assistance, eg, issues arising from accepting instructions to act such as identity checks, conflicts of interest, confidentiality and client care in compliance with the Code.
2. Understand the financial consequences of terminating a marriage or dissolving a civil partnership	2.1 Explain the most commonly used forms of dispute resolution as a means of resolving a financial dispute arising on the termination of a marriage or the dissolution of a civil partnership	2.1 An explanation of the different types of dispute resolution: namely, agreement reached between the parties, negotiation between solicitors, mediation or other forms of alternative dispute resolution (ADR)/non-court dispute resolution such as collaborative law or court-based conciliation and arbitration (where available) and adjudication by the court to resolve financial disputes; <ul style="list-style-type: none"> • consideration of the benefits and the costs and limitations of mediation and other ADR methods; • an appreciation of the need to keep the appropriateness of the process of ADR under review.
	2.2 Describe the process of mediation or another form of ADR as may be appropriate	2.2 The process involves the parties to the dispute, whether or not legally represented or whether or not legal proceedings have commenced, agreeing to appoint a neutral third party (the mediator) who is impartial and has no authority to make any decision with regard to the subject matter of the dispute (which may relate to separation, divorce, children, property, financial issues or a combination thereof); <ul style="list-style-type: none"> • the mediator helps them to reach their own informed decisions by negotiation without adjudication; • an understanding of the role of the advisor to a client engaged in the ADR process and adopting best practice in relation to ADR as set out in the protocol

This specification is for the 2026 examination sessions.



<p>2.3 Explain the costs incurred in these proceedings including consideration of how the costs will be met</p>	<p>2.3 An explanation of the approximate costs and disbursements involved in applications for a financial order;</p> <ul style="list-style-type: none"> • compliance with the requirements of the Code with regard to costs and generally being aware of possible conflicts of interest, eg, Money Laundering Regulations 2007 and the effect of the case of <u>Bowman v Fels</u> (2005) <u>EWCA CIV 226</u> and the duty to report
<p>2.4 Summarise the ancillary relief procedure</p>	<p>2.4 MCA 1973/CPA 2004;</p> <ul style="list-style-type: none"> • applications and typical directions/timelines, the requirement for mediation, the duty of full and frank disclosure, expert evidence, costs, the procedure from issue to final hearing (including the First Directions Appointment and the Financial Dispute Resolution Hearing), the use of Consent Orders.
<p>2.5 Explain the factors the court will take into account in making an order for ancillary relief</p>	<p>2.5 The application of section 25 MCA 1973 including the impact of pre-nuptial agreements;</p> <ul style="list-style-type: none"> • analysing the strengths and weaknesses of a client's case and predicting a possible outcome; • orders available and their use: maintenance pending suit, lump sum, periodical payments, clean break, transfer, settlement, including consideration of Mesher, Martin and Harvey orders; • sale of family home, pensions, identifying and explaining a package of orders to comprise a resolution of the financial claims; justifying each term; • relevant case law, eg, <u>White v White</u> (2000) 2 FLR 927; <u>Miller v Miller</u>; <u>McFarlane v McFarlane</u> (joined cases) (2006) UKHL 24 and <u>Charman v Charman</u> (2007) EWCA CIV 503 and its implications; <u>Radmacher v Granatino</u> (2010) UKSC 42 and its impact on pre-nuptial agreements.

This specification is for the 2026 examination sessions.



	<p>2.6 Explain the consequences of the breakdown of a marriage or civil partnership in relation to the ownership and/or occupation of the family home</p>	<p>2.6 An analysis of how the family home is treated by the courts in situations of marriage/civil partnership breakdown;</p> <ul style="list-style-type: none"> • an explanation of home rights under the Family Law Act (FLA) 1996 section 30; • the acquisition and registering of home rights; • severance of joint tenancy and application of other relevant legislation, eg, section 24 MCA 1973 or Schedule 7 FLA 1996 in relation to the transfer of tenancies.
	<p>2.7 Explain the appropriate action to be taken in order to prevent disposals or set aside disposals of assets made with a view to frustrate financial claims</p>	<p>2.7 The role of injunctive action under section 37 MCA 1973 to prevent a disposal (section 37 (2) (a)) or set aside a disposition already made with a view to frustrate a claim being made in relation to it for financial provision (section 37 (2) (b));</p> <ul style="list-style-type: none"> • analysis of a ‘reviewable disposition’ as set out in section 37 (2) (c) and the requisite intention required to satisfy the court in order to obtain an injunction.
	<p>2.8 Explain enforcement provisions in relation to financial orders</p>	<p>2.8 Methods available to enforce an order, eg,</p> <ul style="list-style-type: none"> • attachment of earnings; • warrant of execution; • third party debt order; • charging order; • execution of transfer deed by District Judge; • collection and enforcement by the Child Maintenance Service; • circumstances of their use and analysis of their effectiveness.

