LEVEL 6 - UNIT 7 – 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 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 tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

SECTION A

Question 1(a)

Applications under the DPMCA 1978 are now made in the Family Court despite the fact that the statute refers to the Magistrates Court Act 1978. Applications for relief can usually only be made whilst the marriage subsists and before divorce proceedings are commenced.

S1 DPMCA indicates that either party to a marriage can make an application if the other party has failed to provide reasonable maintenance for the applicant or any child of the family. This is similar to the provisions of the MCA 1973 regarding maintenance pending suit (s22 MCA 1973).

The applicant can apply if they cannot be expected to live with the respondent or the respondent has deserted the applicant. The grounds are therefore limited in nature to a specific set of circumstances.

If an applicant satisfies one of these grounds then the court can make a number of orders for either periodical payments or a lump sum. Either order can be made for the benefit of the applicant or a child of the family. A lump sum order can be made for any expenses incurred prior to the making of the application. However the payment of a lump sum is limited to £500: s2 (3) DPMCA.

The court must take into account those factors set out in s3, which is similar in nature to s25 MCA 1973. The court is directed to look at all the circumstances of the case, with first consideration being given to the welfare of any child of the family who has not yet attained the age of 18. This is supplemented by a number of provisions set out at s3(2) (a) –(g). These mirror in almost identical terms those factors found out s25 (2) (a)-(g). The notable difference is of course that the equivalent of s25(2)(h)MCA is missing in the DPMCA. In the case of MCA

1973 that provision would enable the court to look at pension and property distribution and which is not available in these types of proceedings.

The court must look at the resources available to the parties, including each person's income and earning capacity. All assets will be taken into account and the court will want to know what needs and financial obligations each party has. The court will look at the standard of living enjoyed by each party to the marriage before the conduct relied on took place. As these applications can only be made in restricted circumstances, the court needs to look at those matters and the way the parties lived before those issues arose. The court will consider each party's contributions to the home and family and any conduct that it would be inequitable to disregard.

S3(3) DMPCA mirrors s25(3) MCA 1973: when making orders for children additional factors must be taken into account. These applications will be limited in nature as the Child Maintenance Service (CMS) will usually have jurisdiction to make assessments. Where the CMS doesn't have jurisdiction, the checklist of factors at s3(3) will be vital for the court to consider in making any orders for children.

The provisions of the DMPCA are therefore not too dissimilar to those in MCA 1973, save for the fact that the provisions are by their nature for a different purpose. The applicant will be making the application during the marriage for maintenance rather than looking for a post-divorce settlement of all assets.

1(b)

Consortium is best described as, "a bundle of rights, hardly capable of precise definition." This description comes from the case of Best V Samuel Fox & Co (1952). Case law has always described these rights in respect of heterosexual marriages and not same sex marriages. These were only made legal as a result of the Marriage (Same Sex couples) Act 2013.

Consortium rights are gained as a result of the parties' marriage, for example marriage gives the couple a right to enjoy each other's company; this could be said to apply to heterosexual and same sex married couples.

Other rights that have been identified over the years are: the right to cohabit with each other and the right to decide where the parties live and buy a house. These are all rights that could apply to either same sex or heterosexual couples.

There are some rights that might not apply equally, for example, the right of a wife to use her husband's surname may not be equally applicable. In the 21st century many women choose not to take their husband's surname in heterosexual marriages. In same sex marriage, the roles of each party are not defined by gender based roles and so this provision may not be applicable.

Further, there is a right to reasonable sexual intercourse which may not be directly applicable to same sex marriages. This could be either because there is not the same emphasis on the importance of a sexual relationship between same sex couples or because the consortium rights aren't construed in the same way.

It would appear that consortium rights might apply to same sex married couples but with some alterations due to changing social attitudes more than anything else.

Question 2

There are numerous laws in the Family, Civil and Criminal Courts that can protect a victim from domestic harm.

Domestic abuse has a wide ranging definition, it is not restricted to violence between parties, and it can cover wide ranging behaviour from, for example, stalking offences, coercive and controlling behaviour to serious incidents or threats of violence.

