

**LEVEL 3 - UNIT 12 – THE PRACTICE OF FAMILY LAW  
SUGGESTED ANSWERS – JANUARY 2018**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. 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 tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

**Question 1**

- (a) Parental responsibility is defined as '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' (s.3(1) Children Act 1989). This covers all aspects of a child's life and gives parents the right to make decisions involving all aspects of the child's life, including education, religion and medical treatment.
- (b) The natural mother has parental responsibility automatically. So Alice, as Kyle and Donna's natural mother, has parental responsibility.

An unmarried father has parental responsibility if he is named on the child's birth certificate and the child is born after 1 December 2003. Here, Levi was named on the children's birth certificates and the children were born after December 2003. Levi has parental responsibility.

Celice does not have parental responsibility, as she and Alice are not married.

- (c) (i) Levi should apply for a child arrangements order to enable him to continue to have regular contact with Kyle and Donna. This order identifies who a child will live with and who a child will have contact with. Contact can be direct (face to face) or indirect (for example, by phone or letter).

In this case, the order will ensure Levi spends time with the children and Alice will have to comply.

- (d) (ii) Levi should apply for a specific issue order to resolve the issue concerning the children's education. This is an order used where those with parental responsibility cannot agree on a major aspect of a child's

life. Here, Alice and Levi cannot agree on how the children should be educated, so the court will decide.

Or accept alternative suggestion of a prohibited steps order, explained and applied.

- (e) The procedure to obtain a s.8 Children Act order is as follows:
- attend a MIAM meeting;
  - Form C100 completed;
  - Form C100 filed with court;
  - court will issue a hearing date or directions appointment;
  - C100 served on respondent at least 14 days before hearing;
  - respondent must file and serve acknowledgement of service (C7);
  - CAFCASS should be informed of application within 48 hours in order to carry out the necessary checks;
  - at the first hearing dispute resolution appointment, the court will deal with various matters such as safeguarding checks, welfare checks, and dispute resolution;
  - court will consider a timetable for proceedings, bearing in mind the no delay principle;
  - court gives directions on filing of documents;
  - court may require a CAFCASS report;
  - final hearing held and orders made.

## Question 2

- (a) Protection against domestic violence is offered in a number of ways by the police and criminal justice system.

Specialist domestic violence units have been created to deal with domestic violence.

When a person is charged with an offence, bail conditions can be imposed by the court, such as not to contact victim.

Breach of bail conditions will be dealt with by the police. The victim will need to inform the police of the suspected breach.

The Domestic Violence Crimes and Victims Act 2004 makes breach of a non-molestation order a criminal offence and so protects from future violence.

The police can apply for a domestic violence protection notice and remove the defendant from the family home for 48 hours.

The police can then apply to the magistrates for a domestic violence protection order. This will be in force for between 14 and 28 days and will allow the victim to obtain advice and support.

- (b) A non-molestation order is an order to prevent the respondent from molesting the applicant or relevant child (s.42 Family Law Act (FLA) 1996). Molestation includes:

1. Physical behaviour e.g. physical violence and threats of violence.
2. Action which harasses the applicant, e.g. nuisance phone calls, loitering near applicant's home. This includes coercive behaviour, such as preventing a partner leaving the house or having access to a telephone.

3. In this case, Bilawal's verbal threats and the incidents of violence are forms of molestation.

Mona should apply for this order to protect herself.

- (c) A person can apply for a non-molestation order if the applicant and respondent were associated persons (s.62 FLA 1996). This covers a range of relationships including spouses, ex-spouses, civil partners and co-habitants.

Here Mona and Bilawal have been co-habiting, so they are associated persons and Mona can apply for an order.

- (d) The procedure to obtain an *ex parte* non-molestation order is as follows:
- prepare application (FL401);
  - prepare the supporting statement which must include the reason for the urgent application;
  - arrange for the supporting statement to be signed by the applicant;
  - issue the application with copies of above documents at court;
  - pay fee at court office;
  - court will allocate a hearing date;
  - prepare and attend the without notice hearing;
  - order issued;
  - arrange service of the order issued and notice of full hearing on respondent;
  - service must take place with a minimum of two days before the hearing;
  - both parties to attend final hearing when an order will be issued.

### Question 3

- (a) The ground for divorce is that the marriage has broken down irretrievably, s.1(1) Matrimonial Causes Act 1973 (MCA 1973). Sadie could establish the ground for a matrimonial order by citing Paulo's adultery, Fact A. Sadie needs to state that Paulo has committed adultery and that she finds it intolerable to live with him (s.1 (1)(a) MCA 1973).

Adultery is defined as sexual intercourse between a man and a woman, one or both of whom are married to another. Intolerability is subjective and does not have to be connected to adultery.

Here, Paulo and Emily are both married to other people and have had sexual intercourse. So Sadie could use this fact, if she can establish that Paulo and Emily were in fact having sexual intercourse.

- (b) A certificate of reconciliation must be filed with the court when a solicitor is fully acting for client, s.6.1 MCA 1973. It must certify whether or not reconciliation has been discussed. Here, Sadie has instructed solicitors to act for her, so the certificate would be required.
- (c) The normal method of service of Sadie's application for a matrimonial order would be first class post.
- (d) If Paulo does not intend to defend the application, he must complete and return the Acknowledgement of Service within 7 days of receipt, and he must indicate that he does not intend to defend the application.

#### Question 4

- (a) The family home could be the subject of a property adjustment order (s.24 Matrimonial Causes Act 1973). This is an order that adjusts the property interests of the parties. The court can order:
1. sale of the property and the proceeds split between the parties; or
  2. the transfer of the property to one party, subject to any mortgage; or
  3. settlement of the property (a Meshor or Martin trust).

Here, the court could consider an order transfer of Weavers Cottage into Sadie's name, subject to the mortgage. The court could also consider an order to transfer the flat in Bedford to Paulo to achieve an appropriate division of assets. A lump sum order in favour of Paulo would be necessary to achieve a fair division of the assets.

A settlement would not be suitable in this case.

- (b) The steps that need to be taken to prepare for the First Appointment are:
- Form E to be completed by both parties- statement of assets and income;
  - Form E to be exchanged with Paulo and filed at court;
  - this must be done not less than 35 days before the First Appointment;
  - at least 14 days before 1st appointment various documents must be exchanged and filed at court. These documents are:
    - a statement of issues – issues on which there is no agreement;
    - the chronology – history of marriage;
    - the questionnaire – further information or documents sought;
    - Form G – stating whether a party is in a position to use First Appointment as FDR;
    - Form H – an estimate of costs so far.

#### Question 5

Unlike Sadie, Tracey and Xander are co-habiting. The property of co-habitees is dealt with in accordance with the legal ownership of the property (property law) and the law of trusts.

The court will start by identifying whose name is on the deeds. If the property is in the sole name of one party, the relevant law is found in Trusts of Land and Appointment of Trustees Act (TLATA) 1996, as the other party will need to show an implied trust in order to make a claim on the property.

The implied trust can be a resulting trust or a constructive trust. A resulting trust arises where a party has contributed to the deposit or the purchase price. A constructive trust arises where there is a common intention to share and one party has acted on this to their detriment by, for example, making mortgage payments or paying for improvements.

Here, Tracey and Xander have been cohabiting. The house is in Xander's sole name but Tracey has paid the mortgage for four years, and has paid for substantial improvements which have increased the value of the property. Tracey will need to establish a constructive trust in order to make a claim for the money she has spent. If she can satisfy the court of this, the court will make the appropriate order.