

**CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS**

**JANUARY 2020**

**LEVEL 3 - UNIT 7 – FAMILY LAW**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested answers 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 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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**

Many candidates had clearly studied the Unit Specification and consulted past question papers and Chief Examiners' Reports. These candidates demonstrated a wide range of knowledge and understanding, and were able to apply their knowledge to the scenario questions with some skill.

General suggestions made in previous Chief Examiner Reports remain important and include:

- Knowledge and application of case law is essential in a Law question paper.
- Understanding the 'significance' of a judicial case does not equate to knowing the facts of the case. The case might establish a test or lay down guidelines, and these matters then indicate the 'significance' of the case.
- Know the Unit Specification well and avoid relying on material that is not contained in the Unit Specification.
- Be prepared to 'explain' or 'describe' as well as to 'state' or 'name.' The former require more detail in the answer

- Key legislative provisions should be known as close as possible to the exact wording of the legislation.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1

Candidates were generally very well prepared to answer this question, and most were able to cite s.44 Civil Partnership Act 2004 as the correct source of law.

### Question 2

Many candidates were able to state correctly that an existing will is unaffected by an order of judicial separation, as the parties remain legally married. Some candidates confused this with the rule relating to intestacy and judicial separation. Others simply defined judicial separation, which did not answer the question.

### Question 3

Most candidates were able to choose from a variety of judicial office holders to answer this question. However, some candidates identified mediators and CAFCASS officers as possible holders of judicial office. This highlights the importance of reading the question carefully. In this case the question asked for those who 'hear' cases in the Family Court.

### Question 4

Many candidates were able to identify key formalities for valid marriages. However, many candidates confused formalities with 'capacity' to marry, which focuses on matters of legal validity.

### Question 5

(a) Candidates generally performed well on this question and were able to define a cohabitation agreement.

(b) When stating the requirements candidates who performed best were able to cite specific requirements rather than making general statements.

### Question 6

Most candidates were able to state relevant Articles from the European Convention on Human Rights (ECHR) with the appropriate Article number. Many were also able to apply these rights to aspects of the Unit Specification, while some struggled to do so and could only describe the right. This demonstrates the importance of thinking about the relevance and 'connections' of human rights law to each aspect of the Unit Specification.

### **Question 7**

This question was generally well answered, and candidates demonstrated understanding of the law on nullity. Candidates should always try to state the full ground – for example, ‘non-consummation due to incapacity of either party’ or ‘non-consummation due to wilful refusal’ – as opposed to simply ‘where the marriage is not consummated.’

### **Question 8**

Where candidates had studied case law, they were able to explain the significance of either case very well. There was a good number of such candidates.

### **Question 9**

This question was answered competently, and candidates overall demonstrated good understanding of the pension orders. One key difference between pension orders, include the time at when the pension is actually divided. Good answers recognised this.

### **Question 10**

(a) Most candidates achieved full marks for this question and could identify individuals who have automatic parental responsibility. Credit was given for those candidates who stated that a father whose name is on the birth certificate has automatic parental responsibility.

(b) A small number of candidates confused those who are able to acquire parental responsibility with those who are able to apply for a s.8 Children Act (CA) 1989 Child Arrangements Order. The strongest candidates were able to state who could acquire parental responsibility and also state how this would be achieved. For example, a grandparent can obtain parental responsibility when named in a child arrangements order as the person with whom a child is to live.

## **Section B**

### **Scenario 1**

#### **Question 1**

Many candidates who answered this question achieved full or nearly full marks. Statement of the law (including key cases) was balanced well with application. Some candidates continue to place too much emphasis on resulting trusts. In addition to not being applicable in this scenario, the Supreme Court has stated that the constructive trust is the preferred implied trust in family home cases. Direct contributions to the purchase price of the home (whether by means of contributing to the deposit or mortgage payments) are also relevant to constructive trusts, as laid out by Lord Bridge in Lloyds Bank v Rosset (1990).

#### **Question 2**

Most candidates were able to identify the appropriate order for Felicity as a child arrangements order under S.8 CA 1989, and then go on to apply elements from the welfare checklist in S.1(3) CA 1989. Strong answers were

able to identify key facts from the scenario but also note general factors relating to children (for example, Grace, like all children, needs a safe home, schooling and consistent parenting).

