



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 – UNIT 7 – 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

There was some good evidence that many candidates had studied the Unit Specification and consulted past papers and Chief Examiner Reports. Candidates who did so were able to demonstrate a wide range of knowledge and understanding, and could apply these to the scenario questions with some skill.

Candidates should carefully note suggestions made here and in previous Chief Examiner reports:

- Case law is very important and will help you to increase your marks.
- The Divorce, Dissolution and Separation Act 2020 will significantly reform the law on divorce, dissolution of civil partnerships and judicial separation. All candidates should be aware of the detailed changes to the law it makes.
- Know the key legislative provisions as close as possible to the exact wording of the legislation. For example, when describing the 'welfare principle' it is essential to say that the welfare of the child will be the 'court's paramount consideration.' Saying that the child's welfare is 'first and foremost' or 'very important' is not accurate and will not gain marks.
- Question papers include a range of questions: some require straightforward recall (e.g., the name of a statute, the name of a case) while other questions require more thinking and application. Ensure that you are prepared for both.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Many candidates were able to identify changes that the Divorce, Dissolution and Separation Act 2020 makes to family law. However, candidates who simply stated that the Act will lead to 'no fault divorce' did not achieve marks. Candidates who provided specific changes to the law did better. Candidates should note that 'irretrievable breakdown' remains the ground for divorce and that the five (or four) facts will be repealed with regards to both divorce and dissolution.

Question 2

Candidates performed well on this question and were able to state the requirements. A significant number of candidates did not achieve a mark for naming the statute where these requirements are found.

Question 3

This was pleasingly well done by many candidates. The strongest answers named two cases and then briefly described how each one relates to parental responsibility. Credit was given to those candidates who cited Gillick v West Norfolk and Wisbech AHA (1985) in spite of the fact that it predates the Children Act 1989; the second mark would need to explain how it links to the concept of parental responsibility.

Question 4

Candidates were overall able to define judicial separation, though some provided very general definitions which did not achieve a mark. Statements such as 'judicial separation lets parties live apart' did not achieve a mark as there is no reference to the fact that judicial separation has legal effect and is achieved by a court order. Candidates are reminded to remember statutory citations.

Question 5

Most candidates were able to cite the European Convention on Human Rights, and did a good job of identifying rights relevant to family law.

Question 6

Candidates did well on this question and demonstrated good understanding of cohabitation contracts.

Question 7

This was a simple question for 1 mark and knowledge was shown by most candidates.

Question 8

Most candidates were able to pick out from the list of family law statutes those that focus on adult domestic relationships. Those who did not achieve full marks for this question did not have a comprehensive knowledge of statutes on family law.

Question 9

Many candidates focussed on the Domestic Proceedings and Magistrates Court Act 1978 and achieved full marks. Other options for answering this question were available.

Question 10

Candidates did better on this question than in previous question papers, which indicates that Chief Examiner guidance is being taken. This is very pleasing.

Section B

Scenario 1

Question 1

Most candidates performed well on this question and achieved good marks. A good starting point was the case of Stack v Dowden (2007) and the presumption that as the house is in Greg's sole name, he will hold the entire beneficial interest. Emma will have to rebut this presumption if she wants to be able to prevent a sale of the house. Good answers then went on to explain and apply the test in Lloyd's Bank v Rosset (1990), noting that while Emma has not contributed financially to the purchase of the house, there may be evidence of a common intention to share the beneficial interest and detrimental reliance by Emma. Candidates did well who noted that the appropriate mechanism to protect Emma's interest would be a constructive trust, and would then go on to discuss how her share could be quantified, proceeding under s14 and s15 TOLATA 1996. Some candidates provided law that was irrelevant to this scenario, such as White v White (1999) and Mesher Orders.

Question 2(a)

Most candidates were able to provide a good definition of parental responsibility along with statutory citation.

(b)

The majority of candidates were able to provide the basic answer that Greg has parental responsibility for Joseph and Pippa because he is on their birth certificates. The best answers noted that this is the case because the children have been born after 1 December 2003 when the law was changed by the Adoption and Children Act 2002.