The Family Law Act 1996 (FLA 1996) is the main statute that provides protection to victims of abuse in the domestic setting. Applications are made to the Family Court. A person who wishes to apply for protection from abuse must first show that they are an 'associated person' within the meaning of s62 FLA. There are numerous categories: married couples, civil partners and cohabitees are covered by this definition. Parties who are related can make applications for protection, for example a step-son could make an application against a step-mother.

Once an associated relationship can be established, the court will have a wide discretion to decide whether or not to make an order for protection. There are two types of protective orders under the FLA 1996: an applicant can apply for a non-molestation order and/or an occupation order.

The non-molestation order would protect the applicant from harm caused by the respondent. There is no statutory definition of molestation; case law indicates that molestation can be equated to pestering: Vaughan v Vaughan (1973). In the case of C v C 1998, the Judge stated that the behaviour must be of such a high degree that it requires the intervention of the court.

An application for a non-molestation order can be made either without notice or *inter partes.* This means that, if it is a matter of urgency, an application can be made speedily to protect the applicant. Any person wishing to make such an application would have to satisfy the conditions set out in s45 FLA 1996. The criteria for making an application without notice to the other party are narrow.

If a non-molestation order is made against the respondent, a breach of the terms of the order is a criminal offence. This change was bought about by the Domestic Violence, Crime and Victims Act 2004. The respondent can be punished for a breach of an order either by a criminal court or a civil court but not both. If punished by a criminal court, the potential punishment is a prison term not exceeding 5 years if convicted on indictment or, on summary conviction, a term not exceeding 12 months, or a fine.

An application can also be made for an occupation order under the FLA 1996. This means that a person who is an associated person can apply for orders to regulate the occupation of the property or to declare existing rights to occupy. These are governed by ss33 – 38 FLA 1996. Depending on which section the applicant applies under, the court either has the power to make an order or is required to make an order in certain circumstances. For an application made under s33 FLA 1996, the court is concerned about the applicant or a relevant child suffering significant harm at the hands of the respondent. If this is proved to be the case according to the civil standard of proof, then the court must make an order; this is called the balance of harm test. If the test is not met then the court can still make an order under its discretionary powers by assessing the criteria laid out in s33(6). Different tests apply to the different sections depending on the parties' rights to occupy the property in question. The court will look more carefully at a cohabiting couple's relationship when applying s35

FLA 96. If granted the occupation order will only be extended on one occasion under this section.

A power of arrest can be attached to an occupation order, the breach of which is not a criminal offence but the respondent can be arrested by the police and brought to the Family Court. The breach is punishable by the applicant bringing contempt proceedings following the respondent's arrest.

The Protection from Harassment Act 1997 (PHA 1997) was introduced in both the civil and criminal arenas. Often, if parties are unable to show that they are associated persons under FLA 1996, they might fall under the provisions of PHA 1997. The applicant needs to show that the respondent has pursued a course of conduct which amounts to harassment of the applicant. Although there is no definition of harassment, the respondent ought to have known that the conduct amounts to harassment. The criminal offence of harassment attracts a fine or prison sentence from six months' to 5 years' imprisonment.

The most recent protection from domestic abuse was introduced by s76 Serious Crime Act 2015 (SCA 2015). This creates an offence of controlling or coercive behaviour. It is now a criminal offence for a person to engage repeatedly in behaviour that is controlling or coercive. The parties must be personally connected and the victim must show that the behaviour has had a serious effect and that the perpetrator was aware of this. This type of behaviour is not likely to be covered by either FLA 1996 or PHA 1997. The definition of people who are personally connected is similar to that of associated persons in FLA 1996.

If a person is found guilty of such an offence the punishment is an unlimited fine and/or a prison sentence of six months to 5 years.

The laws of protection for a victim of domestic abuse cover a wide range of circumstances and offer a range of civil and criminal solutions. This is likely to lead to confusion for the victim of domestic harm and may be off putting to an applicant without advice.

Question 3

Since the 20th century it has been possible for children to be born into different types of relationships, having been conceived in new and scientifically innovative ways.

The main statute that deals with these new types of parenting is the Human Fertilisation and Embryology Act 2008 (HFEA 2008). This Act only came into existence in the 21st century, which should indicate that it is both up-to-date and fit for purpose.