### **Question 3**

(a) Candidates did a good job of defining parental responsibility and stating the correct statutory source. Candidates were also very strong on identifying that Mark does not have parental responsibility for Grace.

(b) This question was answered well, with candidates showing an understanding of the various ways for Mark to acquire parental responsibility. Candidates should focus, however, on those methods that are actually relevant and likely in consideration of the facts. For example, given the facts of the scenario, it is not likely that Mark will acquire parental responsibility by marrying Felicity.

### **Question 4**

Candidates were able to identify the s.8 CA 1989 child arrangement order as an order that Mark can apply for, but were less able to identify s.10(4) CA 1989 as the correct source of law for this. As Grace's natural father, Mark is entitled to apply for any s.8 CA 1989 order.

## **Scenario 2**

### **Question 1**

This question was generally well answered. However, some candidates continue to confuse 'validity' of marriage with 'formalities.' Good answers cited s.11 MCA 1973 and the factors for validity of marriage. Credit was also awarded for those who cited the Marriage Act 1949.

### **Question 2**

(a) Candidates normally perform well on questions requiring knowledge and application of the property orders under the Matrimonial Causes Act (MCA) 1973, and this paper was no exception. Overall, candidates demonstrated ability and skill in applying orders that reflected the facts of the scenario. One exception to this was that some candidates suggested a pension order for Sahar. On careful reading of the scenario, Amir does not have a pension. Rather, he is part-owner of several properties that may provide him with a future income. Amir is also sole owner of the family home and has savings. Good answers appreciated this and made suggestions regarding these properties and the savings that would generate capital and therefore assist Sahar to establish her own pension. With regards to property orders, candidates who suggested an order for sale of the family home should have noted that the home has been specially adapted for Ibrahim and so this might well not be to Sahar's advantage, unless the sale generated sufficient capital for a similar home for the children. Both of these issues demonstrate the need to read the facts of the scenario carefully and to suggest orders that are really relevant to those facts.

(b) The checklist of factors in s.25 MCA 1973 was applied well by the majority of those who answered this scenario. A small number of candidates confused

factors from the welfare checklist in s.1(3) CA 1989 and focused on matters pertaining to the children.

### **Question 3**

(a) Candidates generally did well in answering this question and were able to identify suitable orders under s.8 CA 1989. While candidates had no difficulty stating why a prohibited steps and/or specific issue order were appropriate for Sahar, they struggled more with stating why a child arrangements order was appropriate and tended to simply describe the order. Good answers were able to state that the order was appropriate because Sahar has cared for her sons full-time since they were born and because she knows how to care for Ibrahim's disabilities in particular.

(b) Candidates who answered this question did well to apply the s.1(3) CA 1989 welfare checklist. Many of the answers demonstrated sensitivity to the facts of the case, as well as an understanding of children and parents in difficult situations, such as this scenario raised. This is commendable.

### **Question 4**

This was a challenging question for many candidates. Most could identify an issue on which Amir might object, usually citing the issue of the children's religion and/or education. Only a small number of candidates were able to put this in an appropriate context. Good answers explained that choosing a child's religion and ensuring they are educated form part of Amir's parental responsibility, or are reflected in aspects of the welfare checklist (child's educational needs, child's background).

### **Scenario 3**

#### **Question 1**

(a) Candidates had little difficulty with this straightforward question.

(b) Most candidates were able to identify that the only facts available for a 'quick' divorce were Patrick's behaviour and possibly Patrick's adultery. Most candidates appreciate that adultery is still an option for same sex couples, provided that the infidelity took place with someone of the opposite sex. Application to the facts was strong. Full marks required reference to relevant cases such as Cleary v Cleary (1974) and Livingstone-Stallard v Livingstone-Stallard (1974), with their respective definitions and tests. Some good candidates explored the issue of Patrick and Oscar continuing to live together, time restrictions and how this might affect Oscar's reliance on either fact.

#### **Question 2**

The key to answering this question was in the words 'during divorce proceeding' and consequently required discussion of maintenance-pending-suit.

#### **Question 3**

(a) Almost all candidates identified that the agreement is a premarital or prenuptial agreement and could correctly explain when it would be considered.