Question 3

Most candidates correctly identified the child arrangement order under s8 CA 1989 as the appropriate order for Emma to apply for. However, many candidates stopped after providing a basic definition of the order. A complete answer would have noted that the order should be for the children to 'live with Emma'. As a child arrangements order can be for 'live with' or 'contact with' (or both) it is necessary to specify what order will be appropriate to the party specified in the question. With regards to the principles, this was answered well, with most candidates able

to define each principle. Some candidates attempted to paraphrase the principles, which should be avoided, and some candidates simply listed the principles without definitions.

Question 4

Candidates performed well on this question, with most showing a good understanding of the welfare checklist and how to apply it. Note that 'needs' includes physical, emotional and educational needs: many candidates focused only on Joseph's educational needs. Both children should have been considered for each factor that was applied.

Question 5

This question could have been answered in many different ways, and credit was awarded flexibly. Most candidates appreciated that Emma could well find herself in the same situation with Mark that she has been in with Greg, and so sensibly advised her to enter a cohabitation agreement with Mark. Strong answers went on to consider other options, for example suggesting that she obtain a declaration of trust in her favour. Few candidates suggested that she consider a formal relationship with Mark such as marriage or civil partnership.

Scenario 2

Question 1(a)

This was well answered by most candidates who could identify the difficulties Eric will have in proving irretrievable breakdown of the civil partnership with David. He cannot rely on his own behaviour, and David's behaviour may not be sufficiently 'unreasonable' to prove irretrievable breakdown. Strong answers suggested that Eric wait for the 2-year separation but acknowledged the potential problem with gaining David's consent.

(b)

Good answers to this question noted that under the Divorce, Dissolution and Separation Act 2020 Eric will simply have to make a declaration that the civil partnership has irretrievably broken down. Eric will not have to rely on any of the four facts currently provided in the CPA 2004. Too many candidates tried to paraphrase the law by stating that the law will 'bring in no-fault divorce.'

Question 2(a)

There were many good answers to this question, with candidates able to identify a separation order as an option for Eric. Candidates should make sure to provide a statutory citation for court orders.

(b)

Candidates did well identifying the consequences of a separation order.

Question 3(a)

Candidates did a good job in identifying appropriate orders for David, though not all stated why the order would be appropriate: for example, a sale of property order would be appropriate because there is a property to sell which will provide each party a sum of money with which to start a new life. Likewise, a lump sum order could be appropriate because the investments could be sold. Many candidates failed to see that David actually has the bigger pension, and so did not achieve marks for suggesting a pension order.

(b)

This was answered well, and most candidates achieved both available marks.

Question 4

Candidates did well on applying the factors, but should note that s25 MCA 1973 is not the correct source of law for financial orders following dissolution of civil partnerships. Good answers were comprehensive – for example, when discussing financial resources, good answers considered both parties' incomes, pensions, the house, Eric's inheritance and business. Candidates should remember that the factors should take both parties into consideration and remember to focus on factors that are directly relevant to the facts. For example, in this scenario neither conduct of the parties nor physical or mental disability were relevant factors.

Question 5

As in previous Chief Examiner Reports, it must be noted that candidates are not fully informed as to what happens in a Mediation Assessment and Information Meeting. These meetings are not mediation sessions, but information sessions. This is an important topic which candidates should be able to prepare for easily.

Scenario 3**Question 1**

Most candidates did a good job in identifying that the marriage might be voidable. Knowledge of Hirani v Hirani (1982) is good and candidates were able to apply the law to the facts of the case.

Question 2

Candidates were able to make some good points about the different consequences of marriage as opposed to cohabitation as this would affect Amira and Pete. However, candidates are encouraged to think more widely across the Unit Specification: if the marriage is valid, Pete will be Hassan's step-father, and this may have implications for Pete's ability to apply for parental responsibility and/or an order under s8 CA 1989.

Question 3(a)

Most candidates were able to state that the appropriate order is a prohibited steps order under s8 CA 1989 and provide a brief definition of it.

