

 CILEX



A7 – Family Law and Practice

Advanced Stage

2021

A7: Family Law and Practice

The aim of this module is to give you the essential knowledge and understanding of law and procedure to equip you to deal with family law cases. The module covers a range of current family law topics that you would encounter in practice, incorporating the formation of adult relationships, matters relating to children, and the breakdown of adult relationships. On completion of the module, you will have the skills to draft basic court documentation, whilst acquiring the knowledge and extended foundations of family law and procedure.

The module covers:

1. Family Law themes
2. Formation of adult relationship: Marriage, Civil Partnership
3. Void and Voidable Marriages and Civil Partnerships
4. Divorce, Dissolution and Judicial Separation
5. Financial Relief on Divorce/Dissolution
6. Wills, Severance and Intestacy
7. Cohabitants
8. Private Law Children
9. Child Maintenance
10. Public Law Children
11. Domestic Abuse

Learning Outcomes

By the end of this module you will be able to:

1. Demonstrate detailed knowledge and understanding of the principles and rules governing family law
2. Identify and evaluate relevant facts and issues and apply the law to provide advice on a given set of facts
3. Advise on procedural matters in family law cases
4. Draft key documents in family law cases, including application for a matrimonial order and application for a private law children order
5. Identify situations that potentially give rise to conflicts of interest, issues of professional ethics or other issues under the Code of Conduct

Linked online assessment: A7

1. Family Law themes

The basis of family law is underpinned by some common themes which those studying and working in family law need to know. There will be legal and ethical obligations to the client, particularly relating to funding options and mediation.

- a) Single family court
 - Structure
 - Allocation of cases and gatekeeping
 - Appeal process
 - Using technology
- b) Funding
 - Legal Aid, Sentencing and Punishment of Offenders Act 2012
 - Legal Aid franchise
 - Access to public funding domestic abuse cases
 - Access to public funding forced marriage cases
 - Access to public funding public law children cases
 - Statutory charge
 - Privately paying or self- representation
- c) Mediation
 - S.10 Children and Families Act 2014
 - Part 3 Family Procedure Rules 2010, Practice Direction 3A
 - Mediation, Information and Assessment Meeting (MIAM)
 - Exclusions from Mediation
 - Referral and Instructions to the Mediator
 - Legal aid for mediation

2. Formation of adult relationship: Marriage, Civil Partnership

The basis of family law requires you to consider what type of adult relationship has taken place. This will involve consideration of the rules relating to formation of that adult relationship, and whether they have been complied with, to establish validity of the marriage or civil partnership. Therefore, you will need to know the following:

- a) Key Statutes on formation of a marriage/civil partnership
 - Matrimonial Causes Act 1973
 - Civil Partnership Act 2004
 - Marriage (Same Sex Couples) Act 2013
 - S.9 Marriage (Same Sex Couples) Act 2013 - Transitional arrangements; converting a civil partnership into a marriage
- b) Key similarities and differences between a marriage and a civil partnership

	<ul style="list-style-type: none"> • Property • Children • Intestacy rules • Dissolving the relationship <p>c) Provisions relating to capacity to marry/civil partnership</p> <ul style="list-style-type: none"> • Age • Prohibited Degrees • Not already married <p>d) Provisions relating to formalities to marry/civil partnership</p> <ul style="list-style-type: none"> • Preliminary formalities for Church of England ceremonies • Preliminary formalities for non-Church of England ceremonies • The marriage ceremony – Civil marriages • The marriage ceremony – Church of England ceremonies • The marriage ceremony – Quaker and Jewish marriages • The marriage ceremony – other religious ceremonies • Registration post ceremony <p>e) Different outcomes for failing to comply and their effects</p> <ul style="list-style-type: none"> • Void • Non-marriage
<p>3. Void and Voidable Marriages and Civil Partnerships</p>	<p>As well as recognising whether an adult relationship has been formalised in accordance with the law so it is valid, you must also understand the circumstances in which a marriage or civil partnership is void or voidable, and the key differences and effects. Therefore, you will need to know the following:</p> <p>a) The law of nullity: void</p> <ul style="list-style-type: none"> • S.11(a)-(d) Matrimonial Causes Act 1973 • Effects <p>b) The law of nullity: voidable</p> <ul style="list-style-type: none"> • S.12(1)(a)-(h) Matrimonial Causes Act 1973 • Statutory bars per s.13 Matrimonial Causes Act 1973 • Effects
<p>4. Divorce, Dissolution and Judicial Separation</p>	<p>All family practitioners will be asked to advise on divorce or dissolution, or other alternatives for the parties to live apart, which will involve consideration of the law and the procedure. Therefore, you will need to know the following:</p> <p>a) The law relating to divorce - Matrimonial Causes Act 1973</p>