(b) Knowledge and understanding of Radmacher v Granatino (2010) was not widely demonstrated, and virtually no candidates had knowledge of any other relevant case law. The test in Radmacher is important and essential to a full understanding of this issue, as is the principle that an agreement is very unlikely to be upheld if the needs of both parties are not met.

#### **Question 4**

(a) Almost all candidates were able to identify judicial separation as a means of formalising the parties' separation without pursuing divorce. A full answer would have stated that Oscar would not have to prove irretrievable breakdown, but would have to demonstrate evidence of one of the five facts.

(b) This question was very well answered and shows good understanding of the effects of judicial separation.

### **SUGGESTED ANSWERS**

#### **LEVEL 3 - UNIT 7 – FAMILY LAW**

#### **SECTION A**

1. Under s.44 Civil Partnership Act (CPA) 2004, there is only one ground for the dissolution of a civil partnership – namely, the irretrievable breakdown of the partnership.
2. Section 18 Matrimonial Causes Act (MCA) 1973 states that judicial separation does not affect either party's existing will, as the parties are still legally married.
3. Since the Crime and Courts Act 2013, there is now a single Family Court. Cases may be heard by a variety of people who hold judicial office, including lay justices (magistrates), or by District Judges, Circuit Judges and High Court Judges.
4. Formalities for a valid marriage are detailed in the Marriage Acts 1949 and 1994. First, preliminary notice must be made at the local registry office (or by reading of the banns in the Church of England); secondly, a ceremony must occur on approved premises, officiated by someone who is authorised to conduct weddings; and thirdly, registration of the marriage must occur.
5. (a) A cohabitation contract is an agreement, made by two parties who cohabit (i.e. not married or civil partners), that details how finances and property are to be managed during the relationship and/or on breakdown.  
  
(b) A cohabitation contract may be upheld as valid if:
  - it is in writing;
  - it is signed by both parties;
  - there is evidence that the parties have received independent legal advice;

- there is evidence that the parties intended to create legal relations;
  - there is no evidence of duress or undue influence;
  - the agreement relates to the parties' finances and property and not lifestyle.
6. The European Convention on Human Rights (ECHR) provides several rights applicable to Family Law. For example:
- Article 6 – the right to a fair hearing. This could apply in cases where a parent is seeking contact with a child or seeks to obtain financial support following a divorce, and contested hearings take place.
  - Article 8 – the right to respect for a private and family life. This could apply where a parent is being denied contact with a child.
  - Article 12 – the right to marry and have a family. This has applied in historical cases where persons with gender dysphoria have sought to marry in their acquired gender.
  - Article 14 – freedom from discrimination in the context of another right. This could arise where a father is denied having his child live with him because of his sexual orientation or religious affiliation.
7. The grounds upon which a marriage is voidable are found in s.12 MCA 1973. They are:
- non-consummation of the marriage due to the incapacity of either party to consummate it;
  - non-consummation of the marriage due to the wilful refusal of the respondent to consummate it;
  - lack of consent by either party due to duress, mistake, unsoundness of mind, or for another reason;
  - mental disorder of either party as defined by the Mental Health Act 1983;
  - at the time of the marriage the Respondent was suffering from a sexually transmitted disease and the Applicant was unaware of it;
  - at the time of the marriage, one party was pregnant by another man, not her spouse;
  - an interim gender recognition certificate has been granted to one party after the date of the marriage;
  - the Respondent had an acquired gender at the time of the marriage and the Applicant was unaware of this.
8. S v R (Parental Responsibility) (1993) identifies the matters to be considered when a parent applies for a parental responsibility order under s.4 Children Act (CA) 1989. The court should consider the commitment shown by the applicant to the child, the level of attachment to the child and the reasons for applying.
- Dawson v Wearmouth (1999) states that the change of a child's surname requires the consent of all the parties with parental responsibility and should be referred to court where this cannot be obtained.
9. There are two types of pension orders that can be made under the MCA 1973 on divorce:

- pension sharing order, where the pension is split at the time of divorce allowing each party to accrue a pension independent of the other.
  - pension attachment order, where the pension is split at the time the pension-holder retires, with a portion of the pension going to the other party.
10. (a) Those who have automatic parental responsibility (PR) include:
- the child's mother;
  - the father if married to the mother;
  - same sex spouse/civil partner at the time of the child's birth.
- (b) Other people can acquire parental responsibility:
- an unmarried father who is named on the birth certificate (for children born after 1 December 2003);
  - an unmarried father who obtains a PR order under s.4 CA 1989;
  - an unmarried father who makes a PR agreement with the mother;
  - an unmarried father who obtains a Child Arrangements Order under s.8 CA 1989 for the child to live with him;
  - family member who obtains a child arrangements order under s.8 CA 1989 for the child to live with them;
  - guardians;
  - step-parents.