Surrogacy is an arrangement whereby a woman carries a child for other people, the intention being that the child will be brought up by the other people, rather than the woman who carries the child. There are different variations of the surrogacy arrangement. An arrangement such as this should be entered into with the woman before she begins to carry the child. Consent to a parental order must be given no less than 6 weeks after the child is born.

Although surrogacy arrangements are regularly entered into, they cannot be enforced against any of the people entering into them. This can of course be difficult for parties where things go wrong.

S33(1) HFEA 2008 defines the mother as the woman who is carrying a child as a result of placing an embryo or sperm and eggs. No other woman is to be treated as the mother of the child. The parents who have made arrangements for the surrogacy to take place are called the commissioning parents.

It is important to note that in England and Wales it is a criminal offence to carry out a commercial surrogacy arrangement. Persons entering into the arrangement are permitted to pay for the woman's reasonable expenses but no more. It is not possible to advertise surrogacy services either. It could be argued that these arrangements are not in accord with people's expectation of surrogacy arrangements today, as other jurisdictions are much more open to commercial surrogacy arrangements. The payment of money in excess of reasonable expenses is not acceptable in the modern surrogacy arrangement in England and Wales even if the surrogacy takes place overseas, where this will be the norm.

The two types of surrogacy arrangements are either a total surrogacy or a partial surrogacy. A total surrogacy is one where the commissioning parents use an egg from the mother and the sperm from the father before implanting both in the surrogate mother. The commissioning couple are therefore the genetic parents but the law states that the surrogate is the mother pending the making of a parental order.

A partial surrogacy is where the surrogate is artificially inseminated using the sperm of the commissioning father using the surrogate's egg. The genetic and legal mother is the surrogate pending the making of the parental order.

Once the child is born using either type of surrogacy arrangement, the commissioning parents should apply for a parental order under s54 HFEA 2008 within 6 months. A parental order extinguishes the mother's rights and the commissioning parents become the legal parents, as long as certain conditions of surrogacy have been met. A single person is not permitted to apply for a parental order.

Two people who are married, civil partners or a couple in an enduring relationship must make the application. One of them should have donated their gametes for a parental order to be granted. The mother and any man considered to be the father of the child must give consent to the order being made.

Such an application can only be made once the surrogate mother has handed the child over to the commissioning couple. These rules are strict and if the mother refuses to give consent problems can arise.

In the case of Re X and Y (2011) the court considered the meaning of the payment of reasonable expenses. The couple contacted a service in India to arrange for a surrogacy. They entered into partial surrogacy arrangements with two women, using an anonymous egg donor. It was clear that the children born would be handed over to the commissioning parents. They agreed to pay expenses for each mother, including medical and non-medical expenses. Both surrogate mothers agreed to relinquish all parental rights to the commissioning parents. The court considered whether the payments made to the women fell foul of the provisions of s55(8) HFEA 2008. The parents agreed that the money they had paid was more than just reasonable expenses but that it should not prevent a parental order bring made. Whether the court should authorise those reasonable expenses is a matter of consideration. The court took into account whether the couple were trying to commit a fraud.

In D and L (Surrogacy) (2012), a male couple had commissioned a partial surrogacy arrangement in India, using an anonymous donor egg and the sperm from one party. Twins were born as a result of the arrangement. They had been handed over to the couple 2 days after the birth. However the mother did not give her consent to a parental order and the commissioning parents could not find her to obtain her consent. The judge found that the requirements were met to make a parental order even without the consent of the surrogate and that requirement was dispensed with. This was done as the welfare of the children was paramount and all reasonable steps had been taken to find her. The mother had given consent to the surrogacy arrangement before the expiration of 6 weeks from the date of the birth. The court also retrospectively authorised the payment of monies which was accepted to be beyond reasonable expenses.

In Re Z (no 2) (2016), the father commissioned a partial surrogacy as a single parent in the USA. When the child was born and handed over to him, he applied for a parental order in England but his application was refused. A single person in England and Wales is not permitted to apply for a parental order: s54 HFEA 2008. The child was made a ward of court and the judge declared that the law is incompatible with Articles 8 and 14 of HRA 1998. The treatment of single people is different to that of couples. The court felt that this difference could no longer be justified. Adoption was an alternative for the father instead of making an application for a parental order. However, the father did not want to adopt his own child as he was recognised as the child's father according to American law.

