

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
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 June 2021 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

This exam tests candidate's knowledge of the relevant law underpinning a question and understanding through application to the facts described in the case study. Some questions will test both knowledge and understanding, while some such as the procedure-based questions may only test knowledge.

Candidates wishing to achieve good results need to prepare by developing a good knowledge of the case study scenarios. They also need to have a good knowledge of law across the specification. And they need develop good exam skills such as reading and understanding the question, including the mark allocation, and answering as instructed.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1 - Divorce

(a) Some candidates failed to achieve 2 marks as they did not provide citation.

1(b)

Some very good answers, including relevant reference to Owens v Owens. Candidates should note that credit was only given for relevant facts – Fact B in this case, plus reference to Fact D and Fact E with supporting reasons.

(c)

A varying level of knowledge of the Divorce, Dissolution and Separation Act 2020 was seen. It was disappointing to see that some candidates were not aware of the Act and the change that will occur when it is fully operational.

Question 2 – Financial matters

(a)

Some candidates wrote about financial orders such as periodical payments, which did not gain credit, rather than the orders directly relevant to the family home – sale, transfer or settlement of land.

A few candidates wrote about occupation orders which was not appropriate in the circumstances.

(b)

These questions were testing knowledge of the child maintenance system, rather than the mainstream financial orders. However, as the courts can sometimes deal with such issues credit was given.

(c)

Candidates were generally able to provide some good/very good responses to the question on statutory factors. So it is pleasing to note that CE's previous advice has been taken on board and that candidates are developing skills required and using them.

A few candidates wrote about more than the requested 3 factors. No credit could be given for additional factors.

Question 3 – Domestic violence

(a)

Again, candidates have taken on board CE's previous advice and are overall able to provide good answers, although some candidates failed to explain the order itself.

(b) Quality of answers varied with knowledge of occupation orders.

(c)

Knowledge of procedure varied. Candidates are advised to consider answering this type of question using bullet points – though with some detail, rather than within a block of text.

A few candidates did not take on board that the application was *ex parte* and so wrote about giving Charlie notice.

Question 4 – Children

(a)

Candidates overall able to identify the specific issue order as relevant and to explain why.

(b)

Although candidates were generally able to identify 2 principles and to explain them, in general there was little application.

(c)

Knowledge of procedure varied. Candidates are advised to consider answering this type of question using bullet points – though with some detail, rather than within a block of text.

SUGGESTED POINTS FOR RESPONSES
LEVEL 3 – UNIT 12 – THE PRACTICE OF FAMILY LAW

The purpose of this document is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2021 examinations. The Suggested Points for Responses 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. Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> • Irretrievable breakdown of marriage. • S1 Matrimonial Causes Act (MCA) 1973 	2
Q1(b)	<ul style="list-style-type: none"> • Must establish one of 5 facts under S1(2) MCA 1973: • In this case, Judy could consider: • Fact B, S1(2)(b) Unreasonable behaviour – respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent • Credit development- e.g. types of behaviour, the “right thinking person” approach, <u>Livingstone-Stallard v Livingstone-Stallard</u> (1974) • Judy could apply for a divorce based on Fact B as she wishes to move on quickly, citing arguments, lack of emotional support and lack of physical affection. • Alternatively, Judy could cite • Fact D, S1(2)(d) 1973, that the parties have lived apart for a continuous period of 2 years and the respondent consents, if Max agrees, or • Fact E, S1(2)(e) 1973, that the parties have lived apart for a continuous period of 5 years if Max will not agree. • <u>Owens v Owens (2018)</u> 	7
Q1(c)	<ul style="list-style-type: none"> • Under the Divorce, Dissolution and Separation Act 2020 either or both parties could apply for a divorce. • Introduced concept of “no fault” divorce • The ground – irretrievable breakdown of marriage, remains. • But this will simply be established by a statement by the applicant, or by both parties. • The new act dispenses with the need for one party to “blame” the other party for the breakdown. • Application e.g. So Judy would be able to apply for a divorce under this Act as soon as it is in operation, would not have to satisfy 1 of 5 facts so quicker and easier. 	4
Question 1 Total		13 Marks

Question Number	Suggested points for responses	Max Marks
Q2(a)	<ul style="list-style-type: none"> • Property adjustment orders s24 MCA 1973 • Property can be transferred into the name of one party • Property can be sold, and proceeds divided. • Trust of land can be used if sale/transfer is not appropriate. • Mesher order – property settled subject to a trigger point such as children reaching age of 18 or remarriage. • Martin order – sale is postponed for occupant’s life or until re-marriage. • Here, immediate sale/transfer is not appropriate as Nyra wishes to maintain the family home for the children. • A Mesher order would be appropriate as it would meet Nyra’s wishes but would not deprive Hari of his interest long term. 	6
Q2(b)(i)	<ul style="list-style-type: none"> • Courts do not usually deal with child maintenance, CMS does • CSPSSA 2000 contains rules on maintenance for children. • Maintenance is paid by the “non-resident” parent to the parent with care. • The amount of the payments will be worked out according to a formula. • Here, Hari will have to make payments to Nyra but these payments may not cover the cost of school fees. • The court has limited power to make financial orders for children. 	3
Q2(b)(ii)	<ul style="list-style-type: none"> • The court has limited power to make financial orders for children. • Nyra could apply for an order to cover the cost of school fees. • This order could be either a periodical payments order where regular payments are made or • A lump sum order where a lump sum is ordered to be paid. 	1
Q2(c)	<p>Any three of the following:</p> <ul style="list-style-type: none"> • The financial resources of the parties • Income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have. • Relevant application – e.g. Although Nyra is 28 years of age and so could work, she has never worked and given the ages of the children this might be difficult. • Present and future financial needs obligations and responsibilities of parties • Includes housing, food, travel expenses etc. 	9

