

**CHIEF EXAMINER COMMENTS WITH  
SUGGESTED ANSWERS**

**JANUARY 2021**

**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 2021 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 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.

Candidates should take particular notice to follow the instructions in all questions. For example, Section A, Q3 asked for an explanation of 'three' ways the rights and obligations of civil partners and cohabitants differ. In Scenario 1, Question 3 candidates were asked to explain 'two' principles from the CA 1989. Many candidates ignored these instructions and listed many ways and many principles. This practice is to be avoided, and candidates should follow the instructions carefully.

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 for questions on all aspects of the Unit Specification.
- Be prepared to 'explain' or 'describe' as well as to 'state' or 'name.' The former require more detail in your answer
- Key legislative provisions should be known as close as possible to the exact wording of the legislation.
- When asked to explain relevant financial or property orders, ensure that the order is relevant to the facts of the case. In your answer, explain why the order is appropriate in the context of the scenario.
- When applying a child arrangements order to the facts of a scenario, make sure to explain whether the order will focus on living arrangements or contact arrangements or both – and explain why this is the case.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### SECTION A

#### **Question 1**

Most candidates were able to cite either Hyde v Hyde and Woodmansee (1866) or Bellinger v Bellinger (2001) with their respective definitions of marriage, and comment on its relevance today.

#### **Question 2**

Many candidates did not achieve the full 2 marks for this question. Candidates are reminded to include statutory citations (in this case, S.17 MCA 1973). Some candidates mistakenly claimed that judicial separation requires evidence of the irretrievable breakdown of the marriage.

#### **Question 3**

Most candidates were able to cite the Gender Recognition Act 2004 correctly. Good answers focused on 'legal' consequences as required by the question. This could include the issuing of a new birth certificate and a Gender Recognition Certificate as well as the possibility of a decree of nullity if the individual is married or a civil partner. Candidates noting the legal consequence of being able to marry should have noted that this is being able to marry in the acquired gender

#### **Question 4**

Candidates generally performed well on this question and could identify differences in rights and obligations between cohabitants and civil partners. When discussing inheritance rights, candidates should have noted the relevance of one party dying intestate, or without a will.

#### **Question 5**

Candidates did well on this question overall but should always try to be as specific as possible. 'Freedom from discrimination' should include freedom from discrimination based on factors such as age, sex, race or religion.

## **Question 6**

This was a challenging question for many candidates. Many answers correctly acknowledged that civil partnerships can be formed on religious premises if the religious organisation chooses to 'opt in' and allow it. Currently the Church of England cannot 'opt in'. The best answers cited the Equality Act 2010, noting that no faith group can be forced to opt in, and that the ceremony remains a civil ceremony (albeit on religious premises) and requires a registrar to be present.

## **Question 7**

Candidates performed well on this question and were able to cite many differences between void and voidable marriages. Candidates did a good job here in using statutory citations.

## **Question 8**

Some candidates answered this question accurately, noting that S.1(1) establishes the welfare principle, and that S.1(2A) establishes the parental involvement principle. Definitions of each could be given by many candidates. Some candidates incorrectly listed all four of the key principles, but without differentiating the two in the question.

## **Question 9**

Most candidates could state that both orders are property orders that are made on divorce or dissolution, that both involve settlement of property, defer the sale of property and allow one party to remain in the home until it is sold. Good candidates could also distinguish the orders in terms of whether children are involved and 'trigger events.'

## **Question 10**

Widely answered well, most candidates could cite the four S.8 CA 1989 orders.

## **SECTION B**

### **Scenario 1**

#### **1.**

Most candidates achieved good marks on this question. A good starting point was the case of Stack v Dowden (2007) and the presumption that a house in both parties' name is shared equally in the absence of any other evidence. Candidates were able to note that Henrik and Jo are joint legal owners, but some applied the test of common intention in Lloyds Bank v Rosset (1990), which was not necessary in this case as Jo clearly has a beneficial interest. The key question was how Jo's interest is quantified based on the facts. Good answers noted that the court would take the 'whole course of dealing' between the parties into account (as, for example, in Stack v Dowden), proceeding under S.14 and S.15 TOLATA 1996.