It is therefore arguable that there are areas of the current surrogacy law that require amendment to make them fit for use in the 21st century. The discrimination against single people and the prohibition of commercial arrangements are not consistent with foreign surrogacy arrangements.

Question 4

The law in respect of matrimonial finance is found in the Matrimonial Causes Act 1973. Although this Act has been amended over the years to take into account various changes, for example by the introduction of the Marriage (Same Sex Couples) Act 2013, it has not been overhauled since then.

This means that there is a risk that the MCA 1973 may not be fit for purpose 45 years later.

Recently, the Law Commission looked into the matter, resulting in their report on Marital Property Needs and Agreements, published in 2014.

The current law gives the court a wide discretion when it comes to the various orders that the court can make. The court can only make a fixed range of orders but the factors that the court balances to make its decisions are very wide-ranging and open to interpretation.

The court can make orders to sell or transfer property (s24). The court can make an order for a lump sum (s23(1)(c)), a range of pensions orders and maintenance orders between spouses (s22 and s23(1)(a) and, in some circumstances, maintenance orders for children. The court was unable to make any pensions orders until MCA 1973 (ss25 (b) and (c)) was amended to give the court the power to make pension attachment and pension sharing orders.

S25 MCA 1973 sets out the factors that the court can take into account. The first consideration of the court is the welfare of any minor children of the family. The court must take into account all the circumstances of the case and balance those

factors found at s25(2) (a)-(h). None of those factors should take priority over any other. In conducting this discretionary exercise it can be said that there is little certainty of outcome for the parties. This can be quite stressful for parties and many have stated that a formula that would apply to all parties would be a welcome change. The Child Maintenance Service (CMS) apply a maintenance formula for the payment of maintenance and many feel that it would be appropriate to introduce a similar approach to matrimonial finances.

The Law Commission report concluded that the law does not need reform in respect of assessing parties' needs following a divorce. Although outcomes are not easy to predict, the wide discretion available to the courts ensures that parties achieve a fair result. The courts aim to ensure that parties are able to achieve a clean break, which is enshrined in s25A MCA 1973. Even if a clean break is not achievable immediately, the courts try to ensure that this is something that will be achieved in the long term.

The Law Commission recommended that the Family Justice Council prepared guidance to ensure that the meaning of 'financial needs' is understood by people going through a divorce. This should help to ensure that the law is applied consistently across the country. Such guidance is now available.

Although the Law Commission do not support the introduction of a formula to replace the current statutory framework, they do support the introduction of a formula as an aid to calculation. One complex area that may need some clarity is the distribution of non-matrimonial property, eg property owned by one party before the marriage.

One of the main areas identified for change is that of 'Qualifying' nuptial agreements (QNAs). These include pre-nuptial and post-nuptial agreements. The law as it stands does not recognise the rights of parties to enter into these agreements before or during marriage. The courts have, however, been taking these agreements into account more and more over the years, particularly after the notable case of Radmacher v Granatino (2010). This case establishes that pre-nuptial agreements can be given weight if they are properly entered into and that the parties understand the nature of the agreement.

The recommendation is that the law is in need of change in this area to ensure that these agreements are enforceable as contracts. The courts would no longer have any discretion in these cases as they currently do; parties would be able to rely on the agreement that they decided to enter into. If these agreements were given a different status then parties could make their own decisions about the distribution of matrimonial and non-matrimonial property.

The Law Commission recommends that for these agreements to be 'Qualifying' there should be certain safeguards in place. If these formalities are met, the parties should be free to determine their own asset distribution with one important exception. The parties will not be able to determine their financial needs: the court will always retain discretion in that respect. This ensures that a fair settlement will always be achieved in regard to these matters.

The formalities set out in the report are as follows:

- The agreement must be contractually valid and enforceable
- It must be made by deed. The parties must sign a statement saying that they understand that the agreement will be valid
- There should be at least 28 days between signing the agreement and getting married

- Both parties must have disclosure of the other party's financial and other circumstances
- Both parties must have received legal advice at the time that the agreement was formed

It is unfortunate that four years after the Law Commission's recommendations not much movement has been made by the government to implement these changes. It is not likely that these changes will be introduced in the future particularly as the Government will be busy dealing with post Brexit statutory matters for the next two years.