## SECTION B

### Scenario 1 Questions

1. The house is in Felicity's sole name. In Stack v Dowden (2009), the Supreme Court established that 'equity follows the law', meaning that where only one party holds the legal title, that party holds the entire beneficial interest. Where the parties hold the legal title jointly, and there is no express declaration of trust, equity presumes that they hold the property in equal shares. Therefore, the presumption is that Felicity holds the entire beneficial interest and Mark does not have an interest in the house. The presumption is rebuttable, but the burden will fall on Mark to prove that he has a beneficial interest.

Mark can seek to establish a beneficial interest under a constructive trust, as laid out in Lloyds Bank v Rosset (1990). He must prove that he and Felicity had a common intention to share the beneficial interest which he acted on to his detriment, and/or that he made direct financial contributions to the purchase price of the house.

Mark did not contribute to the purchase of the house. However, the words Felicity used in toasting Grace's birth could be interpreted as evidence of an intention to share the beneficial interest of the property with Mark, which he relied on to his detriment by renovating the garden and converting the garage. Mark may argue that this is supported by the



change in tone since they first lived together, when Felicity had the deed of transfer pinned up in the kitchen. If Mark is successful in proving a beneficial interest, these indirect contributions, as well as his care for Grace, may also be taken into consideration when quantifying his share under a constructive trust.

Under s.14 Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), a court can make an order for sale and declare the parties' shares. It will consider the factors in s.15 TOLATA 1996, such as the welfare of any children living at the house and the purpose that the house fulfilled. Under Oxley v Hiscock (2004), the court will consider Felicity and Mark's 'whole course of dealings', including the childcare Mark has provided and the work he has done in and around the house.

2. Felicity should apply for a Child Arrangements Order, under s.8 Children Act (CA) 1989, for Grace to live with her. A court considering this application will apply the Welfare Checklist found in s.1(3) CA 1989. This includes consideration of:
  - Grace's ascertainable wishes and feelings in light of her age and understanding. Grace is six years old and therefore her wishes and feelings, while they will be considered, are unlikely to carry significant weight with the court.
  - Grace's physical, emotional and educational needs. Grace is young and needs a safe and secure home environment with consistent parenting. Her welfare is presumed to be promoted by having contact with both of her parents, unless there is evidence to the contrary.
  - The likely effect on Grace of a change in her circumstances. Grace has lived all her life in the family home and a move might have a detrimental impact on her, in addition to having to adjust to her parents' breakup.
  - Grace's age, sex, background and other relevant characteristics. Grace is a six-year-old girl who has lived almost all her life with both parents in a comfortable home with a large garden. She appears to have had a stable and happy upbringing.
  - Any harm which Grace has suffered or is at risk of suffering. At the current time, Mark does not have suitable accommodation for Grace at his brother's flat. Additionally, there is a possibility that Grace will be exposed to drug use at the flat, which is a potential cause of harm.
  - The ability of Mark and Felicity to meet Grace's needs. Both parents appear to be capable of meeting Grace's needs, however Mark will need more suitable accommodation.
3. (a) Parental responsibility (PR) is defined in s.3(1) CA 1989 as all the rights, duties, powers, responsibilities and authority which by law a parent has, in relation to a child and the child's property. Mark is not married to Felicity and is not named on Grace's birth certificate and therefore he does not have parental responsibility for Grace.
- (b) As an unmarried father, Mark can only acquire PR through reaching an agreement with Felicity or by a court order. Mark could ask Felicity to enter into a PR agreement with him. If Felicity does not consent to this, Mark can apply for a PR order under s.4 CA 1989. He will have to demonstrate that he is committed to Grace (e.g. he

has provided most of her early childcare and created a garden and play area for her), that there is attachment between himself and Grace (e.g. he has cared for her at home) and that his reasons for applying are genuine and in Grace's best interests. Finally, Mark could seek to acquire PR by obtaining a Child Arrangements Order for Grace to live with him, but as he does not currently have suitable accommodation, this is unlikely to succeed.

