

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 20 – 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

In relation to divorce law, some candidates are still referring to the old legislation and need to ensure that their knowledge is current in relation to the new legislation.

For money laundering, an understanding of what it is and what the law of this area is as well as what a firm should be doing in relation to family clients to protect against this.

For both child orders and financial orders, it is important to be able to apply the factors to the scenario rather than just list what the factors are. The main credit is given for the application, particularly as the statute book lists all the factors so it is not a Level 6 skill to be able to duplicate these.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1(a)

This question was generally well answered. The question focused on a different area than is usual in occupation order questions – this gave the opportunity for learners to show they knew of this slightly more obscure area. Some marks could still be gained with less knowledge of this area, but the higher marks were from learners who clearly knew the different criteria that applied to this particular section.

**1(b)** This question was again well answered on the whole. Most candidates didn't give enough detail in relation to how the order could be enforced which is more recent legislation.

### Question 2(a)

Child abduction has not been mentioned on previous papers, so some candidates were not familiar with this area. The mark scheme was set so that marks could be gained from a wide variety of responses for this question.

**2(b)** This question has been asked many times and was well answered by candidates that were aware of the factors.

**Question 3(a)** Enforcement of CMS orders was well answered. Most candidates knew this area well and were able to give good responses.

**3(b)** This question was well answered. Candidates were aware what was required for this form.

**3(c)** This question was generally well answered with a lot of candidates scoring in the middle of the range or marks – there was a lot that could be written to gain marks in this question.

**Question 4(a)** Most candidates scored well on this question – the ones that didn't were not aware of the new law and were still referring to the previous legislation.

**4(b)** As for the previous question – some candidates still referring to the old legislation process so scored a bit lower.

**4(c)** Money laundering hasn't been assessed before, so the mark scheme was generous in allowing a variety of answers – candidates generally knew what it was but failed to refer to the legislation and what is required to protect for it.

**SUGGESTED POINTS FOR RESPONSE****JANUARY 2023****LEVEL 6 UNIT 20 – THE PRACTICE OF FAMILY LAW**

<b>Question Number</b>	<b>Suggested Points for Responses</b>	<b>Marks (Max)</b>
<b>1(a)</b>	<p>S35 (a) one former spouse or former civil partner is entitled to occupy a dwelling house by virtue of a beneficial estate.            (b) the other former spouse or former civil partner is not so entitled; and            (c) the dwelling-house – (i) in the case of former spouses, was at any time their family home or was at any time intended by them to be their family home.</p> <p>Application to scenario</p> <ul style="list-style-type: none"> <li>• the length of time that has elapsed since the parties ceased to live together;</li> <li>• the length of time that has elapsed since the marriage was dissolved or annulled; and</li> <li>• the existence of any pending proceedings between the parties for property adjustment orders under s23A or 24 Matrimonial Causes Act 1973</li> </ul> <p>Application of factors to scenario</p> <ul style="list-style-type: none"> <li>• When deciding the terms of the discretionary provisions of an order, the court must also have regard to the “balance of harm” test, reproduced in s35(8).</li> <li>• the respondent or any relevant child is likely to suffer significant harm if the order is made; and (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm . . . which is likely to be suffered by the applicant or child if the order is not made.</li> </ul> <p>Application to scenario            Could include:            Usually made for 6 months</p>	<b>10</b>
<b>1(b)</b>	<ul style="list-style-type: none"> <li>• Non-molestation order under section 42 of the Family Law Act 1996 (FLA)</li> <li>• To qualify for both orders Hubert must establish that he is an associated person under s62 FLA 1996. He can establish this as he and Frances are ex-spouses.</li> <li>• The non-molestation order could have a power of arrest attached and breach is automatically a criminal offence for which the police can take action. s42A FLA 1996 makes the breach of a non-molestation order a criminal offence which is punishable with up</li> </ul>	<b>10</b>