SECTION B

Question 1(a)

There are three children to consider in this family, Mina who is Emma's child from a previous relationship and the twins, Conor and Senan, who are biological children of both parties.

It is clear that Julius has parental responsibility for the twins as his name is on the birth certificate for each child. Parental responsibility means the rights, duties, powers and responsibility that a parent has by law in respect of that child and their property.

He does not have parental responsibility for Mina, who is not his child, and as he is not married to Emma he is not able to apply for step-parent's parental responsibility.

As a parent he can apply for a child arrangements order (CAO s8 CA 1989) in respect of the twins. This will regulate where they live and how often they have contact with the party they do not live with.

S10 (5) CA 1989 provides that, as Mina has lived in the same household as Julius for three years, he can make an application for a CAO as long as he makes the application within 3 months from when they stop living together.

1(b)

Emma should be advised that there is no such thing as 'common law' spouses. She and Julius are merely cohabitants and as they haven't entered into a formal relationship their obligations to each other will be limited.

A cohabitation contract is one which regulates the relationship of the parties who enter into the contract. In this case we are told that she and Julius entered into a contract that regulated how her home was owned and how they would share the bills between them. A cohabitation contract would permit this type of regulation alongside the division of household chores and details of the maintenance and surnames of any children they planned to have. We are told that they regulated the financial matters but nothing in respect of children.

These types of contract were historically treated as being void on the grounds of public policy as they were seen to undermine the nature of marriage. However, as social values have moved on and as more couples choose these types of relationship instead of marriage, it is likely the courts will take a more liberal view as to the enforcement of these contracts.

A cohabitation contract is different from a contract FOR cohabitation. This type of contract would be against public policy as case law has determined.

In Sutton v Mishcon de Reya and another (2004), the parties were a male couple. One of the parties was wealthy and wanted to enter into a 'master/servant' relationship where he would be the servant of the two. They instructed solicitors to draw up a contract whereby the wealthy party would transfer his wealth to the 'Master'. He changed his mind about this and the 'Master' agreed a settlement which was less lucrative for him. He sued his solicitors in negligence for a badly drafted contract. The court held that the contract was void as it offended public policy.

It is more likely that this contract would be valid as it seems that both parties were properly advised on the content of the agreement. Julius is unlikely to have any share in the property unless the contract provided him with a share in the event that their circumstances changed.

1(c)

If the parties had no written contract setting out their entitlements to property and other financial matters, the issues might be more complex.

Cohabitants do not have a general right to make financial claims against each other as they have limited statutory protection. In this case, Julius would need to rely on trust and property law to resolve any issues about the property. The main statute that would apply is the Trust of Land and Appointment of Trustees Act (1996).

In this case, the legal ownership of the property lies with Emma as she owned the property before she met Julius and he, therefore made no financial contribution to the purchase of the property. As the property is mortgage free, he has not made any contribution to the mortgage payments either. There is therefore no resulting trust, which is defined by there being direct contributions to the purchase price.

A leading case on sole ownership is that of Lloyds Bank v Rosset (1990), where the court set out the constructive trust elements that would need to be met.

Julius would need to show that there was a common intention to share the property and that he acted to his detriment in reliance on that common intention. It is unlikely on these facts that he would succeed.

The leading case in cohabitation matters is Stack v Dowden (2007), which was decided in the House of Lords. In that case the court established that it would need to ascertain the parties' shared intentions. If Emma and Julius stated their oral intentions that under no circumstances would Julius ever be entitled to a share of the property, then this is what the court would uphold. The burden would be on Julius to show that the legal ownership of the property does not reflect their agreement or that their initial agreement changed after their twins were born. He might suggest that their agreement changed at the point he became the main wage earner and Emma stayed at home with the children. When Emma's household contributions stopped he paid for everything, including expensive roof repairs that cost him £2,500. If Julius is able to persuade the court that their common intention changed, the court may award him a small beneficial interest due to the limited contributions he has made to the household repairs.

Even if Julius is able to establish a beneficial interest, he will not be able to force a sale of the property to get his share as the house is being used as a home for all the children and this was their common intention from the outset.

