

## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 7 – FAMILY LAW\*

**Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time**

#### Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

## SECTION A

### (Answer ALL questions in Section A)

1. State **one** case law definition of marriage and explain its relevance today.  

**(3 marks)**
2. Explain the basis on which an order for judicial separation is granted.  

**(2 marks)**
3. Name the statute that allows individuals to legally change their gender, and state **two** legal consequences that follow from doing this.  

**(3 marks)**
4. Explain **three** ways that the rights and obligations of civil partners differ from those of a cohabiting couple.  

**(3 marks)**
5. Explain the right contained in Article 14 of the European Convention on Human Rights.  

**(2 marks)**
6. Explain whether or not a civil partnership can be formed on religious premises.  

**(3 marks)**
7. Explain the differences between a void marriage and a voidable marriage.  

**(4 marks)**
8. Define the principles established in s.1(1) and s.1(2A) Children Act 1989.  

**(4 marks)**
9. Explain **one similarity** and **one difference** between a 'Mesher Order' and a 'Martin Order'.  

**(2 marks)**
10. List the private orders available under the Children Act 1989 relating to children and their upbringing.  

**(4 marks)**

**(Total Marks for Section A: 30 marks)**

## SECTION B

**(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)**

### Scenario 1

Henrik and Jo lived together for 15 years. They have two children: Tom, who is 12, and Elise, aged 14.

The family home is registered in joint names and is worth £300,000, with an outstanding mortgage. Henrik paid the deposit on the house and, until recently, the mortgage payments had come out of his bank account. Jo now works part-time as a nurse. Since she went back to work, Jo's income has gone towards daily living expenses as well as paying the mortgage.

Henrik was made redundant 12 months ago. Being at home without a job had a serious impact on Henrik's mental health, and his consumption of alcohol increased greatly. He began to drink heavily at home, and was often clearly drunk when Tom and Elise arrived home from school. When drunk, Henrik was aggressive and angry towards Jo, and his outbursts were witnessed by the children.

Six months ago, Jo insisted that Henrik move out of the family home. He went to stay in a one-room apartment owned by his brother. Tom and Elise have continued seeing Henrik at the weekends, as Jo had hoped that this might help to keep Henrik from drinking.

Jo was recently asked to attend the children's school. Tom has been exhibiting disruptive behaviour and the standard of his schoolwork has plummeted. Elise has told her friends that she is self-harming. She has also been seen socialising after school with older teenagers who are known to use and sell illegal drugs. Jo confided to the safeguarding officer that she is aware that Elise has been drinking alcohol with her friends.

Jo wants to sell the family home and find new accommodation for herself and the children, as she is unable to pay the mortgage. Henrik says that she has 'not put a penny in', and so she is entitled to nothing.

Jo is also desperately worried about Elise, who she fears will soon be out of her control. Henrik is desperate to keep contact with his children and is attending counselling for alcoholics, but Jo is frightened about the influence that he is having on the children.

## Scenario 1 Questions

1. Advise Jo what rights she has in the family home and how she can realise those rights.  
**(10 marks)**
2. Explain the order that Henrik can apply for, in order to continue seeing Tom and Elise.  
**(4 marks)**
3. Explain **two** principles the court will apply, when considering Henrik's application.  
**(5 marks)**
4. Identify and apply **three** relevant factors from s.1(3) Children Act 1989 that Jo will rely on, if she contests Henrik's application.  
**(6 marks)**
5. Explain to Jo what order the court can make that will provide support in dealing with Elise.  
**(5 marks)**

**(Total Marks for Scenario 1: 30 marks)**

## **Scenario 2**

Vivien (aged 30) and Aisha (aged 25) are civil partners. Vivien has a son, Jaden, who is five years old.

Vivien and Aisha met four years ago and had a civil partnership ceremony soon afterwards. Aisha cared for Jaden while Vivien was working. Aisha has a substantial private income, which is more than enough to meet the family's needs. They lived in a flat that Aisha bought when she moved to London. The flat is worth £750,000 and has no mortgage.