	<p>to five years' imprisonment. It is an arrestable offence and the applicant can simply telephone the police to report the breach. A breach of a non-molestation order can still be punished using the power of the court of punishment for contempt of court. No power of arrest is available for the civil enforcement of a non-molestation order and a warrant of arrest will have to be obtained from the court.</p> <ul style="list-style-type: none"> <li>To make the application without notice under section 45 FLA we must prove to the court that Hubert, Rosie and Zoey are at risk of significant harm if the order is not made immediately.( Alternatively we can rely on the fact Hubert will be deterred or prevented from pursuing the application if the order is not made immediately. It is unlikely as this is a not a serious case of violence that it will be required to be applied for without notice.</li> </ul> <p>Concluding statement of whether order will likely be made or not</p>	
<b>Question 1 total:20 marks</b>		
<b>2(a)</b>	<ul style="list-style-type: none"> <li>Arrestable offence under Section 1 Child Abduction Act 1984</li> <li>Must be a person connected with the child – in this case a parent</li> <li>Consent is required from all parties with PR</li> <li>Offence not committed if child taken out of UK for less than a month</li> <li>If there is a real threat that a child may be removed unlawfully an all ports warning system may be invoked</li> <li>Child abduction application is ideally needed</li> <li>Need to contact the local police station who will liaise with port immigration officers if there is a real and imminent danger of removal</li> </ul>	<b>9</b>
<b>2(b)</b>	<ul style="list-style-type: none"> <li>Raul should apply for a prohibited steps order regarding relocation (S8)</li> <li>In deciding whether to grant Raul's application the welfare of the child will be the court's paramount consideration. The court will also consider the no delay and no order principles and the presumption of shared parental involvement. In deciding whether a prohibited steps order would be in Simon's best interests the court will apply the s.1(3) checklist :</li> <li>The ascertainable wishes and feelings of the child: Simon is only 7 so his views will not be considered in detail by the court.</li> <li>The child's physical, emotional and educational needs: the court would generally hold that a relocation of this level would not be beneficial to the child's emotional needs. In relation to educational needs Raul says Simon is happy at the school he goes to and is settled in the routine that him and Desiree have with him.</li> <li>The likely effect on the child of any change in circumstances: Simon stays with Raul every other week and spends half of his</li> </ul>	<b>16</b>

	<p>school holidays with him so him moving to Turkey will definitely affect that.</p> <ul style="list-style-type: none"> <li>• The child’s age, sex, background etc.: Simon is 7 years old. The court will decide what weight to attach any significant weight to his views. Raul and Desiree equally share care of Simon currently and he spends equal time with each of them.</li> <li>• Any harm that the child has suffered or is at risk of suffering: it is unlikely that the court will consider the situation to be one which poses physical harm to Simon although the court may recognise the possibility of emotional harm caused by moving him away from his father.</li> <li>• How capable the parents are of meeting the children’s needs: this is not an issue here. There is no suggestion that Raul or Desiree cannot look after Simon as they currently share care.</li> <li>• The range of powers available to the court As the parties are in dispute the court will have to make an order to resolve the issue.</li> <li>• The court will decide this application in accordance with the welfare principle and so it is highly likely that the court will feel that the relocation is not in Simon’s best interests and make a prohibited steps order in Raul’s favour.</li> </ul>	
<b>Question 2 total:25 marks</b>		
<b>3(a)</b>	<p>An answer which consists of reasoned evaluation, offering opinion/decision on the best course of action when advising the client.</p> <p>Marks should be distributed in the following areas:</p> <p>Describe the range of powers possessed by the CMS – student should provide information and describe what these are. The provision of 2 possible enforcement options.</p> <p>Responses should include:</p> <p>The CMS has a range of powers that are used against the non-resident parent.</p> <p>1) Deductions from earnings orders can be served on the non-resident parent’s employer requiring them to make deductions from salary and pay this to the CMS who pay it to the resident parent. The charge for this is £50. This is not available where the non-resident parent is self-employed.</p> <p>2) Deductions from bank or building society are used where the non-resident parent is self-employed. Requires the bank to pay money directly to the CMS. The charge for this is £50.</p> <p>If a DEO is not effective the court action can be taken. A liability order is obtained where the CMS apply to the Family Court giving the non-resident parent 7 days' notice of the application. Where</p>	<b>5</b>

