

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021  
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 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

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, Q9 asked for candidates to identify two rights in the ECHR that are relevant to an application for a Child Arrangements Order under s8 CA 1989. The strongest candidates identified rights such as Article 6, Article 8 and Article 14 ECHR, and explained how these could be used in support of such an application. In Scenario 1, Question 4a candidates were asked to identify two financial orders relevant to the family home. Candidates who suggested a periodical payments order had clearly not read the question 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. For example, the welfare principle in s1 CA 1989 should always be stated in full: the welfare of the child is the court's paramount consideration. Candidates should avoid paraphrasing such definitions.
- 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 state the requirements for a valid marriage accurately, citing s11 MCA 1973. Some candidates confused matters relating to 'validity' with matters relating to 'formalities.' Some candidates were able to cite the requirements, but omitted to include the statutory citation.

#### Question 2

Many candidates were able to name the orders, namely a dissolution order, nullity order and separation order. Some candidates incorrectly listed orders available following breakdown, referring to financial and property orders.

#### Question 3

Many candidates answered this question without reference to legislation. The strongest answers noted the words 'if the mother does not agree to it' and stated that an unmarried father would need to apply for an order under s4 CA 1989 or obtain a Child Arrangements Order for the child to 'live with' the father under s8 CA 1989. Candidates should note that a Child Arrangements Order for contact only does not confer parental responsibility upon an unmarried father. Therefore, the order must specify that the child is to live with the father in order to obtain parental responsibility.

**Question 4**

This question was generally well answered and there was good knowledge of the reasons why parties seek judicial separation.

**Question 5**

Many candidates had good knowledge and were able to answer this accurately. Those who did not answer it well had clearly not revised this area of the Unit Specification.

**Question 6**

Many candidates could competently discuss the significance of White v White (2000). Candidates are reminded to always include statutory citations, in this case reference to the fact that the case is applied during financial proceedings and is considered in the context of s25 MCA 1973.

**Question 7**

Disappointingly, many candidates did not know the name of the statute that allows opposite sex couples to form civil partnerships. Candidates are reminded that it is important to remember the exact name of statutes, including the date.

**Question 8**

Many candidates were very well prepared on ss14 and 15 of TOLATA 1996. Candidates should note that under s14, the court can both declare the parties' interests and make an order of sale.

**Question 9**

This was answered well overall, though some candidates did not read the question carefully. Articles of the ECHR should have been chosen which are relevant to the making of a Child Arrangements Order under the CA 1989. The best answers focussed on Article 6 (the right to a fair hearing), Article 8 (the right to respect for private and family life) and Article 14 (freedom from discrimination).

**Question 10**

Surprisingly, many candidates had no knowledge of the significance of this Act for divorce law. Strong answers noted that it introduces 'no-fault' divorce, and removes the necessity to prove one of the facts to establish the irretrievable breakdown of the relationship.

## Section B

### Scenario 1

#### Question 1(a)

Most candidates were able to state the definition of parental responsibility and cite s3(1) CA 1989 as the statutory citation.

#### (b)

Most candidates correctly concluded that Ekene does have parental responsibility for Ayo and Imose. Some students wrongly calculated that Ekene was married to Nikky at the time the children were born, emphasising the need to read the scenario carefully. However, strong answers noted that he acquired parental responsibility at the time he married Nikky. Some candidates correctly went on to suggest that Ekene might be on the children's birth certificates and the implications of that.

#### Question 2(a)

Most candidates could cite s8 CA 1989 and the Specific Issue Order as appropriate for Ekene's situation. The best answers contextualised this and noted that Ekene would state in the order that he wishes the children to attend a Christian school.

#### (b)

There was a worrying amount of confusion on how to state the welfare principle. A good answer would say that in making any decision relating to the upbringing of a child, the child's welfare is the court's paramount consideration. A great variety of other suggestions were put forward that attempted to paraphrase this rule. It is essential, as noted before in these comments, to know the exact words used by Parliament. The best answers again contextualised the definition, noting that taking into consideration the wishes and feelings of the two children, a court might decide that they should not move schools as their father wants.