This specification is for the 2026 examination sessions.



<p>2.9 Explain best practice in this area</p>	<p>2.9 Main sections of the Protocol;</p> <ul style="list-style-type: none"> • examples of best practice include pre-application disclosure and negotiation so that parties are in a position to settle the case fairly and early in the process without litigation; • the Protocol encourages the narrowing of issues in dispute to aid the effective and timely resolution of the dispute.
<p>2.10 Explain the rules as to admissibility of evidence and the duty to provide full and frank disclosure in applications made to court</p>	<p>2.10 In outline only, the relaxation of rules of evidence in relation to applications made under the MCA 1973 or the CPA 2004;</p> <ul style="list-style-type: none"> • the admissibility of offers to settle during the procedure and the general duty of disclosure; • relevant case law, eg, <u>Livesey (formerly Jenkins) v Jenkins</u> (1985) AC 424; • <u>P v P (Financial Relief: Non-Disclosure)</u> (1994) 2 FLR 381; • <u>Kimber v Brookman Solicitors</u> (2004) 2 FLR 221.
<p>2.11 Explain, in outline only, the impact of welfare benefits and the duty of a local authority to provide housing</p>	<p>2.11 Child benefit;</p> <ul style="list-style-type: none"> • Income Support and the ‘passport benefits’ automatically gained, eg, free school meals; • Jobseeker’s Allowance; • Universal credit; • housing benefit; • council tax reduction; • duty of a local authority to provide accommodation as set out in Housing Act 1996 and the Homelessness Act 2002, eg, where the former matrimonial home is sold either because of large mortgage arrears or because on relationship breakdown neither party can afford it alone.

This specification is for the 2026 examination sessions.



	<p>2.12 Explain the overriding objective in relation to the proportionality of costs, including tactics for making offers to settle</p>	<p>2.12 An explanation of the principle of proportionality, eg, that it is unacceptable for the costs of any case to be disproportionate to the value of the subject matter of the dispute, eg, valuation of family businesses and joint instruction of experts;</p> <ul style="list-style-type: none"> the pre-application protocol annexed to the Practice Direction (Ancillary Relief Procedure) (2000) 1 FLR 997; eg, pre-application disclosure and negotiation with a view to try to settle fairly before proceedings; tactics: eg, open offers to settle; costs orders, eg, litigation conduct being taken into account in the discretion to make costs orders against one party.
	<p>2.13 Analyse a given legal situation on the financial consequences of terminating a marriage and dissolving a civil partnership in order to offer practical advice and assistance</p>	<p>2.13 Analysis of a complex scenario to offer advice and assistance, eg, re mediation and an application for a financial order, where agreement is reached or otherwise, the drafting of an agreement to include heads of agreement and consent orders.</p>
<p>3. Understand the legislation, provisions and remedies available in cases of domestic violence and molestation</p>	<p>3.1 Explain the alternative options to court proceedings and their appropriateness</p>	<p>3.1 The role of the police as the first point of contact where there has been domestic violence:</p> <ul style="list-style-type: none"> the necessity to have considered alternative methods of dealing with domestic violence, eg, writing a warning letter to the respondent (especially in the context of legally aided clients) power of police to issue Domestic Violence Protection Notices (DVPN and Domestic Violence Protection Orders (DVPO) under Crime and Security Act (CSA) 2010 subject to changes in outline only, and subject to commencement, under Domestic Abuse Act (DAA 2021); in outline only, key provisions of DAA 2021; police prosecution under the criminal law; support for victims, eg, refuges and places of safety and regional differences in support

This specification is for the 2026 examination sessions.