	<ul style="list-style-type: none"> • S.3: one year rule • S.1(1): irretrievable breakdown • S.1(2): five facts • The effects of resumed/continuing cohabitation • Defences <p>b) The law relating to dissolution - Civil Partnership Act 2004</p> <ul style="list-style-type: none"> • S.41: one year rule • S.44(1): irretrievable breakdown • S.44(5): four facts • The effects of resumed/continuing cohabitation • Defences <p>c) Stages</p> <ul style="list-style-type: none"> • Divorce: Decree nisi and Decree absolute • Dissolution: Conditional order and Final Order <p>d) Procedure – Family Procedure Rules 2010</p> <ul style="list-style-type: none"> • Documents: application for matrimonial order (D8), marriage certificate, fee, statement of reconciliation (FPR 7) • Service, and methods of service (FPR 6) • Application for decree nisi/conditional order (D80) • Pronouncement of decree nisi/conditional order • Application for decree absolute/final order (D36) • Decree absolute/final order pronounced <p>e) Digital Divorce</p> <ul style="list-style-type: none"> • 2018 online divorce application process for litigants in person • The future developments e.g. separate online service for legal professionals - being tested <p>f) Changes to Divorce Law</p> <ul style="list-style-type: none"> • No fault divorce • Divorce, Dissolution and Separation Bill <p>g) Judicial Separation</p> <ul style="list-style-type: none"> • S.17 Matrimonial Causes Act 1973 • Terminates the obligation to live together but not the marriage/civil partnership • No irretrievable breakdown, but just establishing a fact • Can still deal with finances
<p>5. Financial Relief on Divorce/Dissolution</p>	

In conjunction with advising a client on divorce/dissolution, you will also advise on how the assets will be divided. As such, financial relief on divorce/dissolution will be considered. You must have an awareness of the key law and procedures governing financial relief. Therefore, you will need to know the following:

- a) The law - Matrimonial Causes Act 1973
 - S.25(1) - all the circumstances with first consideration to minor child
 - S.25(2)(a)-(h) - statutory factors
 - S.25A clean break principle
 - Yardstick of equality

- b) Financial orders - Matrimonial Causes Act 1973
 - S.22 - maintenance pending suit
 - S.23 - periodical payments order
 - S.23 - lump sum order
 - S.24 - property adjustment orders
 - S.24B - pension sharing orders
 - S.24C - pension attachment
 - Offsetting
 - Legal Services Order

- c) Pre-nuptial agreements
 - Legal basis
 - S.25 MCA 1973 consideration
 - Principles
 - Law Commission 2014 'Qualifying Nuptial Agreements'

- d) Procedure – Part 9 Family Procedure Rules 2010
 - Making the application within the divorce proceedings or making the application as a stand-alone application
 - Importance of the MIAM before issue
 - Form A (issue)
 - Form E (financial questionnaire)
 - First appointment
 - Financial Dispute Resolution appointment
 - Final hearing
 - Consent orders
 - Code of Conduct for CILEx/ Solicitors/Code of Conduct for Firms – duty of full and frank disclosure/not to mislead the court

<p>6. Wills, Severance and Intestacy</p>	<p>On receiving instructions from a client regarding financial provision, you should understand how to protect the client's interests in relation to assets from the outset. It is important to understand the role of a CILEx Family Law Practitioner, the authorisation you have and when to escalate to another member of staff. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Overview of wills <ul style="list-style-type: none"> • Validity • Effect on divorce • CILEx Family Law Practitioner responsibilities in respect to advising on making a new Will b) Awareness of the implications of not having a will c) Protecting property rights <ul style="list-style-type: none"> • Joint or sole • Sole name of other party – registration at the land registry to prevent sale • Joint names: <ul style="list-style-type: none"> ○ Preparing a Severance of Joint Tenancy ○ When ○ Effect ○ Filing at the land registry
<p>7. Cohabitants</p>	<p>Family practices not only deal with clients who are married or civil partnered, they often deal with clients who live with their partners and often have children. On the breakdown of a cohabitation, family practitioners will need to advise on division of assets and matters relating to children. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Define cohabitants b) Cohabitation Contracts/Agreements <ul style="list-style-type: none"> • Status • Content c) Contrasting consequences and remedies as against married couples and civil partnership couples: <ul style="list-style-type: none"> • Financial support • Property disputes d) The Law – Implied trusts <ul style="list-style-type: none"> • Joint names or sole name of one party? • Resulting trust • Constructive trust • Lloyds Bank v Rossett (1990) • Stack v Dowden (2007)