#### **2.**

Candidates were able to cite a child arrangements order well. However, a good answer would have gone on to state that Henrik (in the circumstances) would apply for an order stipulating contact and not 'living with.' The best answers

went further and discussed whether this contact should be indirect until Henrik is able to manage his alcohol intake.

**3.**

This question was answered well, and candidates showed good knowledge of the principles. Candidates who achieved full marks were able to apply the principle to the facts of the question.

**4.**

Candidates did a good job of applying factors from the welfare checklist to the facts. Candidates are reminded to apply the law to the facts as much as possible.

**5.**

Many candidates were able to identify a S.16 CA 1989 Family Assistance Order as appropriate in this case. As above, having stated the law it is essential to apply this to Jo and Elise.

**Scenario 2**

**1(a)**

Candidates who did well on this question were able to identify that Vivien will need to demonstrate that she has gender dysphoria, that she has lived in her acquired gender for two years and intends to do so permanently. If successful, Vivien will receive an interim gender recognition certificate.

**1(b)**

Most candidates were able to identify that if Vivien obtains a gender recognition certificate, Aisha will be able to apply for the civil partnership to be annulled under the Civil Partnership Act 2004. The application would be on the basis that the civil partnership is voidable.

**1(c)**

Candidates showed ability here to explain that Aisha could apply for a dissolution order on the basis that the civil partnership had irretrievably broken down. This could have been based on Vivien's behaviour, 2-year separation with Vivien's consent, or (if willing to wait) 5 year separation.

**2(a)**

This question was answered well. Candidates were able to identify that Vivien would likely have need for support covering daily expenses (periodical payments order) and also a place to live. Good answers suggested a sale of property order, or a lump sum based on the fact that Aisha owns a substantial property and has a private income. Credit was also given for suggesting a maintenance-pending-suit order to provide support for Vivien prior to the dissolution order as Vivien may need help with legal expenses.

**2(b)**

Candidates identified relevant factors, including Vivien and Aisha's resources, needs, standard of living, their respective ages and duration of their relationship. Good answers were able to apply specific elements of the scenario, balancing the law with application, picking up on the fact that Aisha has significantly more assets than Vivien but that both parties need somewhere to live and will have daily living expenses. Strong answers considered that Vivien will have additional needs based on her treatment, and

that Aisha has contributed to the partnership not only financially but through care of Jaden.

### **3(a)**

Most candidates could identify that Aisha will apply for a child arrangements order under S.8 CA 1989. Strong answers noted that Aisha can do this under S.10(5) CA 1989 because she is a civil partner to Vivien and Jaden is a child of the family. Few candidates specified the detail of an order: for example, that Jaden would live with Vivien and have contact with Aisha, or live with both Vivien and Aisha.

### **3(b)**

Candidates generally performed well on application of the welfare checklist. Good candidates could identify relevant aspects from this checklist to apply: for example, Jaden's physical, emotional and educational needs; his age, sex and background; and the capability of Vivien to meet his needs. The best candidates identified that nothing is known about Jaden's father. All candidates are reminded about the importance of applying the law to the facts and discussing the parties in detail in their answers. Candidates should note that the Jaden's wishes and feelings would be less relevant here considering his young age.

## **Scenario 3**

### **1.**

This was a popular scenario and many candidates achieved full marks for this question. Good answers noted the single ground for divorce, and then acknowledged that the question is whether Davina can divorce Michael 'quickly', leading to application of the facts of adultery and behaviour. Candidates should use the full wording of the MCA 1973 when discussing the test for adultery: there was a tendency amongst many candidates to simply state "adultery and intolerability" without actually stating in full what S.1(2)(a) MCA 1973 says.

### **2.**

This was a challenging question and required knowledge and understanding of S.2 MCA 1973. Good answers addressed the rules for both adultery and behaviour. For each there is a rule based on whether the parties have continued to live together for a period or periods of six months or more, but the tests are slightly different. Many candidates focussed solely on the time limit with regards to an application based on adultery.

### **3.**

A straightforward question, requiring application of the financial and property orders under the MCA 1973. Good answers took careful notice of the fact that neither Davina nor Michael have significant assets to divide (in particular, they do not own a property nor does either have a pension). Candidates should always think carefully when suggesting an order whether the facts lend themselves to it: for example, many candidates suggested a lump sum order without explaining where the money for a lump sum would actually come from. Very few candidates explained that the only property which could provide a lump sum was Michael's shares, which would also necessitate an order of sale.