#### Question 3(a)

Most candidates correctly stated that Nikky should apply for a Child Arrangements Order under s8 CA 1989. However, few candidates noted that she will want the order to state that the children will live with her and have contact with Ekene.

#### (b)

Many candidates received high or full marks in applying sections of the welfare checklist. Where candidates did not receive full marks it was usually because they had tried to paraphrase elements of the checklist and did not have precise knowledge. Candidates did not receive marks for discussion of 'harm' as this was not relevant to the facts.

### **Question 4(a)**

Candidates generally answered this well, and focussed on orders relating to the family home as the question required. Not all candidates answered the second part of the question, which required an application of the law and explanation of how the orders would benefit Nikky and the children.

### **(b)**

Many candidates answered this question incorrectly and applied s15 TOLATA 1996. Candidates who received higher marks applied the statutory factors in s25 MCA 1973, focussing on matters such as the resources of the parties, their needs, their ages and duration of the marriage, etc. When discussing a factor such as the parties' resources or needs under s25 MCA 1973, candidates should remember that it is the resources/needs of BOTH parties that will be considered, not just those of the applicant.

## **Scenario 2**

### **Question 1(a)**

Most candidates could identify that the two options for Scott and Angus to formalise their relationship are to get married under the MCA 1973 or to form a civil partnership under the CPA 2004. Candidates should note that while same sex marriage was introduced by the MSSCA 2013, the marriage would still take place under the law of the amended MCA 1973.

### **(b)**

This was generally answered well, and candidates demonstrated understanding of the differences between cohabitation and marriage/civil partnership. The best answers focussed on legal differences.

### **Question 2**

The issue here is whether Angus will acquire parental responsibility for Julia if he marries Scott or they become civil partners. Good answers began with a definition of parental responsibility with statutory citation, and moved on to consider that while Angus will become Julia's step-parent, this does not automatically confer parental responsibility. He will only acquire parental responsibility by agreement with Scott and Beth, or by a court order under s4 CA 1989.

### **Question 3**

A good answer to this question identified that Angus is the sole legal owner of the house and so, according to Stack v Dowden (2007), he holds the entire beneficial interest. It is for Scott to prove that he should share the beneficial interest under a constructive trust. Candidates should have applied the tests in Lloyds Bank v Rosset (1991) to the facts, and noted that Scott would need to bring an application under s14 TOLATA 1996. Key facts to note were the

contribution of £10,000 and the statement made by Angus about the house being a home for Scott and Julia as a family.

#### **Question 4**

Candidates who answered this question generally identified that Angus might make use of a premarital agreement to preserve his inheritance. It is essential to identify the ruling in Radmacher v Granatino (2010) in this regard, noting that the agreement will usually be upheld by a court if it is fair in all the circumstances and the parties have entered into it freely and with full understanding of its implications.

#### **Scenario 3**

##### **Question 1**

The key to answering this question well was in the wording of the question: namely, the words "while they are still married." Strong answers focussed on the Domestic Proceedings and Magistrates Courts Act 1978, noting the grounds and the available orders, and applying this to the facts. Some candidates incorrectly applied the MCA 1973 provisions on financial relief following divorce or dissolution.

##### **Question 2**

This question was answered quite well by candidates who had clearly revised the current law on divorce – many of whom achieved full marks. Candidates who did not achieve full marks are reminded of the importance of stating the statutory provisions and the statutory tests very clearly and accurately.

##### **Question 3(a)**

This question was answered well overall with most candidates achieving full marks. Some candidates could have done more to explain why the orders were "the most important orders for Christa to seek." Simply describing the order is not sufficient without application to the parties' particular circumstances.