4. Mark can apply for a s.8 Child Arrangement Order under the CA 1989 to have contact with Grace on a regular basis. S.10(4) CA 1989 establishes that a child's natural parents can apply automatically (without the permission of the court) for any s.8 CA 1989 order. Parental responsibility is not required.

### **Scenario 2 Questions**

1. The rules on validity of a marriage are found in the Marriage Act 1949 and s.11 Matrimonial Causes Act (MCA) 1973. The requirements are that:
  - both parties are over the age of 16 when they marry;
  - the parties are not within the prohibited degrees of relationship – they are not related too closely by blood or by affinity;
  - neither party was already married at the time of their wedding;
  - the marriage was conducted according to the correct formalities.
2. (a) Under ss 22-24 MCA 1973 Sahar can apply for the following orders:
  - Maintenance pending suit: Sahar does not work and has no income of her own. This will provide her with periodical payments during the divorce proceedings up until decree absolute.
  - Periodical payments: regular payments will provide income to Sahar as she is not working and has never worked. She will need an income for herself and the two children.
  - Lump sum: Sahar may apply for a lump sum to purchase a car which can be used to transport Ibrahim as well as Zain. Sahar may also seek a lump sum to begin a private pension for herself.
  - Transfer of property order: Amir is owner of several properties including business premises and the family home. Sahar could apply to have the family home transferred to her for the benefit of herself and the two children.
  - Settlement of property: A 'Mesher' order would allow for Sahar to stay in the family home with the boys until Ibrahim finishes school (or another 'trigger' event) at which point the house would be sold. As Sahar is only 32 years old, this might provide sufficient time for her to acquire sufficient skills to obtain paid employment.
2. (b) In making financial or property orders, the court will consider a range of factors found in s.25 MCA 1973. First consideration will be given to the welfare of Zain and Ibrahim. In addition, the court will consider:

- Financial resources of both parties: Sahar has no income or savings, but Amir owns a range of properties including the family home. The savings account holds £25,000 and the house has an equity of approximately £225,000.
  - Needs and obligations of both parties: Sahar will need an income and a place to live; Amir will also need suitable accommodation if he moves out of his parents' home; both parties will require a car suitable for Ibrahim's needs.
  - The age of the parties and duration of the marriage: the parties are both young and have been married for 10 years; Sahar has time to develop skills for working and supporting herself.
  - Standard of living enjoyed during the marriage: the value of the house and the business success of Amir indicate that the family have had a comfortable standard of living.
  - Contributions to the welfare of the family: Amir has provided the income for the family, while Sahar has provided childcare and the day-to-day care of their disabled son.
  - Value of any benefit which a party will lose the chance of acquiring as a result of the divorce – Sahar will risk losing out on a pension, as Amir does not have a private pension and their wealth is largely tied up in properties in the name of Amir and his family.
3. (a) Sahar could apply for a Child Arrangements Order, under s.8 Children Act (CA) 1989, for Zain and Ibrahim to live with her. She could apply for this because she has been their primary carer since birth and because she has an understanding of how to care for Ibrahim on a daily basis. She could also apply for a Prohibited Steps Order under s.8 CA 1989 to stop Amir from moving the boys to a new school or a Specific Issue Order to address and resolve the issues of schooling and faith
- (b) The court will apply the Welfare Checklist in s.1(3) CA 1989 when considering Sahar's application. This includes:
- Ascertainable wishes and feelings in light of age and understanding: Zain is nine years old and may be old enough to express his feelings, but he is still quite young and may lack the maturity and understanding to do so. Ibrahim is only seven and probably too young for the court to give weight to his wishes and feelings in making their decision.
  - Physical, emotional and educational needs: Ibrahim has a disability which might work strongly against Amir moving him from the family home, as the house has been adapted to his needs. Both boys have need for education and a stable home environment with consistent parenting.
  - Likely effect of a change of circumstances: both boys are young and are adjusting to their parents' breakup. Moving to a new house, new school and living with extended family might have a detrimental impact on them, although much will depend on how well they know their grandparents and where they live.
  - Any harm the children have suffered or might be at risk of suffering: there is no evidence that either child has suffered harm.