**4.**

Candidates were generally very competent in applying the S.25 MCA 1973 factors. Discussion of a relevant case, however, varied amongst candidates. There was a strong leaning towards White v White (2000), but other cases such as Charman v Charman (2007) and Miller v Miller (2006) could also have been cited. Good answers focused on the contributions Davina and Michael made to the marriage and how these would be assessed, or Michael's Post Office shares which were acquired prior to the marriage and might be considered pre-marital assets.

**5.**

Most candidates were able to provide a general definition of a clean break order and discuss whether one was appropriate for Davina and Michael. Good answers provided a statutory citation, noted that the court is obliged to consider a clean break order, and explained that a deferred clean break might be suitable for Davina.

## **SUGGESTED ANSWERS**

### **LEVEL 3 - UNIT – 7 FAMILY LAW**

#### **SECTION A**

1. Marriage was defined in the case of Hyde v Hyde and Woodmansee (1866) as the voluntary union of life of one man and one woman to the exclusion of all others. This definition is less relevant today since the introduction of same sex marriages under the Marriage (Same Sex Couples) Act 2013. Bellinger v Bellinger (2001) also defined marriage as a contract for which the couple elect, which is regulated by the state and which confers rights and responsibilities.
2. Under s.17 Matrimonial Causes Act (MCA) 1973, judicial separation is granted on proof of one of the five facts of adultery/intolerability, behaviour, desertion, two-year separation with the respondent's consent, or five-year separation.
3. The Gender Recognition Act 2004 allows an individual to legally change gender. The consequences are that the individual receives a new birth certificate in the acquired gender and is able to marry or form a civil partnership in the acquired gender.
4. Civil partners have certain rights and obligations that a cohabiting couple do not have. These include:
  - the obligation to provide each other with financial support;
  - the right to seek financial and property orders following dissolution;
  - the right to inherit if the other party dies intestate;
  - a statutory right to occupy the family home.
5. Article 14 of the European Convention on Human Rights (ECHR) prevents discrimination based on grounds such as age, sex, race or religion. However, Article 14 does not stand on its own and can only be used when

the issue raised falls within the scope of one of the other Articles in the ECHR.

6. Under the Equality Act 2010, a civil partnership ceremony can be conducted on religious premises, but the ceremony must be a civil ceremony and conducted by a registrar. No religious group is obliged to allow civil ceremonies to be held on its premises.
7. A void marriage is one that lacks capacity under s.11 MCA 1973. A void marriage has never legally existed and is void '*ab initio*'. A void marriage suffers from a legal flaw that makes it automatically void. A voidable marriage also suffers from a flaw in its legality, as detailed under s.12 MCA 1973. However, a voidable marriage is deemed valid until such time as it is nullified.
8. S.1(1) Children Act (CA) 1989, states that when a court is making any decision regarding the upbringing of a child, the child's welfare shall be the court's paramount consideration. S.1(2A) provides that the child's welfare is presumed to be furthered by having contact with both parents, unless there is evidence to the contrary.
9. Mesher and Martin orders are both property settlement orders under Ss24(1)(b)-(d) MCA 1973. Under both orders, the property, usually the family home, is placed in trust. Both types of order provide for the deferment of sale of the property. They differ in that Mesher orders place the property in trust until a stated event occurs, normally that the children of the family reach a certain age or finish full-time education, or when the person in occupation remarries. A Martin order places the house in trust and allows one party to live in the house until the other spouse remarries, moves, or dies, at which point the proceeds of the sale are split.
10. Under s.8 CA 1989 a court can make three orders:
  - Child Arrangements Order;
  - Specific Issue Order;
  - Prohibited Steps Order.

## **SECTION B**

### **Scenario 1 Questions**

1. In Stack v Dowden (2007) and Jones v Kernott (2011), the Supreme Court established two starting points for disputes involving the family home where the parties are not married and there is no declaration of trust:
  - where the property is owned by only one party, it is presumed that that party holds the entire beneficial interest;
  - where the property is jointly owned, it is presumed that the parties hold the beneficial interest equally.

