

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 - UNIT 12 - 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 2022 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

Performance for this session was generally very good. Candidates who were well prepared were able to show knowledge of the relevant law and understanding through application to the situations described scenarios in the pre-release case study.

They had also developed the skills to answer exam questions as they had clearly read and understood the questions and were able to show their knowledge and understanding.

Candidates are advised to ensure that they should:

1 - Provide evidence of **knowledge** of the relevant law in their answers (key citation, definitions and explanations) AND

2 - **Understanding** of knowledge through application to the situation in the case study and providing advice as marks are awarded for both knowledge and understanding (KUS), as shown through application. The examiner can only assess a candidate and give credit on their written answer, so it is important to provide sufficient evidence of both knowledge and understanding.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a) Non molestation order

Generally answered very well with definition, citation, examples and application to case study.

(b) Occupation order

Candidates need to be able to provide a clear definition of an occupation order.

(c)(i) Balance of harm test

Disappointingly, 50% of candidates were unable to identify this test, or to provide an explanation.

(ii) Factors considered

Good answers identified and explained the selected factors and stated why they applied to the scenario. Many candidates failed to do this.

Question 2(a)(i) Parental responsibility (PR)

Very good performance by candidates providing a good definition, citation and examples.

(ii) PR and mother

Good performance.

(iii) PR and unmarried father

Good performance.

(b) Child arrangements order (CAO)

Although candidates were able to identify the CAO, marks were lost by failing to either describe in sufficient detail, or to apply.

(c) Leave to apply for a CAO

A significant number of candidates failed to recognise the problems experienced by grandparents in applying for a CAO as they are not recognised as having a right to apply under the Children Act 1989.

Question 3(a) Ground for divorce

Candidates were able to state the ground.

3(b) Satisfying the ground under the MCA 1973

Generally, good knowledge shown of current law under the MCA 1973.

(c) Satisfying the ground under the DDSA 2020

Generally, good knowledge shown of the new “no fault” divorce under the DDSA 2020.

Question 4(a) Financial matters

Candidates who were able to explain and apply each order gained full marks. Others either did not explain or did not apply and so missed marks.

(b)(i) Clean break

Well prepared candidates able to explain clearly. Others only showed limited knowledge.

(ii) White v White

Well prepared candidates able to explain clearly. Others only showed limited knowledge.

(c) Preparing for the 1st appointment

Knowledge of stages in this process shown by some candidates was very good. Others failed to provide sufficient detail. Candidates should recognise that in a practice paper they are likely to be examined on aspects of procedure.

SUGGESTED POINTS FOR RESPONSE

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Question Number	Suggested Points for Responses	Max Marks
1(a)	<p>Non-molestation order</p> <ul style="list-style-type: none"> • s42 FLA 1996 • An order to prevent the respondent molesting the applicant • Molestation can include wide variety of behaviour – from physical violence to threatening behaviour and harassment and psychological abuse • Here Gary has been making threatening phone calls to Wendy and has been verbally threatening to her near the home. • A non-molestation order would protect Wendy and the girls as it would prevent Gary from repeating this behaviour. • Breach of a non-molestation order is a criminal offence and the police could arrest Gary if he breached the order 	5
1(b)	<p>An occupation order</p> <ul style="list-style-type: none"> • An occupation order is an order that deals with the occupation of the family home - it is an order that controls who lives in the family home and can be used to exclude those who use or threaten violence • Wendy should apply for a s36 occupation order as she is a former cohabitee and does not have a right to occupy because Gary is the sole owner of the house. • In this case, Wendy has been physically attacked by Gary in the past and has been threatened with violence again recently. 	4



	<ul style="list-style-type: none"> Wendy and the children need a safe home but Wendy has nowhere to go whereas Gary has family nearby that he could stay with an occupation order would protect her by allowing her to live in the family home with the children by excluding Gary 	
1(c)(i)	<ul style="list-style-type: none"> The “balance of harm” test The balance of harm test Harm suffered by applicant and relevant child and whether they are likely to suffer significant harm if an order IS NOT made balanced against Harm suffered by respondent and relevant child if an order IS made Here Wendy has suffered harm in the past and has felt increasingly threatened recently. She may suffer further due to the conduct of Gary if an order is not made Gary is unlikely to suffer significant harm if an order is made – he can live with his parents 	5
1(c)(ii)	<p>Factors considered by court when considering an application for a s36 occupation order</p> <ul style="list-style-type: none"> Housing needs and resources of each of the parties Application, e.g. Wendy needs a home for herself and her children. Gary is living with his parents and should be able to afford accommodation for himself if he wishes. Financial resources of each of the parties Application, e.g. Gary is in a well-paid job and could afford another property as the family home was inherited. Wendy is currently the full time carer for the children and has no income of her own and no family to help her Likely effect of any order, or of any decision by the court not to exercise its powers on health, safety and well-being of the parties and of any relevant child Application, e.g. if court does not allow Wendy and the children to remain in the family home, they will become homeless. Gary on the other hand can continue living with his parents or he can acquire another property. The conduct of the parties in relation to each other and otherwise Application – here Gary has a history of violence against Wendy and is becoming increasingly threatening towards Wendy which is affecting the children The nature of the parties relationship Application – Wendy and Gary were in a relationship for 7 years and have 2 children. The length of time they have co-habited Application – Wendy and Gary have co-habited for 7 years 	6