	<ul style="list-style-type: none"> • Relevant application – e.g. Nyra has her own income but wants to ensure that Hari takes responsibility for the school fees. • Standard of living enjoyed by family before breakdown of marriage • The court will aim to maintain this if possible but if not then a fall in living standards should be borne equally • Relevant application – e.g. Nyra and Hari have enjoyed a comfortable life style and the children are being privately educated. The court will aim to continue this. • Age of parties and duration of marriage • Age of parties and duration of marriage • Relevant application – e.g. Nyra and Hari have been married for 12 years which is a reasonable period. • Contributions made by parties to the welfare of the marriage • The court will give equal weight to the party going out to work and earning and the party staying at home to look after the home and family. • Relevant application – e.g. Hari has been the breadwinner and Nyra has been the homemaker so Nyra’s contribution is important. • Credit value of benefit lost e.g. pensions, if rationale to support. 	
Question 2 Total		19 Marks

Question Number	Suggested points for responses	Max Marks
Q3(a)	<ul style="list-style-type: none"> • S42 Family Law Act (FLA) 1996 • A non-molestation order is an order designed to prevent respondent molesting the applicant or a relevant child. • Molestation includes a range of behaviour – violence and threats of violence through to • pestering applicant – nuisance phone calls • Here, Nathan has been messaging and shouting threats and has been physically violent as he has caused Charlie to suffer injury (a black eye and broken ribs) . • Breach of a non-molestation order is a criminal offence and Nathan could be arrested. 	4
Q3(b)(i)	<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. • Charlie can apply for a s33 occupation order as he is entitled to occupy – the house is in the joint names of Charlie and Nathan. • As Nathan has physically attacked Charlie and threatened him, an occupation order would protect Charlie by allowing him to live in the family home with the children by excluding Nathan. 	4
Q3(b)(ii)	<ul style="list-style-type: none"> • s62 FLA 1996 • Eligibility requires applicant and respondent to be “associated persons”. • This covers a range of relationships including spouses, ex spouses, civil partners etc. • Here Charlie and Nathan are married and so are “associated persons”. • Property must be a dwelling house and must be or must have been intended to be the family home. • 28 The Laurels is a dwelling house and is the family home. 	5
Q3(c)	<ul style="list-style-type: none"> • Interview client (as per CILEX text) • Check re eligibility re funding • An <i>ex parte</i> application is made without giving notice to the respondent. • Prepare the application form (FL401). • Prepare the supporting statement which must include reason for urgent application without notice • Prepare draft orders • Arrange for statement to be signed & issue the application and supporting statement and draft orders at court • Pay fee at court office 	8

	<ul style="list-style-type: none">• Court will allocate a hearing date• Prepare and attend the without notice hearing• Order issued and date for a full hearing set• Service of the order and notice of full hearing on respondent arranged• Service must take place with a minimum of two days before the full hearing	
Question 3 Total		21 Marks

Question Number	Suggested points for responses	Max Marks
Q4 (a)	<ul style="list-style-type: none"> • Prohibited steps order. • An order to prevent a party exercising their parental responsibility – prevents them from doing things outlined in the order e.g. taking a child abroad. • Here, this order would prevent Zuzanne taking the girls to Poland until Paul and Zuzanne have agreed contact arrangements. 	3
Q4(b)	<p>Any two of the following.</p> <ul style="list-style-type: none"> • s.1 CA 1989 Child’s welfare is paramount • The welfare of the child should come before and above any other consideration in deciding whether to make an order. • Application – e.g. the welfare of Gabriela and Patrycia should come before and above any other considerations, including the wishes of Zuzanne and of Paul, in deciding whether to make an order. • s.1(2) CA 1989 No delay principle • Issues involving the children should be resolved as soon as possible since a child will settle in a particular home and be distressed if has to move. • Application – e.g. issues involving Gabriela and Patrycia should be resolved as soon as possible so that any distress caused is kept to the minimum, particularly as their mother plans to take them to Poland. • s.1(5) CA 1989 No order principle. • The court should not make the order(s) unless it considers that doing so would be better for the child than making no order at all. The court must be assured that there will actually be a benefit to the child if the order is made. • Application – e.g. the court would prefer Zuzanne and Paul to make an arrangement themselves rather than the court making an order. It seems this may be unlikely in this case. • Shared parenting principle • s.1(2)(A) CA 1989 (as amended by s.11 CFA 2014) There is a presumption, subject to evidence to the contrary, that involvement of a parent in the life of a child will further the child’s development. • Application – e.g. as their father, Paul, should be involved in Gabriela and Patrycia’s life. 	6
Q4(c)	<ul style="list-style-type: none"> • Attendance at a MIAM required, unless exempt (domestic violence cases) 	8

	<ul style="list-style-type: none"> • Complete Form C100 (plus C1A if harm alleged) and file with court • Within 24 hours Court will issue parties with a hearing date (C6), and • Will issue copies of Forms C100 and C1A (if harm alleged), acknowledgement form (C7) and blank form C1A • Within 48 hours of filing Court serves copy C100 on CAFCASS to enable initial safeguarding checks • Respondent to file and serve acknowledgement of service (C7) within 10 working days • FHDRA for court to investigate issues within 5-6 weeks • Court will consider a timetable for proceedings • Court direction on filing of documents etc • Court may require a CAFCASS report • Court may list for further dispute resolution appointment (DRA) • Final hearings and orders 	
Question 4 Total		17 Marks