- Age, sex, background: both boys are young and have been raised in a Muslim family and Amir wants his sons to attend religious ceremonies and to be educated in a religious school.
  - Capability of Amir and Sahar to meet the children's needs: both parents appear to be capable parents. However, Amir does not have his own accommodation and we are not sure of his parents' accommodation and whether it will meet Ibrahim's needs. Sahar has experience and has made contacts within the community which helps with Ibrahim's disability.
4. With reference to the welfare checklist in s.1(3) CA 1989, Amir may raise the issue of the children's background. They have been raised as Muslims and Amir believes that this will be best promoted by their attending a Muslim school and regularly attending a mosque. A similar argument could be made relying on the boys' educational and emotional needs.

### Scenario 3 Questions

1. (a) Oscar would seek a divorce under s.1(1) Matrimonial Causes Act (MCA) 1973. There is only one ground for divorce, namely the irretrievable breakdown of the marriage.
- (b) Oscar could seek to rely on the fact of adultery under s.1(2)(a) MCA 1973, defined as voluntary sexual intercourse between the respondent and a person of the opposite sex. The facts indicate a possibility that Patrick has committed adultery, as Hannah is of the opposite sex. Oscar would need to prove not only that Patrick has committed adultery, but also that Oscar now finds it intolerable to live with Patrick. The case of Cleary v Cleary (1974) demonstrates that the fact of adultery does not have to be the cause of the intolerability, though the two factors are often connected.

If Oscar cannot prove that adultery occurred, or if Patrick will not admit it, he can apply on the basis that Patrick's behaviour is such that Oscar cannot reasonably be expected to live with him under s.1(2)(b) MCA 1973. The test in Livingstone-Stallard v Livingstone-Stallard (1974) states that the court should ask what the 'right-thinking' person would think of Patrick's behaviour in light of Oscar's personality and characteristics. Patrick has had some sort of relationship with Hannah and has punched and pushed Oscar, which would amount to sufficient behaviour for this purpose.

2. Once Oscar has applied for a divorce, Patrick can make an application for maintenance pending suit under s.22 MCA 1973. This can provide Patrick with periodical payments up to the time of the decree absolute.
3. (a) It appears that Oscar and Patrick have signed a premarital agreement. A premarital agreement sets out how the parties wish their assets to be managed, should the marriage come to an end. The agreement is considered as part of 'all the circumstances' of the case when a court is deciding what financial orders to make on divorce.
- (b) The key case on marital agreements (whether premarital or postmarital) is Radmacher v Granatino (2010). The Supreme Court

ruled that, while premarital agreements are not legally binding contracts, they can carry significant weight. A court is more likely to uphold a premarital agreement where the parties have entered into it freely and in full knowledge of its implications, and where it is fair in all the circumstances to uphold it. Whether the parties have taken independent legal advice will be relevant to whether the parties have entered into the agreement freely. Such agreements have been addressed in cases such as Kremen v Agrest (2012) where the agreement was not upheld because the wife had not had independent legal advice, and V v V (2011) where the agreement was upheld.

In this scenario, it will be critical to know whether Patrick's needs can be met without recourse to Oscar's accrued wealth, and whether both Oscar and Patrick received independent legal advice.

4. (a) Oscar can formalise his separation from Patrick by applying for an order of judicial separation under s.17 MCA 1973. He does not have to prove the irretrievable breakdown of their relationship, but he will have to prove one of the 5 available grounds: adultery; behaviour; desertion; 2-year separation with Patrick's consent; or 5-year separation.
- (b) An order of judicial separation will relieve Oscar from the obligation to cohabit with Patrick. However, the order does not affect the validity of the marriage, and so they will remain legally married. This in turn means that neither Oscar nor Patrick can remarry or form a civil partnership. If legally separated, Patrick can make financial applications for support from Oscar, and a clean break is not available. While an order of judicial separation may give Oscar and Patrick time to consider the future of their relationship, it is not a suitable option for Oscar if he is sure that their marriage is irretrievably broken down.