Jo and Henrik are joint legal owners and there is no evidence of a declaration of trust. Therefore, the starting point is that they share the beneficial interest equally. Henrik may try to rebut the presumption based on his greater contributions to the deposit and mortgage

payments. If successful, his share will be held on a constructive trust. The Supreme Court held in Stack v Dowden that the constructive trust is the preferred implied trust in cases involving the family home.

Following the approach in Oxley v Hiscock (2004) a court will look at the 'whole course of dealings' between Jo and Henrik. This will include how they managed their finances, who paid for what, who took care of the children and the home. The court will try to arrive at a solution that accords with what Jo and Henrik intended, as opposed to what the court thinks is fair. Henrik has contributed financially more than Jo as he paid the deposit and made mortgage payments prior to Jo beginning work. Jo on the other hand has contributed indirectly to the family by caring for the children and the home and using her income to pay for daily living expenses.

Under s.14 Trusts of Land and Appointment of Trustees Act (TOLATA) 1996, the court has the power to declare Jo and Henrik's shares in the property and to determine if it should be sold. The court will consider the factors under s.15 TOLATA 1996, including the welfare of Tom and Elise and the interests of their mortgage lender in arriving at a reasonable conclusion.

2. Henrik can apply for a child arrangements order under S.8 CA 1989. This order determines who the children will live with, who they will have contact with, and how and when this should happen. Henrik does not appear to want the children to live with him, but he does want to see them. He will therefore apply for an order to establish regular contact arrangements. A court might consider that any contact with the children should be supervised until such time as Henrik can control his drinking. Alternatively, the court may decide that indirect contact e.g. through emails, text and Facetime, is preferable to their staying at his apartment, until it is safe for Tom and Elise to see him directly.
3. When considering Henrik's application, the court will apply the principles found in s.1 CA 1989. These include:
  - The 'welfare principle' in s.1(1) states that the welfare of Tom and Elise is the court's paramount consideration and will therefore override Henrik's wishes or Jo's objections. The court will be very concerned about Tom's school problems and Elise's social behaviour as these impact on their health and well-being.
  - Under s.1(2A), the court will presume that Tom and Elise's welfare is promoted by having contact with Henrik as well as Jo, unless there is evidence to the contrary. Henrik's drinking appears to be out of control at the moment and so this might deter the court from allowing contact until he deals with his alcohol problem.
  - Under s.1(2), the court will have regard to the principle that any delay in determining arrangements is likely to prejudice the welfare of Tom and Elise. The children both appear to be negatively affected by their parents' breakup and so resolving matters quickly will be in their best interests as this will help to establish stability for them.
  - Under s.1(5), the court will presume that it is better for the children to make no order at all, unless making an order is better than making no order. Henrik's erratic behaviour and problematic drinking indicate that a court order might be necessary in this case.

4. If Jo contests Henrik's application for a child arrangements order with contact, she may rely on several aspects of the welfare checklist in S.1(3) CA 1989:
- The physical, emotional and educational needs of Tom and Elise. Both children need a secure and safe environment in which to live. Elise needs support as a young teenage girl, and Tom needs support in school and at home. Both children are coping with an alcoholic parent whose behaviour is erratic and upsetting. They need consistency in the parenting they receive.
  - The age, sex and background of each child. Tom is 12 years old and at an impressionable age. He is looking for a positive male role-model. Elise is 14 years old and navigating adolescence. Both children have been living in a home with an alcoholic parent.
  - The capability of the parents to meet the children's needs. At the present time, Henrik is not able to meet the needs of Tom and Elise. His alcohol abuse means that he will put his own needs before those of his children. Jo appears to be able to care for the children.
5. Under s.16 CA 1989, a court can make a family assistance order. Under this order, a social worker or CAFCASS officer will 'advise, assist and befriend' those named in the order, which could include Jo, Elise and Tom. The order lasts a maximum of 12 months and is made in the context of a s.8 order. For example, when making a child arrangements order regarding contact with Henrik, the court can also make a Family Assistance order. This order might be of some help to Jo as she deals with this difficult situation.