3(b)

Many candidates struggled to apply s10 CA 1989 to the question. If the marriage is valid, then Pete is Hassan's step-parent, but under s10(4) he will have to have parental responsibility in order to be eligible to apply for any s8 CA 1989 order. Some candidates noted that Pete can apply to a court for leave to apply for a prohibited steps order – though many did not cite s10(9) CA 1989 as the appropriate section.

(c)

Candidates did a better job on this part of the question, recognising that Pete would need the permission of the court in order to apply for any order under s8 CA 1989. Very few candidates were aware of the precise factors that the court would consider, but made some good 'educated guesses.'

Question 4

Most candidates were able to identify elements of the welfare checklist, citing s1(3) CA 1989 as the statutory source. As has been noted in other Chief Examiner reports, application and discussion of the facts could be more detailed.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 – UNIT 7 – FAMILY LAW

SECTION A

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none">• Irretrievable breakdown remains as sole ground for divorce• Facts are no longer needed to prove irretrievable breakdown• Applications can be brought by one or both parties• Application can no longer be contested• Irretrievable breakdown proved by statement of applicant(s)	3
2	<ul style="list-style-type: none">• MCA 1973 S.11• Both parties over the age of 16• Neither party already married or in civil partnership• Parties not within the prohibited degrees	4
3	<p>Two from:</p> <p><u>S v R (PR)</u> (1993) – matters to be considered re S.4 CA 1989 application</p> <p><u>Re G (PR: Education)</u> (1994) – consultation on exercise of PR</p> <p><u>Dawson v Wearmouth</u> (1999) – change of name</p> <p><u>Re A (Children) (Specific Issue Order; Parental Dispute)</u> (2001) – education</p> <p><u>Re S (Specific Issue Order: Religion: Circumcision)</u> (2005)</p> <p><u>Re L (Contact: Genuine Fear)</u> (2002)</p>	4

4	<ul style="list-style-type: none"> • S.17 MCA 1973 • Definition: court order which legally separates the parties to a marriage. <p><u>One</u> from:</p> <ul style="list-style-type: none"> - Religious views against divorce - Social pressures not to divorce - Parties do not want to live together but think their marriage can be saved. - Parties have not been married for 1 year. 	3
5	<ul style="list-style-type: none"> • European Convention on Human Rights <p><u>Two</u> from:</p> <ul style="list-style-type: none"> • Article 8 Right to respect for private and family life <ul style="list-style-type: none"> • Article 12 Right to marry and found a family • Article 14 Freedom from discrimination re: other rights • Article 6 Right to a fair hearing 	3
6	<ul style="list-style-type: none"> • Definition: formal agreement regulating property and finances during relationship and/or following breakdown. <p><u>Two</u> advantages:</p> <ul style="list-style-type: none"> • Provides certainty • Provides framework for disputes • Shows evidence of common intention • Because courts have no powers to make financial orders for cohabitants on breakdown 	3
7	<ul style="list-style-type: none"> • Provides that opposite sex couples can form civil partnerships. 	1
8	<p><u>Three</u> from:</p> <ul style="list-style-type: none"> • Civil Partnership Act 2004 • Marriage (Same Sex Couples) Act 2013 • Divorce, Dissolution and Separation Act 2020 • Gender Recognition Act 2004 	3
9	<p><u>Three</u> from:</p> <ul style="list-style-type: none"> • Where parties are separated but still married • In cases of domestic abuse where one party has left the family home • Under one of the grounds under DPMCA 1978 <ul style="list-style-type: none"> - R has failed to provide reasonable maintenance; - R has failed to provide reasonable maintenance for a child of the family; - R's behaviour; - R has deserted the A 	3
10	<p>Radmacher v Granatino:</p> <ul style="list-style-type: none"> • Each spouse has entered it freely • With full understanding of implications • It is fair in all the circumstances to uphold it. 	3
Section A Total:		30 marks

