



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 7 – FAMILY LAW*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Family Law 2019-2020, 28th edition, Rob George, Oxford University Press, 2019.**
- 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 following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. Discuss the effect of the Marriage (Same Sex Couples) Act 2013 on the treatment of same sex couples compared to opposite sex couples with reference to:
 - (a) the formation of their legal relationships;

(14 marks)
 - (b) the ending of their legal relationships.

(11 marks)

(Total: 25 marks)

2. With reference to the Supreme Court decision in *Owens v Owens* [2018], discuss to what extent reform is needed to divorce law in England and Wales.

(25 marks)

3. Explain how a cohabitee, who is not a legal owner of the family home, could establish an interest under a constructive trust in that property if no direct financial contribution has been made.

(25 marks)

4. Discuss whether the principles in section 1 Children Act 1989 and relevant case law, lead to a presumption of shared care in an application for a child arrangement order.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Jessica and Sarah were married three years ago.

The first few years of marriage were relatively happy. However, Jessica has recently discovered that Sarah has been having an affair with a work colleague. Jessica had grown suspicious as a result of Sarah spending longer hours at work and a number of nights away, supposedly to attend work-related events. Sarah had also become irritable and very dismissive of Jessica. This led Jessica to check Sarah's phone. On the phone, she found a number of incriminating messages. In those messages, Sarah promised to leave Jessica to commence a relationship with this person.

Two months ago, Jessica confronted Sarah about this and she eventually admitted the affair. Sarah then immediately left the family home.

Sarah has now told Jessica that she wants to come home and try again. She states that she regrets her actions. In addition, Sarah has just been diagnosed with cancer. Because of this, she is currently off work and is due to begin treatment at a local hospital near the matrimonial home. Sarah is worried about her financial position if Jessica decides to end the marriage. Jessica does not want to upset Sarah, but ultimately still wants to bring the marriage to an end. She therefore wants to know what her options are.

(a) Advise Jessica on how to bring the marriage to an end in the circumstances described.

(10 marks)

(b) Advise Sarah as to whether she can prevent or delay Jessica ending the marriage.

(10 marks)

(c) Explain whether and how your advice to Jessica would change if they had previously been in a civil partnership, which they had converted into a marriage six months ago.

(5 marks)

(Total: 25 marks)

[NOTE TO CANDIDATES: You are NOT required to discuss a claim for financial relief under Part II Matrimonial Causes Act 1973.]

Turn over

Question 2

James and Maria divorced six months ago, after being married for 15 years. They have one child together, Felipe, who is 12 years old. Felipe lives with Maria during the week, but sees his father most weekends.

Felipe has not reacted well to the divorce and has been experiencing difficulties at school, both in terms of his behaviour and his educational development more generally. Maria has dismissed the concerns about Felipe's behaviour following the divorce and is blaming the quality of teaching at the local comprehensive school that Felipe attends. James is annoyed by this and thinks Felipe just needs a little more emotional support from him and Maria. He is sympathetic to the school, because he has a number of friends who work there and is aware of some of the difficulties with resources that they face.

Maria has suggested that Felipe should transfer to a private school with smaller class sizes. James does not agree with this but has discovered that Maria has already taken Felipe to visit the new school, despite being aware of James' objections. Maria has been informed that there is a place for Felipe at the school and she wants him to start there as soon as possible.

James is refusing to agree to the change in school. Maria's reaction to this has been to say that she has every right to make major decisions like this in respect of Felipe's upbringing, because he lives with her during the week, and she will take court action if she needs to.

- (a) Advise James whether Maria is correct that she has the right to make major decisions about Felipe's upbringing.

(10 marks)

- (b) Explain what court action Maria may be referring to and what factors the court may take into account when deciding whether to make an order.

(15 marks)

(Total: 25 marks)

Question 3

Asha and Kamal have been married for 12 years. The family home was purchased at the time of the marriage and is registered in Kamal's sole name. The couple have two children together, Samir and Zahara. Six months ago, Asha lost her job. This led to a lot of financial stress and the couple regularly argued. During those arguments, Kamal would make derogatory comments about Asha and her struggle to find new employment. The children witnessed a number of these arguments and began to become very upset at home.

Asha decided that it would be best for the children if she and Kamal separated, with Asha and the children remaining in the matrimonial home and Kamal going to stay with his parents. Kamal moved out of the home two months ago.

Asha's friend Jacob has also just separated from his partner. Asha agreed that Jacob could stay in the spare room at her house until he found a new place to live. Jacob moved into the home two weeks ago and Kamal found out about this recently from one of the children. Kamal has since been sending abusive messages to Asha and Jacob, accusing them of being in a relationship, criticising Asha's parenting skills and threatening to hit Jacob if he is at the property when Kamal next collects the children for contact. Kamal has also been posting derogatory messages about both Asha and Jacob on his social media accounts. Asha and Jacob have asked him to stop, but he has refused.

Up to this point, Kamal has continued to pay the mortgage and bills on the house. However, he has said that he will not continue to pay these. He has suggested that either Jacob should pay them, or both Asha and Jacob would have to move out and allow Kamal to return to the property to live there with the children.

Advise Asha and Jacob about what protective orders might be available to them through the civil and family courts.

[NOTE TO CANDIDATES: You are NOT required to advise Asha and Jacob about potential criminal offences.]

(25 marks)

Turn over

Question 4

Ramesh and his wife Anita have been married for 14 years and there are two children of the marriage, aged 9 and 12.

The parties have separated after a disagreement about moving to London from their home in the North of England. Ramesh is still living in the matrimonial home, which is mortgage-free and has a value of approximately £480,000. Ramesh gave up his job as a police officer nine years ago to look after the children and enable Anita to focus on her medical career. Anita is a consultant oncologist, earning £125,000 per annum. She has an NHS pension with a cash equivalent transfer value of £385,000. Ramesh has a police pension, but this was frozen when he left work nine years ago. As he only paid into it for a few years, the cash equivalent transfer value is only £18,000. There is a portfolio of shares, which is in joint names and is worth approximately £50,000. This was purchased three years ago with money that Ramesh had inherited on the death of his mother.

Anita has moved out of the matrimonial home and has told Ramesh that she is not prepared to support him. She states that he will have to get a job, as the children are now older. She wants to put the house up for sale and wants her half of the net equity to buy somewhere small where she can live, in London. She intends to move there permanently and has been offered a lucrative position in a private hospital.

Anita has indicated that she wishes to file for a divorce. Ramesh is in agreement with this but is concerned about how he will pay any legal bills.

Ramesh has no money other than child benefit and has been borrowing money from his parents since the separation. Anita has stopped paying her salary into the joint account, although she has continued to pay all of the household bills.

Advise Ramesh on what financial orders a court is likely to make on divorce and why.

[NOTE TO CANDIDATES: You are only required to advise Ramesh about potential orders available under the Matrimonial Causes Act 1973, NOT under the Domestic Proceedings and Magistrates' Courts Act 1978.]

(25 marks)

End of Examination Paper

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