	<ul style="list-style-type: none"> • Whether there are any children who are children of both parties or for whom both parties have parental responsibility or have had parental responsibility • Wendy has parental responsibility and Gary also as named on birth certificates • Relating to the legal or beneficial ownership of the dwelling house • The house is in Gary's sole name 	
Question 1 Total:		20 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)(i)	Parental responsibility <ul style="list-style-type: none"> • s3(1) Children Act CA) 1989 • All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property • Examples e.g. decisions re education, religion, medical treatment 	4
2(a)(ii)	Does mother have parental responsibility (PR) <ul style="list-style-type: none"> • The natural mother has PR automatically • Debbie as natural mother of Anya and Naomi has PR 	2
2(a)(iii)	Does mother have parental responsibility (PR) <ul style="list-style-type: none"> • An unmarried father does not have automatic PR • He has PR if named on the birth certificate of children born after 1 December 2003 • Jaden did not have PR as he was not named on the birth certificate and was not married to Debbie 	3
2(b)	Child arrangements order <ul style="list-style-type: none"> • A child arrangements order • An order that regulates with whom a child will live, and • With whom a child will have contact • Contact can be either direct (face to face) or indirect (letters, emails, cards, telephone calls) 	4
2(c)	Leave to apply and considerations <ul style="list-style-type: none"> • Those who can apply for a CAO are identified in s10(4) CA 1989 and s10(5) CA 1989 • Examples of these categories • People who do not fit the categories stated must apply to the court for permission to apply • Here, Monique and Kingston as grandparents do not meet any of the identified categories so must apply for leave • AORP 	4
Question 2 Total: 17 marks		

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> Irretrievable breakdown of marriage S1(1) Matrimonial Causes Act (MCA) 1973/s1 Divorce, Dissolution and Separation Act (DDA) 2020 	2
3(b)	<ul style="list-style-type: none"> Tina would have to satisfy one of five facts under s1(2) MCA 1973 Adultery – not applicable here as Tina cannot cite her own adultery Unreasonable behaviour – on the facts stated no indicator here that Harry has behaved unreasonably Desertion – not applicable 2 years separation and the other party consents This would be apply if Tina moves out but only if Harry will agree which seems unlikely at the present 5 years separation This would be the alternative but would mean waiting 5 years. Harry would not be able to object. Credit reference to Owens v Owens Credit reference to the DDSA 2020 Conclusion 	6
3(c)	<ul style="list-style-type: none"> Either, or both parties, may apply to the court for a divorce order Introduced “no fault” divorce There is no longer necessary to support application with one of the 5 facts (MCA 1973) The application must be accompanied by a statement that the marriage has irretrievably broken down The court must take the statement as conclusive evidence Although Harry doesn’t agree that their marriage has broken down, Tina can apply and the court must issue a divorce order Conclude that waiting to apply under the Divorce, Dissolution and Separation Act 2020 would enable Tina to obtain a divorce more speedily than under MCA 1973 	4
Question 3 Total:		12 marks

Question Number	Suggested Points for Responses	Max Marks
4(a)	<p>Financial orders</p> <p>Maintenance pending suit (s22 MCA 1973)</p> <ul style="list-style-type: none"> Maintenance pending suit – periodical payments up to the date of the decree absolute Harry appears to have no money of his own and is not working. He is reliant on Tina for money so would help with living, legal costs etc. <p>Periodical Payments (S23 MCA 1973)</p>	4

	<ul style="list-style-type: none"> • A periodical payments order - an order for one party to make periodical payments to the other party to provide regular income • Here, Harry has no income of his own for living expenses. He has been reliant on Tina for this. <p>Pension sharing/attachment order (s166 Pensions Act 1995)</p> <ul style="list-style-type: none"> • A pension sharing order (PSO) creates a separate pension fund for the applicant, and reduces respondent's fund OR • A pension attachment order (PAO) instructs the pension provider to pay a specified amount of the pension to the applicant on retirement or death of the respondent. • Here Tina is contributing to a pension whereas Harry has made no provision. <p>Property adjustment order (PAO)</p> <ul style="list-style-type: none"> • PAO - an order dealing with the property by sale or transfer or trust (or credit reference to a specific method e.g. sale of property) • Credit appropriate application e.g. a transfer to Harry or a Mesher/Martin trust, with supporting rationale. 	
4(b)(i)	<p>The 'clean break principle' s.25 A MCA 1973</p> <ul style="list-style-type: none"> • s25A MCA 1973 • Clean break principle provides that the parties should be financially independent of each other after divorce, if possible • Ordered in a range of circumstances e.g. parties are young with no children, or older with sufficient assets • Application point: e.g.the 'clean break' may not apply because there are young children involved, one of whom is disabled, so on-going contact will be expected, OR the "clean break" could apply if appropriate financial arrangements, including on-going maintenance for Olly, can be agreed 	4
4(b)(ii)	<p>General approach by court when applying <u>White v White (2001)</u></p> <ul style="list-style-type: none"> • White v White established the Yardstick of Equality • No discrimination between husband and wife and respective roles, earner and homemaker • Court should aim to achieve equality and only depart from this if there is a good reason • Credit reference to a delayed clean break being possible • Here although Tina has been the earner, Harry has looked after the home and the children so the yardstick of equality should apply 	4
4(c)	<p>Steps to prepare for the First Appointment</p> <ul style="list-style-type: none"> • Attend a MIAM • Complete form E – statement of income, property etc • Exchange form E and file it at court • Not less than 35 days before the First appointment • Exchange and file at court at least 14 days before First Appointment various documents: • A statement of issues – issues on which there is no agreement • The chronology – history of marriage 	9

	<ul style="list-style-type: none">• The questionnaire – further information or documents sought• Form G – stating whether party in a position to use First Appointment as FDR• Form H – an estimate of costs so far	
Question 4 Total:		21 marks