	<p>the court is satisfied the payments are due then a liability order will be issued.</p> <p>The CMS then consider the means of enforcement which can include:</p> <ul style="list-style-type: none"> <li>• registration of a charge at HMLR</li> <li>• seizure of goods</li> <li>• freezing bank accounts</li> <li>• third party debt orders</li> <li>• deductions orders</li> <li>• attachment of earnings order</li> <li>• committal order</li> </ul> <p>Students to provide 2 options to get the marks here</p> <p><i>Responses could include:</i></p> <p>Finally, the CMS can seek to take a driving license or passport.</p>	
<b>3(b)</b>	<p>Form E – financial statement – 30 page form that details the financial circumstances of the party completing the form (optional 1 mark)</p> <p>Should include:</p> <p>Financial resources – will need to get CEV figure of pension</p> <ul style="list-style-type: none"> <li>• Personal and family history</li> <li>• Liabilities and needs of the maker of the statement</li> <li>• Future marriage plans</li> <li>• Nature of the orders being applied for</li> </ul> <p>Evidence to be attached can include – payslips, mortgage statements, property valuation, pension statement, bank statements (must identify at least two)</p> <p>Statement of truth to be signed at the end</p> <p>Must be filed not less than 35 days before the first appointment</p>	<b>5</b>
<b>3(c)</b>	<ul style="list-style-type: none"> <li>• Section 25 MCA provides that the court must take into account all of the circumstances of the case, giving first consideration to the welfare of any minor children (s.25). The parties have 2 children, David and Esme who are living with Clara and who will continue to do so. Section 25 MCA then sets out a list of factors for the court to use in resolving a couple’s finances on divorce.</li> </ul> <ul style="list-style-type: none"> <li>• s25 (a): Resources. <ul style="list-style-type: none"> <li>4-bedroom property net equity £425,000</li> <li>- Joint life assurance policy with a surrender value of £50,000</li> <li>- Shares in Melissa Bellfont’s sole name: £165,000</li> </ul> </li> </ul>	<b>20</b>

- Savings in Clara Bellfont's sole name: £133,000  
- Savings in Melissa Bellfont's sole name: £286,000  
Total £1,059,000  
The parties' unrealisable capital resources are: -  
- Melissa Bellfont's pension: C.E. £82,000  
- Clara Bellfont's pension: C.E. £152,000  
Total £234,000  
Clara earns £19,000 gross per annum working part time.  
Melissa earns approximately £68,000 gross per annum.  
Clara has some further earning potential in two years when the children are both in school.  
Clara also receives child maintenance from Melissa via the CMS -

• s.25(b): Needs.

The court will consider the children's need to have a secure home first and will also consider each of the parties' needs to have a home. Clara could rehouse herself in a smaller or cheaper house and the children require it as a home, so the court could consider an order for sale but it is likely that the assets will be sufficient for Clara to stay in the family home with the children.

The court would accept that Melissa needs her own accommodation and ideally this should also be a 3-bedroom property so that the children can stay with her.

She says that she has seen a 3-bedroom semi-detached house she likes for herself for £195,000 – this appears reasonable.

Both parties have mortgage capacity, but Melissa's is better than Clara's as she earns more than Clara.

• s25(c): Standard of living.

In light of the parties' income and assets they had high standard of living during the marriage. The court will attempt to ensure that both parties bear any reduction in their standard of living post-divorce equally. However, as Clara has the children living with her, and their interests must be considered first, it is likely her standard of living will be reduced less than Melissa's.

• s.25(d): Ages of the parties and duration of the marriage.

Clara is 43 and Melissa is 45. They are close in age and are both young enough to continue working for a number of years, contribute to their pensions and improve their financial position post-divorce.

The duration of the marriage is 6 years which makes it a relatively short marriage.

• s.25(e): Disability of the parties: not relevant in this case

• s.25(f): Contributions to the family.

Melissa has been the main earner.

Clara has worked part-time, as well as looking after the home and the children of the family. She will continue to look after the children.

The court will rank these contributions equally.