Question 2

Maud would like to exit the marriage to Iris as soon as possible and so the first matter than needs consideration is whether the marriage is valid to start with. If the marriage is not valid from the outset then it will be void and if that is the case no further action will need to be taken.

The requirements for capacity to marry are contained within Matrimonial Causes Act 1973 (MCA 1973) and the Marriage Acts 1949-1986 (MA 1949-1986). The marriage will be void if certain conditions are not met.

S11 (a)(i) MCA 1973 the parties must not be related within the prohibited degrees of consanguinity or affinity.

S11 (a)(ii) MCA 1973 where the parties are under the age of 16, the marriage will be void.

S.11(b) MCA 1973 – neither party must be lawfully married already.

S.11(c) MCA 1973 – one party must be male and the other female. (This provision has been repealed since the introduction of the Marriage (same sex couples) Act 2013.

S.2 MA 1949 also provides that both parties must be aged 16 years or over. S3 of the same Act states that where a party to the marriage is 16 or 17 then consent must be obtained from the appropriate persons. In this situation Iris is clearly able to give consent as she is over 18. None of the other issues appear to apply to Iris, we are not told that she is already married or that she and Maud are related to each other.

Maud is over the age of 16, but it is clear that she did not obtain the consent of her parents to go ahead with the marriage. We are not told whether any other person was able to give consent but it seems that Iris did not intend to tell anyone about their marriage. It is therefore likely that no one was directly asked to give consent and did not know about the marriage to object. If no one objected when asked to give consent to Maud to allow her to marry then the marriage is not void. As long as the other formalities of marriage exist, the marriage is valid.

It is useful to see if there are any grounds to support an application for a voidable marriage which can be pursued within the first year of marriage under s12 MCA 1973. Same sex couples are not able to rely on any non-consummation grounds to support an application for a voidable marriage.

Maud and Iris both wanted to get married and there is no issue of duress that can be made out. Although Maud was not happy that Iris wanted to keep it a secret, this does not amount to duress which is described as fear caused by threat of danger to life, limb or liberty: Szechter v Szechter (1970).

There are no issues regarding either party's capacity to consent to a marriage, mistake, mental illness, pregnancy or that either was suffering from a venereal disease at the time of the marriage. There do not appear to be any grounds for either party to apply for a nullity.

Maud has made it clear that she wants to end the marriage to Iris and so there is no need to give her advice about obtaining a judicial separation. Although the application can be made within the first year of marriage, this does not fulfil her desire to end the marriage.

Maud and Iris have not been married a year, which means that Maud is unable to apply for a divorce until a year has passed: s3(1) MCA 1973. This appears to be the only option open to Maud as there are no grounds for nullity under s11 or s12 MCA 1973.

There is only one ground for a divorce, which is that the marriage has broken down irretrievably: s 1(1) MCA 1973.

If Maud wants to present a petition she must evidence the breakdown of the marriage with one of the five available facts. These are found at s2 (a)-(e) MCA 1973. The two facts that would allow her to divorce immediately (after 1 year of marriage) are that Iris committed adultery and that Maud finds it intolerable to live with her: s 2(a) MCA 1973.

The definition of adultery is that Iris had penetrative sex with a man: Dennis v Dennis (1955). We are not told that Iris has done this, although if she did have sexual intercourse with a man before Maud presented a petition then she could rely on this fact. At the moment, we cannot advise Maud to proceed on this basis.

The second fact that she could rely on after one year of marriage has elapsed is that Iris has behaved in such a way that Maud cannot reasonably be expected to live with her: s 2(b) MCA 1973.

The test that is applied to this fact is found in the case of Livingstone-Stallard v Livingstone-Stallard (1974). The test is whether a right thinking person would conclude that Maud could not reasonably be expected to live with Iris. The test has both objective and subjective elements.

In this case the court will take into account that Maud was aged 17 when she married Iris and will look at any allegations against Iris taking that into account. The court will also take into account that Maud has been suffering from depression and that she has been prescribed medication.

Maud may wish to allege that Iris would not allow her parents to attend the wedding ceremony as evidence of unreasonable behaviour. She was not happy about this and although she went along with it, she could allege that it was unreasonable for Iris to do this. Maud can rely on incidents that took place in the first year of marriage.