### **Scenario 2 Questions**

1. (a) Under the Gender Recognition Act 2004, Vivien must provide medical evidence that she has gender dysphoria; that she has been living in her acquired gender for at least two years; and that she intends to do so permanently. She will receive an interim gender recognition certificate because she is still in a civil partnership.
- (b) The validity of civil partnerships is governed by S.49-54 Civil Partnership Act (CPA) 2004. A civil partnership is void if either party was under 16 at the time the partnership was registered, either party was already married or in a civil partnership, or the parties were within the prohibited degrees of relationship. On this basis, the civil partnership between Vivien and Aisha appears to be valid.

However, the partnership may be voidable once Vivien obtains the interim gender recognition certificate. Under s.50, one of the grounds on which a civil partnership is voidable is that either party has obtained an interim gender recognition certificate after the registration of the civil partnership.

- (c) Aisha can also apply for a dissolution order, under S.44 CPA 2004. She will have to prove that the civil partnership has irretrievably broken down. This will have to be evidenced by reference to one of the four facts in s.44. Aisha might rely on the fact of behaviour, that Vivien has behaved in such a manner that Aisha cannot reasonably be expected to live with her. She could argue that Vivien moving out for two years with little personal contact and changing her

gender without telling Aisha amounts to such behaviour. However, as they have not lived together for two years, this might be difficult for Aisha. A better option might be for Aisha to rely on two-year separation, although this will require Vivien's consent. If Vivien does not consent, Aisha will have to wait for a five-year separation. On the facts, it seems likely that Vivien will consent.

2. (a) Vivien can apply for the following orders:

- Sale of property order: Vivien needs to raise capital which could be achieved by a sale of the flat. The court has the power to order a sale of the family home under Sch. 5 CPA 2004.
- Lump sum order: The court can also make an order for Aisha to give a lump sum of money to Vivien. This may be appropriate as it is known that Aisha's income is more than meets both their needs.
- Periodical payments order: Aisha has a high income and Vivien does not. A periodical payments order will help Vivien to meet her daily living expenses until she is able to find full-time work again.

(b) Sch 2 CPA 2004 contains the statutory guidelines that are considered by the court in making financial orders. These are the same factors considered in s.25 MCA 1973 and include:

- Resources of Vivien and Aisha: Vivien works part-time, and Aisha has a private income; they live in a flat worth £750,000 and it can be presumed that there are substantial savings and investments from which Aisha's income derives.
- Needs, obligations and responsibilities of both parties: both parties need somewhere to live and one or both of them will need to take care of Jaden; they have normal daily living expenses and Vivien may have additional expenses relating to her treatment.
- Standard of living enjoyed before the end of the relationship: it can be presumed that they enjoyed a comfortable lifestyle, as we know that they shared a flat worth £750,000; a court will try to ensure that both parties continue in similar fashion if possible.
- Age of each party and duration of the relationship: both parties are still young, and the civil partnership was relatively brief. Both Vivien and Aisha are able to re-establish themselves financially and eventually become independent of each other.
- Contributions made by each party to the welfare of the family: Aisha has provided much needed income as well as the flat for the family to live in. She has also provided care to Jaden up until the last two years when Vivien has provided his care. Vivien has also provided some income through her employment.

3. (a) Aisha can apply for a child arrangements order under s.8 CA 1989. This order sets out who the child will live with, have contact with, and when and how this should happen. Aisha can apply under s.10(5) CA 1989 because she is a civil partner to Vivien. The order

can be for Jaden to live with Aisha, or to share living arrangements with Vivien. A third option is that the order provides for Jaden to have contact with Aisha.

(b) Aisha appears to have a good relationship with Jaden and has cared for him from the time he was one year old until Vivien moved out, when Jaden was approximately three years old. She has continued to see him since that time. The advantage of a 'live with' order is that Aisha would obtain parental responsibility for Jaden. The welfare checklist outlines factors to be considered when making orders. Relevant factors to Jaden include:

- Physical, emotional and educational needs: Jaden will need a great deal of support. Aisha might be able to provide him with the consistency and stability that he needs at this time.
- Age, sex and background: Jaden is a five-year-old boy who is very young in terms of understanding his mother's situation.
- Capability of parents to meet child's needs: we are told nothing about Jaden's father. Aisha is able to meet Jaden's needs at this point when Vivien may have difficulties doing so.