	<ul style="list-style-type: none"> <li>• s.25(g): Conduct: there is no conduct on the facts.</li> <li>• s.25(h): any loss of benefit. Both parties have a pension, Clara’s pension is higher than Melissa’s. Melissa could apply for a pension sharing order</li> <li>• The court must also consider whether the parties should have a clean break. The court could believe that an immediate clean break is acceptable here, as Clara is working and could increase her earning capacity. If Clara were to have a larger share of the capital from the marriage, then this would increase this possibility. <ul style="list-style-type: none"> <li>• Alternatively, the court may prefer to protect her position by way of a nominal maintenance order.</li> </ul> <p>The court will also apply the principles from the case of <u>White-v-White</u> (2000) 2 FLR 981, thus the court should check any settlement proposal against the “yardstick of equality”.</p> <ul style="list-style-type: none"> <li>• A completely equal division of the realisable assets would give the parties £529,500 each.</li> </ul> <p>This would mean that Clara can have the house with £425,000 equity plus another £104,500 from the savings to equal half, however as the children will live with her then she would get more than half so it wouldn’t be unreasonable for Clara to have over half to compensate for the reduced earning capacity.</p> <ul style="list-style-type: none"> <li>• Relevant orders that could be discussed Maintenance pending suit Periodical payments Lum sum orders Property orders – mesher, martin etc Pension sharing orders</li> <li>• Could include:</li> </ul> <p>Credit students where other case law been discussed to include <u>Chaman v Charman</u> [2007] in relation to stellar contributions and <u>Miller v Miller</u> [2006]</p> </li></ul>	
<b>Question 3 total:20 marks</b>		
4(a)	<ul style="list-style-type: none"> <li>• The ground for divorce is the irretrievable breakdown of marriage S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020</li> <li>• The DDSA 2020 introduces “no fault” divorce and removes the need for a “fact” to be shown</li> </ul>	<b>7</b>



	<ul style="list-style-type: none"> <li>• Mr Shore now simply needs to state that the marriage has broken down irretrievably and does not have to provide any further information – statement will be made.</li> <li>• Mr Shore (Geoffrey) is no longer able object to a divorce. They could apply jointly</li> <li>• Responses could include: The DDSA 2020 followed a consultation Reducing Family Conflict: Reform of the legal requirements for divorce</li> </ul>	
<b>4(b)</b>	<ul style="list-style-type: none"> <li>• Mr Shore must complete and submit application for a divorce order. Application may be a sole application or may be made jointly.</li> <li>• Should submit copy of marriage certificate, certificate of reconciliation and fee.</li> <li>• Application should be submitted on-line via the divorce portal, although paper submissions are still possible.</li> <li>• Mr Shore (Geoffrey) should be served if not a joint applicant</li> <li>• The application must include a statement that the marriage has broken down irretrievably.</li> <li>• A 20 week period follows to allow parties to consider their position and to withdraw the application if they wish to do so</li> <li>• After 20 weeks Mrs Howard can apply for a conditional order (decree nisi)</li> <li>• After a further 6 weeks, Mrs Howard can apply for a final order (decree absolute)</li> <li>• Court will issue final order and marriage is terminated.</li> <li>• Applying under this Act should enable Mr Shore to obtain a divorce within 6 months</li> </ul>	<b>11</b>
<b>4(c)</b>	<ul style="list-style-type: none"> <li>• Money laundering is the process by which criminals attempt to hide or obscure the origins of criminal proceeds in order to make it easier to spend the money.</li> <li>• The proceeds may arise from activities as diverse as drug trafficking and selling, prostitution, people trafficking, robbery and other forms of illegal activity, including tax evasion, benefit fraud or fraud.</li> <li>• Solicitors' firms present money launderers with a target as a firm keeps money within client accounts and moves money between bank accounts in property and other transactions.</li> <li>• The risks to the firm include criminal and disciplinary action against the firm and individual members of staff, with the attendant damage to reputation and bad publicity.</li> <li>• The principal statute governing money laundering is the Proceeds of Crime Act 2002 (POCA 2002) and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.</li> <li>• A firm will assess the risks to it from money laundering and must have systems in place to ensure compliance with the regulations. Customer due diligence describes the systems and processes by which the firm can verify the client's identity using</li> </ul>	<b>7</b>



	documentation (e.g. a passport), and this must be done at the time of the first interview – that is, at the time that the business relationship is established.	
<b>Question 4 total:25 marks</b>		