##### **(b)**

Many candidates were able to achieve full marks on this question by applying the s25 MCA 1973 guidelines to the orders referred to in Q3(a). Failure to achieve full marks was generally due to omission to apply the factors to the parties' circumstances. Candidates should put as much detail as possible into this application, drawing on as many relevant facts as possible.

##### **Question 4(a)**

Good answers noted that the starting point is 'equal sharing' once the parties' needs are satisfied, as explained in Charman v Charman (2007). Candidates who cited White v White (2000) and the 'yardstick of equality' achieved the full 2 marks. A significant minority incorrectly cited the presumptions in Stack v Dowden (2007) - however, this case is about property disputes between

cohabitants who have to rely on property and trusts law, and would not apply to Christa and Erik who have clearly been married.

**Question 4(b)**

This was a challenging question which required knowledge of case law. Good answers cited White v White (2000) or McFarlane v McFarlane (2006) - the latter case demonstrates that a spouse who gives up her career advancement for the benefit of the family can be compensated for loss of income opportunity through enhanced periodical payments.

**(c)**

Many candidates who attempted this scenario answered this question incorrectly. A good answer required understanding of s25 MCA 1973, and the specific factor relating to the parties' conduct. Cases such as Evans v Evans (1989) and Miller v Miller (2006) point out that only in exceptional circumstances where conduct is both 'obvious and gross' will conduct (e.g., Erik's adultery) be taken into consideration when considering financial and property orders.

**SUGGESTED POINTS FOR RESPONSES  
LEVEL 3 – UNIT 7 -FAMILY LAW**

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## Section A

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> <li>• MCA 1973 s11</li> <li>• Over 16 years of age</li> <li>• Not already married or in a CP</li> <li>• Not within the prohibited degrees of relationship</li> </ul>	4
Q2	<ul style="list-style-type: none"> <li>• Dissolution Order</li> <li>• Nullity Order</li> <li>• Separation Order</li> </ul>	3
Q3	<ul style="list-style-type: none"> <li>• Children Act 1989 ('CA 1989')</li> <li>• Parental responsibility order – s4 CA 1989</li> <li>• Child arrangement order for child to <u>live with</u> the father – s8 CA 1989</li> </ul>	3
Q4	<ul style="list-style-type: none"> <li>• Parties have not been married for 1 year</li> <li>• Religious and/or social reasons</li> <li>• Marriage has not irretrievably broken down</li> <li>• To prevent loss of benefits available only to a spouse</li> <li>• To prevent other party re-marrying</li> </ul>	3
Q5	<ul style="list-style-type: none"> <li>• S.16 CA 1989</li> <li>• Social worker will advise, assist and befriend child/parent named in the order</li> </ul>	2
Q6	<ul style="list-style-type: none"> <li>• Financial orders on divorce/dissolution</li> <li>• S. 25 MCA 1973</li> <li>• Contributions made by either party to the welfare of the family</li> <li>• House of Lords held that the wife's non-financial contributions were just as important as her husband's financial contributions</li> <li>• Established the concept of the 'yardstick of equality.'</li> </ul>	4
Q7	<ul style="list-style-type: none"> <li>• Civil Partnerships, Marriages and Deaths (Registration) Act 2019</li> </ul>	1
Q8	<ul style="list-style-type: none"> <li>• S.14 –</li> <li>• allows the court to declare the parties' interests in property</li> <li>• allows the court to make an order for sale</li> <li>• S.15 –</li> <li>• List of factors to consider before making an order</li> <li>• Examples of factors (e.g., purpose of property, welfare of children, interests of any lender)</li> </ul>	4
Q9	<b><u>Two</u></b> from:	4