Vivien and Aisha's relationship was initially happy, but began to break down two years ago, when Vivien became extremely depressed. At this time, Vivien left her job and went to stay with her mother, taking Jaden with her. Vivien has not been able to find full-time work since leaving, so Aisha has continued to provide financial support. Aisha has continued seeing Jaden, with the handovers taking place with Vivien's mother present. Jaden told Aisha when they met recently that he misses her and loves her.

Aisha has approached you for legal advice. She tells you that Vivien recently told her that she is a transsexual and has started the process of transitioning her gender with a view to becoming legally male. Vivien is now living as a male and going by the name of Vic. Aisha is very worried about the impact that this might have on Jaden. Aisha cannot believe that she did not realise this about Vivien, although she admits that she has not actually seen her for two years. She had always hoped that, with time, Vivien and Jaden would come back to live with her.

Aisha accepts that the civil partnership is over, but remains very attached to Jaden. Aisha is also worried, because Vivien wants to find a new place to live but she does not have sufficient financial resources to do so.

## Scenario 2 Questions

1. (a) Explain the legal requirements that Vivien will have to follow, in order to legally change gender.

**(3 marks)**

- (b) Advise Aisha whether her civil partnership with Vivien is voidable.

**(5 marks)**

- (c) Explain what other option is available to Aisha, to end the civil partnership.

**(5 marks)**

**(Total: 13 marks)**

2. Presuming that the civil partnership is ending:

- (a) identify and apply **two** relevant financial or property orders that Vivien can apply for;

**(4 marks)**

- (b) identify and apply **two** factors that the court will take into consideration, when dealing with Vivien's application.

**(4 marks)**

**(Total: 8 marks)**

3. (a) Explain the order that Aisha should apply for with regard to Jaden.

**(3 marks)**

- (b) Apply **three** relevant factors from the 'welfare checklist' that a court will take into account, when dealing with Aisha's application.

**(6 marks)**

**(Total: 9 marks)**

**(Total Marks for Scenario 2: 30 marks)**

### **Scenario 3**

Michael and Davina are aged 32 and 33 respectively. They were married four years ago.

Davina recently discovered text messages on Michael's phone from a woman named Erica. It was obvious to Davina that there was some sort of relationship between Michael and Erica. Michael admitted to Davina that he and Erica had had a short affair, but insisted that it was over. He tried to justify the affair, by saying that Davina had been depressed and distant, and not appreciative of his needs. He asked Davina to forgive him and to consider giving their marriage a chance.

Davina agreed, and consulted her GP about how to address her mental health issues. She also sought support through counselling available at work. She tried to be positive at home, and made sure that the house was clean and meals were ready for Michael when he returned from work.

However, in spite of her efforts, Michael continued communicating with Erica, and spent increasingly longer away from home, allegedly for work. The more Davina tried to please Michael, the more he seemed to resent her efforts. He criticised her cooking, told her that she was 'letting herself go' in her appearance, and he blamed her for the problems in their marriage.

Davina and Michael rent a house. Their combined incomes cover their living costs and they are able to save a little every month from Michael's income. Michael is currently working at a retail store and will soon become a qualified accountant. They have one car, which Michael insists on using to drive to work, while Davina takes the bus. Michael has Post Office shares, which he received from his grandparents many years ago, and Davina believes that they are now worth a fair amount of money. Neither of them has a pension, nor do they own a property. Davina works in a nursing home as a care assistant. She would like to go back to college in the future to gain qualifications, so that she can obtain a better-paid job. She has told her counsellor that her marriage is over, and that she and Michael are living separate lives.

### Scenario 3 Questions

1. Advise Davina whether she can divorce Michael quickly and, if so, on what basis.  
**(8 marks)**
  
2. Explain how the period of reconciliation may affect Davina's application to divorce Michael.  
**(5 marks)**
  
3. Identify **two** financial orders that Davina can apply for, and explain their relevance to her situation.  
**(4 marks)**
  
4. Explain **three** relevant statutory factors and **one** relevant case that the court will consider in the context of Davina's application.  
**(9 marks)**
  
5. Define a 'clean break order' and explain whether this would be appropriate in Davina and Michael's case.  
**(4 marks)**

**(Total Marks for Scenario 3: 30 marks)**

**End of Examination Paper**