### **Scenario 3 Questions**

1. Davina can apply for a divorce under s.1(1) MCA 1973. There is only one ground for divorce, namely that the marriage has irretrievably broken down. Davina would have to prove the irretrievable breakdown of her marriage to Michael based on one or more of the 5 facts: adultery, behaviour, desertion, two-year separation with Michael's consent or five-year separation.

Davina could base her application on the fact of adultery. Adultery is defined as the voluntary sexual intercourse between a man and a woman who are not married to each other and where one is married to someone else. Davina must prove that Michael has in fact committed adultery and that she finds it intolerable to continue living with him. Michael has admitted to having had an affair with Erica which helps Davina establish that adultery has occurred.

Davina can also rely on s.1(2)(b) MCA 1973 that Michael has behaved in such a way that Davina can no longer reasonably be expected to live with him. This would be based on whether a reasonable person would consider his behaviour to be such that Davina, with all her characteristics, cannot reasonably be expected to live with him (Livingstone-Stallard v Livingstone-Stallard (1974)). In addition to having an affair with Erica (which can count towards his 'behaviour'), Michael spends a lot of time away from home, is critical of Davina, comments negatively on her appearance and blames her for the breakdown of their relationship. He is uncaring with regards to the car. Taken cumulatively these may well demonstrate that their marriage has irretrievably broken down.

2. Davina has continued to live with Michael since the discovery of the adultery. Under s.2 MCA 1973, if Davina continues to live with Michael for more than six months after she discovered the adultery, then she will no longer be able to rely on this fact in her application.

Under s.2 MCA 1973, if Davina has continued to live with Michael for less than six months this will not be taken into consideration when the court decides to grant the divorce. Even if Davina lives with Michael for more than six months after Michael's last example of behaviour, the court can still grant the divorce. In this case, Davina has remained living in the same house as Michael because she does not have the means to live anywhere else.

3. Under Ss.22-24 MCA 1973, Davina can apply for the following orders:

- Periodical payments order: Davina has few skills and is doing a low-paid job as a care assistant in a nursing home. If she leaves Michael, she will need an income to help pay for her rent, food and other necessities, such as travel to work. Michael currently does not have a large income. However, he does earn enough to save a little each month and has the capacity to work, and he should be able to earn a better income once he has qualified as an accountant.
- Sale of property and/or lump sum order: Davina can apply to have the shares sold and the proceeds shared between herself and Michael so that she receives a lump sum. This might be sufficient to pay for a deposit on a flat so that she can move out of the house she currently shares with Michael. This might be used instead of periodical payments.

4. A court will consider the factors found in S.25 MCA 1973. Factors relevant to Davina's application include:

- Financial resources of Davina and Michael: Michael works at a retail store, although he hopes to qualify as an accountant soon and will have greater earning capacity. Davina works as a care home assistant and is therefore presumed to be on a small income. She has no qualifications, so her earning capacity at the current time is limited. They do not own a property and have no pensions, and the only asset they have is Michael's shareholdings and a car.
- Present and future needs and obligations: both Michael and Davina need somewhere to live, plus their normal living expenses. They both need transportation to work.
- The parties' ages and duration of the marriage: Davina and Michael are still young and have many years of earning potential ahead of them. It is reasonable to expect that they will each be able to support themselves soon and be financially independent of each other. Their marriage has been a short one.
- Any physical or mental disability: Davina has suffered from depression and has been receiving professional support for this.

Miller v Miller (2006) is a case relevant to Davina and Michael's situation. This also involved a young couple with no children. In this case, the court determined that assets acquired before the couple married were not automatically divided on divorce unless they were needed to meet the parties' needs. Another relevant case is Charman v Charman (2007), which determined that the starting point in a case such as Davina and Michael's is equal division of the marital assets.

5. Section 25A MCA 1973 states that when a court is determining property and financial orders it must consider whether it is appropriate to make a clean break order. If it is not appropriate, the court must consider making a deferred clean break.

A clean break order finalises matters involving finances between the parties once and for all and means that the parties will be financially independent of each other. A clean break order might be appropriate in this situation as Michael and Davina are young, have no children, and have many years to establish their own financial independence. A deferred clean break with periodical payments might be appropriate until Davina has sufficient income to support herself.