	<ul style="list-style-type: none"> <li>• Article 6 - the right to a fair hearing</li> <li>• Article 8 - the right to respect for a private and family life</li> <li>• Article 14 - the right not to be discriminated against (in the context of one of the other rights)</li> </ul>	
Q10	<p>Provides for no-fault divorce and dissolution</p> <p><b><u>One from:</u></b></p> <ul style="list-style-type: none"> <li>• Removes the 5 facts</li> <li>• No need to provide evidence</li> <li>• Parties can apply jointly</li> </ul>	2
<b>Total</b>		<b>30 Marks</b>

## Section B - Scenario 1

Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> <li>• S.3(1) CA 1989</li> <li>• All the rights, duties, powers, authority and responsibility which a parent has in relation to a child and the child's property</li> </ul>	2
Q1(b)	<ul style="list-style-type: none"> <li>• Ekene does have PR</li> <li>• Ekene acquires PR when he married Nikky</li> <li>• Ekene might also be on the children's birth certificates giving him PR</li> </ul>	2
<b>Question 1 Total: 4 Marks</b>		
Q2(a)	<ul style="list-style-type: none"> <li>• S.8 CA 1989</li> <li>• Specific Issue Order</li> <li>• Addresses a particular issue – here the education</li> <li>• Application: Ekene wants the children to attend a faith-based school</li> </ul>	3
Q2(b)	<ul style="list-style-type: none"> <li>• Definition: the welfare of the children is the court's paramount consideration</li> <li>• S.1(1) CA 1989</li> <li>• Application: what is best for Ayo and Imose may take priority over what Ekene wants.</li> </ul>	3
<b>Question 2 Total:6 Marks</b>		
Q3(a)	<ul style="list-style-type: none"> <li>• Child arrangement order s8 CA 1989</li> <li>• Settles who the child will live with and who the child will have contact with, and when</li> <li>• Nikky will apply for the children to live with her and have contact with Ekene</li> </ul>	3
Q3(b)	<p>S.1(3) CA 1989</p> <p><b>Three</b> from:</p> <ul style="list-style-type: none"> <li>• Wishes and feelings: Both children are old enough for the court to take their wishes and feelings into consideration; neither child wants to move schools</li> <li>• Physical, emotional and educational needs: the children need stability at home, they both need to attend school and need stability in their education</li> <li>• Likely effect of change: a change of school could be unsettling for the children, who are already experiencing parental relationship breakdown</li> <li>• Age, sex, background: children have been raised in a conservative religious home; Ayo is 10 and Imose is 12; Ayo does not want to upset his father</li> </ul>	6

	<ul style="list-style-type: none"> <li>• Capability of both parents: both Nikky and Ekene appear to be capable of caring for their children.</li> </ul>	
<b>Question 3 Total: 9 Marks</b>		
Q4(a)	<p><b>Two</b> from:</p> <ul style="list-style-type: none"> <li>• Mesher order: will allow Nikky and the children to remain living in the house with the house sold at a later date. Will provide continuity for the children. Ekene retains an interest in the house</li> <li>• Transfer of property order: will allow transfer of the house to Nikky. Nikky will have to buy out Ekene's share of the house in some way</li> <li>• Sale of property order: the house can be sold and each party attain a decent amount with which to start again. Allows a fresh start for Nikky and the children</li> </ul>	4
Q4(b)	<p>S.25 MCA 1973</p> <p><b>Three</b> factors from:</p> <ul style="list-style-type: none"> <li>• Resources: the parties have a house worth £450,000 with no mortgage; both parties work and have capacity to work</li> <li>• Needs: both parties need somewhere to live big enough for the children to live and/or visit; normal household expenses</li> <li>• Standard of living: they have clearly had a comfortable standard of living prior to the divorce. Sale of the house would give each of them £250,000 if split equally; court will try to maintain an equal standard for both parties</li> <li>• Age and duration of marriage: marriage has been only 6 years, but they have been a couple for at least 12 years. They are in their mid 40s</li> </ul> <p>[NOTE: the factors must relate to the property orders].</p>	7
<b>Question 4 Total: 11 Marks</b>		
<b>Scenario 1 Total</b>		<b>30 Marks</b>