<p>3.2 Explain the impact of legislation</p>	<p>3.2 Statutory definition of domestic abuse under Domestic Abuse Act (DAA) 2021 and part IV of the FLA 1996 and the Protection from Harassment Act 1997;</p> <ul style="list-style-type: none"> • appropriate use of non-molestation under section 42 FLA 1996 and occupation orders under sections 33 and 35-8 FLA 1996 provisions; • applies if 2 people are “personally connected”; appropriate applications either on notice/without notice; • factors governing their use; • explaining and applying the balance of harm test and the statutory factors; • assessing the strengths and weaknesses, including the weight of evidence; • predicting a possible outcome; • additional provisions under section 40 FLA 1996 concerning payment of outgoings relating to the home; • duty of a local authority to provide accommodation as set out in Housing Act 1996 and the Homelessness Act 2002.
<p>3.3 Summarise the procedure used to apply for these orders, including the procedure required for a with or without notice (urgent) application to the court and service of the order</p>	<p>3.3 Deciding when applications are appropriate with or without notice;</p> <ul style="list-style-type: none"> • applying for an order: eg, in the case of a without notice (urgent) application deciding with the client whether they may be in danger if the proceedings are issued on notice; • on a decision to issue proceedings without notice then telephoning the court to make an appointment before the judge further arranging for the personal service of the order on the respondent

This specification is for the 2026 examination sessions.



	<p>3.4 Explain, in outline only, the rules as to admissibility and how the weight of evidence in proceedings of this nature is evaluated</p>	<p>3.4 The rules of evidence in relation to oral applications;</p> <ul style="list-style-type: none"> • evaluating the strengths and weaknesses of evidence, including the weight of evidence; • predicting a possible outcome.
	<p>3.5 Summarise the methods of enforcement of both non-molestation and occupation orders including an explanation of the use of undertakings given to the court</p>	<p>3.5 The courts' and the police powers of enforcement, under FLA 1996 eg, the criminal offence of breach of a non-molestation order, the power of arrest on occupation orders and the possibility of undertakings (in the absence of violence).</p>
	<p>3.6 Describe best practice in this area</p>	<p>3.6 Relevant sections of the Protocol;</p> <ul style="list-style-type: none"> • examples of best practice include: where domestic violence is an issue and the parties have children care should be taken to ensure the client's safety is not compromised by meetings arranged by third parties, eg, CAFCASS officers for negotiations in relation to children.
	<p>3.7 Analyse a given legal situation on the legislation, provisions and remedies available in cases of domestic violence and molestation in order to offer practical advice and assistance to both an applicant and a respondent in these proceedings</p>	<p>3.7 Analysis of a complex scenario to offer advice and assistance; be familiar with the contents of orders and requirements of a statement in support in order to evaluate the documentation and be able to advise on the strengths and weaknesses, including the weight of evidence and predicting a possible outcome).</p>

This specification is for the 2026 examination sessions.



4. Understand the Children Act (CA) 1989 in relation to private law	4.1 Explain the overall intent and purpose of section 1 of the CA 1989	4.1 The welfare principle: section 1 (1), the no delay principle: section 1 (2) the presumption of parental involvement: section 1(2A and 2B);and the no order principle: section 1 (5) of the Children Act 1989 (CA1989) (as amended);applying the legislation
	4.2 Explain the concept of parental responsibility (PR)	4.2 Identification of how PR arises automatically or how it can be acquired under the CA 1989 and how it may be lost; <ul style="list-style-type: none"> the factors and considerations under section 4A of the CA 1989 which a court will take into account and apply to private proceedings; analysis and interpretation of legislation and case law relevant to PR, eg, re G (PR: Education) (1994); re C (Change of Surname) (1998); re H(PR) (1998); <u>Dawson v Wearmouth</u> (1999) and re P (Terminating PR) (1995); evaluating the strengths and weaknesses in situations and predicting a possible outcome.
	4.3 Explain the availability and effect of orders under section 8 CA 1989	4.3 Orders available (child arrangements orders specific issue and prohibited steps orders): who may apply (including when leave of the court is required); <ul style="list-style-type: none"> interim and without notice applications; the factors/considerations under section 1 (3) of the CA 1989 and their application to private proceedings; analysis and interpretation of relevant case law, eg, <u>re L(Domestic Violence & Contact)</u> (2000); <u>re A (section 8 Order: Grandparent Application)</u> (1995); <u>re M (Intractable contact Dispute: Interim Care Order)</u>(2003), <u>re D (Shared Residence)</u> (2001) <u>1 FLR 495</u> and <u>re B (A Child)</u> (2009); evaluating the strengths and weaknesses in situations and predicting a possible outcome in relation to section 8 of the CA 1989 (as amended).

This specification is for the 2026 examination sessions.