Section B - Scenario 1

Question Number	Suggested Points for Responses	Max Marks
1	<p>Law:</p> <ul style="list-style-type: none"> • Stack v Dowden • Jones v Kernott • Lloyds Bank v Rosset • Test: Common intention + detrimental reliance • Common intention: agreements or conduct (financial contributions to purchase of property) • Quantification – based on whole course of dealing • TOLATA 1996 S.14 – order of sale, declaration of interests – can be used to stop a sale. • TOLATA 1996 S.15 – factors to be applied <p>Application:</p> <ul style="list-style-type: none"> • Sole legal ownership case • Starting point: Greg holds the entire beneficial interest • Emma can try to prove she has a beneficial interest • Only if she proves an interest can she try to stop the sale. • Constructive trust will apply here (she has put no money into the purchase) • Was there an agreement? Greg invited Emma to live with him and told her it would be their family home • Emma has not contributed financially • Did Emma rely to her detriment? Yes, by giving up her tenancy and putting work into Greg’s house • If successful, court will quantify Emma’s share based on whole course of dealings between her and Greg. • Suitable concluding statement. 	10
2(a)	<ul style="list-style-type: none"> • S.3(1) 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. 	2
2(b)	<ul style="list-style-type: none"> • Adoption and Children Act 2002 • Greg has PR because he is on the children’s birth certificates and they were born after 1 December 2003. 	2
Question 2 Total:		4 marks
3	<ul style="list-style-type: none"> • S.8 CA 1989 Child Arrangements Order • For Joseph and Pippa to live with her (this mark must be in the context of the facts – not a basic definition of a CAO). <p>Principles:</p> <ul style="list-style-type: none"> • Welfare Principle – that the children’s welfare is the court’s paramount consideration • No delay principle – that any delay is likely to prejudice their welfare • No order principle – that the court should make an order only if it is better than making no order at all 	6

	<ul style="list-style-type: none"> • Parental involvement principle – that the involvement of both parents in the children’s lives is likely to enhance their welfare. 	
4	<p><u>Three</u> from:</p> <ul style="list-style-type: none"> • Wishes and feelings: Joseph is 8 years old and so his feelings might be relevant. Unlikely for Pippa as she is only 4. • Physical, emotional and educational needs: both children need a secure home, loving parents, lack of parental conflict. Siblings should stay together if possible. Joseph has additional learning needs. • Likely effect of change of circumstances: children have had to leave their family home, may find move to new home difficult and involve change of schools. This might stand in Emma’s favour as she has been their primary carer. • Ages, sex, background and other characteristics – both children are young. They have had the full-time care of Emma. • Capability of parents: no indication that either parent is unable to meet the children’s needs. 	6
5	<ul style="list-style-type: none"> • Make sure that if she moves in with Mark in a sole legal ownership situation as with Greg, there is a declaration of trust in her favour. • Consider a legally formalised relationship with Mark as this will ensure she has financial and property rights that can be ordered by a court if the relationship breaks down. • Consider a cohabitation agreement if they do not formalise relationship. • Ask to be put on the registry as a joint legal owner. 	4
Scenario Total:		30 marks

Section B - Scenario 2

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> • Civil Partnership Act 2004 • Irretrievable breakdown of the relationship <p>Must be proved by reference to one of the four facts:</p> <ul style="list-style-type: none"> • 2 year separation: Eric will have to live separately from David for a continuous period of two years prior to an application and will need David's consent • behaviour is not be an option for Eric on facts given • Possible 5 year separation + application • Eric cannot rely on his own behaviour 	6
1(b)	<ul style="list-style-type: none"> • Divorce, Dissolution and Separation Act 2020 will amend the CPA 2004 • Eric will be able to make a statement that the civil partnership has irretrievably broken down • The court will take this as proof • David will not be able to contest the application 	2
Question 1 Total:		8 marks
2(a)	<ul style="list-style-type: none"> • Judicial Separation • S.56 CPA 2004 	2
2(b)	<p><u>Max three from:</u></p> <ul style="list-style-type: none"> • Eric and David no longer obliged to cohabit • Availability of financial orders • Financial orders does not include pension sharing order • Civil partnership remains legally valid • Neither Eric nor David can remarry or form civil partnership • If either dies without a will – the other cannot inherit under rules of intestacy • If either dies with a will – this is unaffected. 	3
Question 2 Total:		5 marks
3(a)	<p><u>Two</u> from:</p> <ul style="list-style-type: none"> • Sale of property: the house is worth £6000,000 and will give each of them a lump sum to find housing • Transfer of property: transfer the house to David – offset by Eric's private income and inheritance. • Lump sum order: investments sold or part transferred to David 	4
3(b)	<ul style="list-style-type: none"> • Define clean break – order which will make Eric and David financially independent of each other <p>Relevance:</p> <ul style="list-style-type: none"> • Both parties have incomes to support themselves • Both parties have pensions • No children 	2
Question 3 Total:		6 marks
Scenario Total:		