## Section B - Scenario 2

Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> <li>• Marriage</li> <li>• MCA 1973 - (optional: as amended by MSSCA 2013)</li> <li>• Civil partnership</li> <li>• CPA 2004</li> </ul>	4
Q1(b)	<ul style="list-style-type: none"> <li>• They will have right to mutual financial support</li> <li>• Scott will acquire home rights of occupation</li> <li>• They will be entitled to financial orders if relationship breaks down</li> <li>• They will be entitled to a share of each other's estates if one dies intestate</li> <li>• Angus can apply for PR for Julia</li> </ul>	4
<b>Question 1 Total: 8 Marks</b>		
Q2	<ul style="list-style-type: none"> <li>• Parental responsibility – definition</li> <li>• S3(1) CA 1989</li> <li>• Examples of PR - PR gives someone the right to be involved in decisions about child's upbringing – education, religion, lifestyle, etc.</li> <li>• Angus becomes Julia's step-parent</li> <li>• Angus has no automatic PR rights as a step-parent</li> <li>• Angus can acquire PR with Scott and Beth's permission – PR agreement</li> <li>• Angus can also apply for a PR order</li> <li>• S4 CA 1989</li> <li>• <u>S v R</u> (1993)</li> </ul>	6
<b>Question 2 Total: 6 Marks</b>		
Q3	<ul style="list-style-type: none"> <li>• Sole legal ownership scenario – Angus is sole legal owner</li> <li>• Assumption– sole legal owner holds entire beneficial interest (may cite <u>Stack v Dowden</u>)</li> <li>• <u>Lloyds Bank v Rosset</u> (1991)</li> <li>• Rosset test – common intention + detriment</li> </ul>	10

	<ul style="list-style-type: none"> <li>• Rosset test – direct contributions</li> </ul> <p>Application:</p> <ul style="list-style-type: none"> <li>• Scott has given £10,000 to improve the house</li> <li>• Angus’ statement about the house being home to Scott and Julia may indicate common intention</li> <li>• Constructive trust is preferred method to protect Scott’s interest</li> <li>• Allocation of share to Scott – based on consideration of all the facts or ‘whole course of dealing’</li> <li>• TOLATA 1996 s14 – declaration of Scott’s interest</li> <li>• TOLATA 1996 s15 – factors to consider</li> </ul>	
<b>Question 3 Total: 10 Marks</b>		
Q4	<ul style="list-style-type: none"> <li>• Prenuptial agreement</li> <li>• <u>Radmacher v Granatino</u> (2010)</li> </ul> <p>(Prenuptial agreements will generally be upheld by courts if)</p> <ul style="list-style-type: none"> <li>• it is fair in all the circumstances</li> <li>• parties have entered into the agreement freely/understanding its implications</li> </ul> <p>Application:</p> <ul style="list-style-type: none"> <li>• Angus might be placing pressure on Scott</li> <li>• Both parties must take independent legal advice</li> <li>• The resulting agreement must be fair and meet Scott’s needs</li> </ul>	6
<b>Question 4 Total: 6 Marks</b>		
<b>Scenario 2 Total</b>		<b>30 Marks</b>