We are told that they were fighting after Maud failed her exams, and that Iris wanted Maud to move with her and take her exams near to her University. Other than the fights it does not seem that there are many grounds of unreasonable behaviour for Maud to rely on. Maud's petition might not succeed in persuading the court that there are sufficient grounds for a divorce to proceed. In that case Maud would have to wait until the parties have been separated for two years to divorce, which can only proceed with Iris' consent, s 2(d) MCA 1973.

Question 3

As Ravi and Selina are married, the division of their assets will be governed by the Matrimonial Causes Act 1973 (MCA 1973). Additionally any child maintenance matters will be dealt with in accordance with the Child Maintenance Service (CMS) formula unless they want to agree something else. Ravi and Selina do not need any advice about the divorce as they are dealing with this themselves.

They need to know that the court will take into account a variety of factors, set out in s25 MCA 1973. Those factors are balanced against each other before the court finally decides what orders to make to distribute the assets between the parties.

Firstly, the court will want to give primary consideration to the welfare of any minor children of the family. We know that there are four children who are aged between 15 and 2 years old. The parties have agreed in mediation that Ravi will continue to be their main carer.

The court will also look at the factors as set out in s25 (2) MCA 1973 and apply them to this case as follows:

(a) Income, earning capacity and other financial resources. The parties own a suitable 6 bedroomed detached house with equity of £317,500. Ravi has no mortgage-raising capacity as he is not working. Although Selina is working and we are told that she can borrow £200,000, we are not told how much it would cost to pay that back from her income each month. Selina earns £60,000 gross per annum with a discretionary bonus. Ravi is not working at the moment but he was a car mechanic and would need retraining if he decided to go back to this work in the future. Selina has company shares worth £10,000.
(b) Financial needs, obligations and responsibilities. Ravi and the children have a need to house themselves in suitable accommodation, being at least a 5 bedroomed property. It is not known if the children are girls or boys or whether they can share rooms, in which case they might only need a smaller property. Selina will also want suitable accommodation for the children at weekends and during their holidays.
(c) The parties seem to have had a good standard of living but not extravagant. They did not need dual incomes as Ravi gave up his work to look after the children.
(d) The parties are in their mid-forties and have been married for 20 years, this is therefore a long marriage.
(e) There is no physical or mental disability that needs to be taken into account.
(f) Contributions – the court will look at Selina's contributions to the family finances as being different from but equal to Ravi's contributions as the children's main carer; White v White (2000).
(g) Conduct – there is no conduct that needs to be taken into account
(h) The value of any benefit lost on the divorce. This can be taken to support pension sharing or pension attachment orders. Both parties have pensions which have a combined value of £500,000. Selina has the majority of pension income in her name.

The first issue to consider is whether Ravi needs to stay in the current home, which is slightly larger than necessary for him and the four children. It might be possible to sell this property, discharge the mortgage and buy a smaller house. This could discharge the mortgage and may even result in a small capital

payment to Selina. If she got a lump sum payment, she might be able to use this as a deposit on a property of her own. If this is the case, Selina could also get a charge against the other property for an appropriate lump sum, depending on the distribution of the other assets.

Ravi may not be able to buy a smaller property straight away, the court may therefore allow him to stay in the current home at least until the oldest child is an adult in three years' time, although there is no guarantee that the eldest child will move out of home at that point. If the property is retained then both parties will probably continue to own the property together with a 'Mesher order' until sale.

Selina may need to keep the shares that she owns to put towards a deposit on a house, so that she can house herself and also the children on visits if she can buy a large enough property.

With regard to the pension difference, there might be a pension sharing or attachment order against Selina's pension to equalise the parties' pensions. If this is the case, it is likely that Selina would get an equal share of the equity in the house in the future. The parties might offset the pension disparity against the equity if they prefer.

The court should consider a clean break order s25A MCA 1973. In this case Selina would probably need to pay some spousal maintenance in addition to child maintenance, for a limited time. This would allow Ravi to stay at home to look after the children until he can go back to work, probably when the youngest child goes to school at the age of 4. This would probably be on a part time basis in the first instance, so he may be able to claim tax credits and possibly benefits to help pay the outgoings.

The court will look to achieve fairness to both parties when distributing the assets.