	<p>4.4 Explain, in outline only, removal from the jurisdiction, child abduction and change of name with regard to the relevant legislation and the current practice directions</p>	<p>4.4 The limitations imposed by section 13 of the CA 1989 in relation to changes of surname and travelling abroad, eg, holidays or emigration;</p> <ul style="list-style-type: none"> • application of the legislation, eg, applications to be made or transferred to the high court in cases of child abduction and relevant case law in relation to child abduction and the Hague Convention, eg, <u>Payne v Payne (Leave to Remove) (2001) MK-v-CK (2011) EWCA CIV 793</u> and <u>re C (Change of name) (1998) 1 FLR 549.</u>
	<p>4.5 Identify when a family assistance order may be made</p>	<p>4.5 A summary of the provisions under section 16 of the CA1989.</p>
	<p>4.6 Summarise the procedure for entering into a PR Agreement, obtaining a PR order or applying for a section 8 order</p>	<p>4.6 An explanation of the procedures to be followed in entering PR agreements, eg, the requirement for registration;</p> <ul style="list-style-type: none"> • or obtaining a pr order under section 4 of the CA 1989; • section 8 order procedures; • the role of CAFCASS and the nature and effect of related documentation such as expert reports or medical evidence; • an awareness of regional variations in procedures; • the Child Arrangements Programme; • awareness, in outline only, of the pathfinder scheme being piloted
	<p>4.7 Explain financial provision for children on the breakdown of a relationship</p>	<p>4.7 Financial provision for children available through Child Support legislation;</p> <ul style="list-style-type: none"> • an awareness of the courts' limited jurisdiction to deal with financial provision under the MCA 1973 or CPA 2004 (if appropriate) and the limited scope of section 1 schedule 15 of CA 1989.

This specification is for the 2026 examination sessions.



	4.8 Describe best practice in this area	4.8 Relevant sections of the Protocol; <ul style="list-style-type: none"> examples of best practice include the requirement to avoid draft statements using emotive and or inflammatory language or expressing subjective opinion; the discouragement of statements or letters written by children.
	4.9 Explain, in outline only, the rules as to admissibility of evidence and disclosure in applications made to court under the CA 1989	4.9 The relaxation of rules of evidence and the requirement for leave of the court in relation to CA 1989 applications.
	4.10 Analyse a given legal situation on the Children Act 1989 in order to offer practical advice and assistance to both an applicant or a respondent	4.10 Analysis of a complex scenario to offer advice and assistance
5. Understand the financial consequences of relationship breakdown for the unmarried family/couple	5.1 Compare and contrast the financial consequences of ending a marriage, a civil partnership and a cohabitation	5.1 The differing financial consequences for married couples/civil partnerships and unmarried couples, eg, unmarried couples have very limited rights against the estate of a former partner in the event of death; <ul style="list-style-type: none"> wills; Inheritance (Provision for Family and Dependents) Act 1975; cohabitation/separation agreements, their contents and the enforceability of these agreements in outline only.

This specification is for the 2026 examination sessions.



	<p>5.2 Explain the consequences of the breakdown of a relationship for the unmarried family/couple in relation to the ownership and or occupation of the family home</p>	<p>5.2 Relevant statutes: Law of Property Act 1925, and legal and beneficial interests in land, eg, the existence of a declaration of trust setting out entitlement;</p> <ul style="list-style-type: none"> • Trusts of Land and Appointment of Trustees Act 1996, in particular sections 14 and 15, which relate to the power of sale; • the strengths and weaknesses, including the weight of evidence; • predicting a possible outcome.
	<p>5.3 Explain the impact of express and implied trusts in relation to the family home for the unmarried family/couple</p>	<p>5.3 Identification of express and implied trusts;</p> <ul style="list-style-type: none"> • the impact of relevant case law, eg, <u>Stack v Dowden</u> (2007), <u>Jones-v-Kernott</u> (2011) <u>UKSC 53</u> and <u>Lloyds Bank plc v Rosset</u> (1990) <u>2 WLR 867</u>.
	<p>5.5 Analyse a given legal situation on the financial consequences of relationship breakdown for the unmarried family/couple in order to offer practical advice and assistance</p>	<p>5.5 Analysis of a complex scenario to offer advice and assistance.</p>

This specification is for the 2026 examination sessions.



Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of the Practice of Family Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 63 First Line Family Law Advice and Unit 64 Family Law Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/a
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/a
Endorsement of the unit by a sector or other appropriate body (if required)	N/a
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

This specification is for the 2026 examination sessions.