### Section B - Scenario 3

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> <li>• Domestic Proceedings and Magistrates Courts Act 1978</li> <li>• S.1 Grounds</li> <li>• R has failed to provide reasonable maintenance for A</li> <li>• S2 available orders</li> <li>• Periodical payments and lump sums up to £1000</li> </ul> <p style="margin-left: 40px;">Application</p> <ul style="list-style-type: none"> <li>• Erik has the higher income</li> <li>• Christa is on a reduced salary and unable to work full time</li> <li>• Christa is mostly in need of periodical payments</li> <li>• Christa has somewhere to live so support will be for living expenses</li> </ul>	6
<b>Question 1 Total: 6 Marks</b>		
Q2	<ul style="list-style-type: none"> <li>• MCA 1973 S. 1</li> <li>• Single ground: irretrievable breakdown of marriage</li> <li>• Based on proof of one of five facts</li> <li>• S1(2)(a) MCA 1973: adultery.</li> <li>• R has committed adultery and A finds it intolerable to live with R</li> <li>• Definition of adultery</li> <li>• <u>Cleary v Cleary</u> (1974)</li> </ul> <p style="margin-left: 40px;">Application:</p> <ul style="list-style-type: none"> <li>• Erik has admitted the affair</li> <li>• Christa must find it intolerable to live with Erik</li> </ul>	7 marks
<b>Question 2 Total: 7 Marks</b>		
Q3(a)	<p>MCA 1973</p> <p><b><u>Two</u> from:</b></p> <ul style="list-style-type: none"> <li>• Periodical payments order</li> <li>• Christa has a reduced income, is not on a high gross salary in any case, will need financial support for daily living expenses</li> </ul>	4

	<ul style="list-style-type: none"> <li>• Sale of property order</li> <li>• Christa needs somewhere to live with security; the house has an equity of £770,000 so can be sold and provide each of them with sufficient money to start again</li>   <li>• Sale of the flat and split proceeds</li> <li>• Sale of investments and split proceeds</li>   <li>• Transfer of property order</li> <li>• The house could be transferred to Christa and offset by allowing Erik to keep the flat and the investments</li> </ul> <p>(Marks for application require candidates to address why the order is important in the circumstances as per the question paper)</p>	
<b>Question 3 Total: 4 Marks</b>		
Q3(b)	<ul style="list-style-type: none"> <li>• S25 MCA 1973</li>   <li>• Resources: both parties are earning; Erik's income is much higher than Christa's; they own a house and a flat and have investments.</li>   <li>• Needs and obligations: both parties need a place to live; both parties have daily living expenses; Christa is currently not working because of health</li>   <li>• Age and duration of marriage: both parties are in their 50s; the marriage has been long; an equal division is therefore more likely, if possible, to satisfy both parties' needs</li>   <li>• Standard of living: Christa and Erik seem to have had a comfortable lifestyle – the house is approaching a value of £1million and Erik is on a high salary. The court will try to ensure that this continues as much as possible</li>   <li>• Any health or disability: Christa is signed off work with stress</li> </ul>	7
<b>Question 4 Total: 7 Marks</b>		
Q4(a)	<ul style="list-style-type: none"> <li>• Needs come first</li> </ul> <p>Or,</p> <ul style="list-style-type: none"> <li>• Equal sharing</li> <li>• <u>Charman v Charman</u> [2007]</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <u>White v White</u> (2000)</li> <li>• 'Yardstick of equality'</li> </ul>	2

Q4(b)	<p><b><u>One from:</u></b></p> <ul style="list-style-type: none"> <li>• <u>White v White (2000)</u></li> <li>• The HL held that the contributions of a spouse who stays home and takes care of the family counts just as much as financial earnings</li> <li>• <u>McFarlane v McFarlane (2006) (1)</u></li> <li>• A spouse who gave up career advancement for the benefit of the family can be compensated for loss of income opportunity. In this case, by means of periodical payments</li> </ul>	2
Q4(c)	<ul style="list-style-type: none"> <li>• S25 MCA 1973 – conduct</li> <li>• Conduct must be ‘both obvious and gross’ to influence a financial order</li> <li>• <u>Evans v Evans (1989)</u></li> </ul> <p>Or,</p> <ul style="list-style-type: none"> <li>• <u>Miller v Miller (2006)</u></li> <li>• The HL held that only in very exceptional circumstances could adultery play a role in financial proceedings</li> </ul>	2
<b>Question 5 Total: 6 Marks</b>		
<b>Scenario 3 Total</b>		<b>30 Marks</b>