Question 4

In this case both parties need to be made aware of the Children Act 1989 and the applications that each can make in respect of Abi who is not yet four years old.

Firstly, we are not told if Pierre has parental responsibility for Abi, which he will want to obtain if he does not have it already. He would have it if his name is on Abi's birth certificate. If his name is not on her birth certificate then he does not have parental responsibility as he is not married to Niyonou.

He can make an application for parental responsibility if Niyonou will not agree to sign a parental responsibility agreement. If he needs to make an application to the court (s4(1)c)) the test in Re H (minors) (1991) will be applied. Three factors will be considered;

(a) The degree of commitment Pierre has to Abi
(b) The degree of attachment between Pierre and Abi
(c) Pierre's reasons for applying for Parental Responsibility

Although we are told that Pierre works very hard and often does not see Abi in the evenings, it would seem that he is committed to Abi. They have lived together since Abi was born, only recently has he been busy. It would appear that Pierre should be able to show the court that he has a sufficient degree of

commitment and attachment to Abi to satisfy the test above. His reasons for applying are not known at this stage, we can assume he wants to recognised as her legal parent.

Both Niyonou and Pierre want to leave Cambridge and take Abi with them to a new country.

In this case there is no Child Arrangements Order (CAO) in place that would allow either party to remove Abi from the jurisdiction for specified periods without consent of the other. Therefore, each needs to apply to the court under s8 Children Act 1989 for permission to remove Abi from the jurisdiction permanently, by way of a specific issue order. Each will want to make an application for a Child Arrangements Order to regulate Abi's living arrangements and how often she will have contact with the parent that she does not live with.

The court will take into account certain principles: the welfare principle ensures that the court places the welfare of the child at the centre of the process, (s1(1) CA 1989). The no delay principle (s1(2) CA 1989) ensures that the court does not not delay decisions in the matter. The no order principle (s1(5)) means that the court will not make an order unless to do so is necessary. The court will also consider the rebuttable presumption that the involvement of each of the parents of the child will further the child's welfare, (s1(2A) CA 1989).

The court will consider each parent's application under s8 CA 1989 by applying the welfare checklist found at s1(3) CA 1989. The court is still guided by the Court of Appeal case of Payne v Payne (2001), albeit with the fresh eyes of the Court of Appeal in Re F (2015).

The guidance in Payne assists the court in applying the welfare checklist. Payne highlights that there is no presumption in favour of an applicant parent. In this case both parents will be making applications. The reasonable proposals of a parent with a residence order wishing to live abroad carry great weight but in this case neither parent has an order so this provision does not apply. The proposals of each party will need to be scrutinised with care to ensure that there is a genuine motivation to remove the child and not to bring contact between the other parent and child to an end.

In this case, Niyonou wants to leave Cambridge as she feels isolated and needs support from her family. She has somewhere to live when she returns to New Zealand, she will have a school for Abi to go to when she gets there and has the possibility of returning to work. We are told that she has savings to see her through until she returns to work. She seems to be motivated by a need to be better emotionally supported.

Pierre has decided that he should move back to France due to the political environment in England. Abi is bilingual so she would be able to settle into life quite easily. We are not told where Pierre will live or where Abi will go to school when he returns to France. We are not told if he has a network of friends and family in France who will be able to help him with Abi. Neither are we told what arrangements he will make for her care whilst he is at work.

The Payne guidelines require the court to consider the effect on Abi of the denial of contact with the other parent. Abi has recently spent three months without direct contact with Pierre and she did not appear to be adversely affected. It seems that denying Abi contact to her mother is untested: as Niyonou is her main carer, this might be traumatic for her. The court will want to consider what opportunity there is for the parent 'left behind' to maintain contact with the child.

In this case the court will examine the opportunities for each to make Abi available for video calls and other indirect contact until holiday contact becomes possible.

Other factors in the checklist that the court will consider is any view that Abi could express on the matter but as she is so young she will be unable to express any consistent view. The court will accept that Abi's circumstances are going to change one way or another as each parent wants to leave for their own reasons.

In this case the court is likely to make an order giving Niyonou permission to take Abi to New Zealand as she is the main carer. Thought will be given to ways in which Pierre can maintain a relationship with Abi when making a CAO in Niyonou's favour.