4	<ul style="list-style-type: none"> • Sch 5 CPA 2004 <p><u>Three</u> from:</p> <ul style="list-style-type: none"> • Financial resources: both parties have incomes, pensions and jointly own house. Investments; Eric's private pension and inheritance; Eric's business. • Needs and obligations: housing, daily expenses, Eric's business expenses; possibly needs of Eric's new partner. • Standard of living: they have both earned incomes and own a house with a small mortgage. • Age of parties and duration of CP: Eric is nearing retirement and David may not be far behind. Long CP. • Contributions to the CP: no children. 	7
5	<ul style="list-style-type: none"> • MIAM – Mediation Information and Assessment Meeting • Meeting to discuss the possibility of mediation, what it will entail, its possible advantages • David must attend/Eric may attend <p>Advantages:</p> <ul style="list-style-type: none"> • can sort out financial matters without court applications, court hearings, • can save on costs and legal fees. • Can reduce any hostility in process of dissolution. 	4
Scenario Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"> • MCA 1973 S.12 • Marriage may be voidable • Lack of consent due to duress or mistake • Hirani v Hirani (1982) • Test: a subjective test based on whether applicant's will has been overcome. <p>Application:</p> <ul style="list-style-type: none"> • Pete has pressured Amira • Pete has threatened to make Amira and Hassan homeless • Amira may have agreed to go to the registry because she felt she had no other choice. <p>Consequence: the marriage is valid until annulled.</p>	8
2	<ul style="list-style-type: none"> • Amira will have home rights of occupation • A court can make financial orders to support Amira • Amira can inherit from Pete if he dies without a will • They will have to go through a legal procedure to formally end their marriage • Pete becomes Hassan's step-father • Pete can apply for PR under S.4 CA 1989 • Pete can apply for S.8 orders re: Hassan 	6
3(a)	<ul style="list-style-type: none"> • S.8 Children Act 1989 • Prohibited Steps Order • An order that no action stated in the order should be taken regarding a child named in the order 	3
3(b)	<ul style="list-style-type: none"> • S10(5) Children Act 1989 • Either party to a marriage in respect of a child of the family • Pete can apply without seeking permission of the court 	2
3(c)	<ul style="list-style-type: none"> • S10(9) Children Act 1989 • Pete would need to receive the permission of the court • Court will consider: nature of the application; Pete's connection with Hassan; any disruption to Hassan's life leading to harm. 	3
Question 3 Total:		8 marks
4	<ul style="list-style-type: none"> • Welfare checklist • S1(3) CA 1989 <p><u>Three</u> from:</p> <ul style="list-style-type: none"> • Wishes and feelings: Hassan is only 5 years old and so is very young for the court to take his views into account. • Physical, emotional and educational needs: Hassan needs a stable home, security and affection. 	8

	<ul style="list-style-type: none"> • Likely effect of a change in circumstances: Hassan has lived in England with Pete for two years; a move abroad could be destabilising, but could also bring him back in contact with his wider family. • Any harm he has suffered or is at risk of suffering: no evidence of harm from Pete or Amira. • Age, sex, background and other characteristics: court will take into account his Turkish background, his family abroad. • Capability of parents or anyone else to meet his needs: 	
Scenario Total:		30 marks