	<ul style="list-style-type: none"> • Establishing the size of the interest <p>e) Trust of Land and Appointment of Trustees Act 1996, s.14 and s.15</p> <p>f) Escalation of contentious matters</p>
<p>8. Private Law Children</p>	<p>Disputes relating to children between separating parents is a key part of family practice work; from disputes relating to whether a person is actually the natural parent, through to who has parental responsibility of a child, and then who the child should live with or see. Additionally, issues may arise on specific aspects of parenting, for example, should the child be immunised, can the child move to another country with the resident parent? Children issues that you may face are far reaching. Therefore, you will need to know the following:</p> <p>a) Parental Responsibility - Children Act 1989:</p> <ul style="list-style-type: none"> • S.3(1) - definition and examples • Automatic parental responsibility • Acquired parental responsibility • S.4 - application and criteria CAR from Re H (Parental Responsibility) (No 3) (1991) • S.2(5) and S.2(7)- exercise of parental responsibility • Termination of parental responsibility <p>b) S.8 Children Act 1989 applications:</p> <ul style="list-style-type: none"> • Child arrangements e.g. relocation • Shared parenting • Specific issue e.g. change of surname • Prohibited steps • Enforcement & committal • S.10(4), S.10(5) and S.10(9) - who can apply • S.1 - general principles • S1(3) - welfare checklist <p>c) Procedure for initiating a s.8 application: Child Arrangements Programme 2014</p> <ul style="list-style-type: none"> • MIAM • Application C100 (C1A) • Service on Respondent (C100/C1A, C6, C7) • Service on CAFCASS • Escalation <p>d) Role of CAFCASS in s.8 applications:</p> <ul style="list-style-type: none"> • Position and duty

	<ul style="list-style-type: none"> • S7 Welfare Reports & s37 Investigations by Local Authorities
<p>9. Child Maintenance</p>	<p>Whilst working in family practice, either stand-alone, or in conjunction with advising on other children matters or financial relief, you may be asked by the resident parent to advise on child maintenance. You will need to know the following:</p> <p>a) The Child Maintenance Service</p> <ul style="list-style-type: none"> • When would you make the application? • Qualifying child • Rights to receive • Rights to pay • Appeal process • Circumstances where referrals should be made <p>b) Top-up Maintenance/Financial Provision</p> <ul style="list-style-type: none"> • s.15 and Schedule 1 Children Act 1989 • Factors to consider • Periodical payments • Lump sum • Property adjustment • Re P (Financial Provision) (2003)
<p>10. Public Law Children</p>	<p>You need to understand the difference between private law children matters and public law children matters. Practices undertaking public law child work will have a legal aid contract, along with a senior solicitor who is a member of the Children Panel. Public law children cases do attract public funding. In such cases, you may be working alongside and therefore you will need to know the following:</p> <p>a) What is a public law case?</p> <ul style="list-style-type: none"> • Fundamental principles of public law in relation to children; Children Act 1989 • Recognising a vulnerable child • Safeguarding duty and escalation • Low level intervention, s.17 and s.20 • Short term intervention/emergency, s.44 and s.46 • Long term intervention s.31 <p>b) Inter-agency working/referral/assessment</p> <ul style="list-style-type: none"> • School, neighbours, GP, hospital, health visitor, police, social services • Overview of investigations and assessments carried out

11. Domestic Abuse

There may be cases involving vulnerable clients who have been threatened or subjected to domestic abuse and may face removal from their family home. Such matters are fast moving and urgent and it often means you have to stop all other work that day to accommodate this client. You will need to know the following:

- a) Part IV Family Law Act 1996
 - Non molestation order
 - Occupation order

- b) Non-molestation order
 - S.62 associated persons
 - S.63 relevant child
 - Define molestation with reference to case law
 - S.42(5) test
 - Terms of the order – general or specific
 - Duration of the order

- c) Occupation order
 - S.62 associated persons
 - S.63 relevant child
 - S.33 applicant entitled to occupy
 - Balance of harm
 - S.33(6) factors
 - S.33(3) orders
 - S.33(10) duration
 - S.35 applicant is a former spouse or former civil partner who is not entitled to occupy
 - Balance of harm
 - S.35(6) factors
 - S.35(10) orders and duration
 - S.36 applicant is a cohabitant or former cohabitant with no entitlement to occupy
 - Balance of harm factors
 - S.36(6) factors
 - S.36(10) orders and duration
 - S.37 and S.38 neither party is entitled to occupy

- d) Applications to be considered as either on notice or without notice
 - Documentation
 - Referrals