

**LEVEL 3 - UNIT 12 – THE PRACTICE OF FAMILY LAW
SUGGESTED ANSWERS – JUNE 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students 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.

Question 1

- (a) The ground that Stewart must satisfy to obtain a matrimonial order is the irretrievable breakdown of marriage, s.1(1) Matrimonial Causes Act (MCA) 1973.
- (b) The procedure that Stewart will follow to commence his application for a matrimonial order is as follows:
- application form D8 will need to be completed and submitted to local divorce centre;
 - the marriage certificate must also be submitted;
 - a statement of reconciliation (Form D6) must be submitted where a legal adviser is fully 'acting'. This will be required here as Stewart is using his solicitor and paying him;
 - payment of the fee;
 - court staff will check documents and issue proceedings;
 - divorce documentation will then be sent to Angie by post.
- (c) The procedure for obtaining a matrimonial order following acknowledgement of service is as follows:
- a copy of acknowledgement of service sent to the applicant;
 - the applicant files application for decree nisi;
 - the applicant also files statement in support;
 - a Legal Adviser at the local divorce centre considers the case;
 - if satisfied, issues certificate of entitlement;
 - parties are informed of the date for the decree nisi;
 - decree nisi issued and copies are sent to both parties;
 - 6 weeks later, application for decree absolute may be made by the applicant;
 - decree absolute is issued if all in order, and copies are sent to both parties.

- if the applicant fails to apply after 3 months, the respondent can apply.

Question 2

(a) Three from the following orders that Angie could apply for:

- **Maintenance pending suit.** This is an order for periodical payments up to the date of the decree absolute. Angie appears to have no money of her own so this would help with living costs, legal costs etc.
- **Periodical Payments.** This is an order for one party to make periodical payments to the other party to provide regular income. Here, it appears that Angie has no income but will require money to live.
- **Lump sum order.** This is an order for one party to pay the other party a lump sum. Here, Angie will require a home and a lump sum could pay for this, and Stewart appears to have the assets that would allow him to make such a payment.
- **Property transfer/sale order.** This is an order to deal with property by transfer, or sale. Here, both parties will need a home and there are 2 properties owned. The court might order sale of the family home and proceeds split, or the transfer of Yew Tree cottage to Angie.
- **Pension sharing order/pension attachment order.** A pension sharing order is an order which creates a separate pension fund. A pension attachment order orders part of pension to be paid to the former spouse on retirement of pension holder.

Here, Stewart has a pension, but Angie does not so the court might consider this order.

(b) The Clean break principle, s.25A MCA 1973, is that the parties should be financially independent of each other after divorce, if possible. It could apply here because the parties are older, the marriage was short and there are sufficient assets to divide. However, it might not apply because Angie has no income and may require periodical payments, although a deferred clean break could be considered.

(c) The procedure for obtaining financial orders following the issue of Form A is as follows:

- Form A is served on the respondent;
- with the notice of first appointment;
- the applicant and respondent complete and exchange Form E no less than 35 days before the 1st appointment;
- questionnaires, a statement of issues and a chronology are filed and served;
- a First Appointment takes place to define issues;
- may be used as a Financial Dispute Resolution (FDR) appointment if parties wish;
- a FDR appointment for conciliation and settlement;
- the FDR is held on a privileged basis;
- the Court can make consent orders if agreement reached;
- if no agreement is reached, then a date is set for final hearing and directions are given;

- parties file open proposals and responses;
- if no agreement, go to final hearing;
- orders are made.

Question 3

- (a) (i) Ismael should apply for a non-molestation order because this is an order which prevents the respondent from molesting the applicant or any relevant child, s.42 Family Law Act (FLA) 1996. Molestation includes physical behaviour e.g. physical violence and threats of violence. It also includes action which harasses the applicant e.g. nuisance phone calls or loitering near the applicant's home. Breach of a non-molestation order is a criminal offence. In this case, Rebekah's verbal attacks and incidents of violence involving both Ismael and the children could be sufficient.
- (ii) To apply for a non-molestation order, an applicant and a respondent must be an 'associated person', s.62 FLA 1996. This covers a range of relationships including spouses, ex-spouses, civil partners and cohabitants. Rebekah and Ismael have been cohabiting so they are associated persons, and Ismael can apply for an order.
- (b) (i) An occupation order is an order that deals with the occupation of the family home in a variety of ways such as excluding a party or allowing a party to return to the family home. An application by a cohabitant with no right to occupy should be made under s.36 FLA 1996. Here, Rebekah owns the house but Ismael needs to have a home for himself and his children – he wishes to return to The Cedars.
- (ii) Three from the following factors that the court will apply in considering Ismael's application:
- Housing needs and resources of each of the parties - Ismael needs a home for himself and the children. He has no earning capacity currently, and no family support, so he is unable to fund a home himself, while Rebekah is financially secure and has another property.
 - Financial resources of each of the parties - Rebekah has the earning capacity to finance two properties, while Ismael has no income currently.
 - Likely effect of any order, or of any decision by the court not to exercise its powers, on the health, safety and well-being of the parties and of any relevant child. If the court does not allow Ismael and the children to return to the family home, they will become homeless.
 - The conduct of the parties in relation to each other or otherwise - Rebekah is becoming increasingly aggressive towards Ismael and the children.
 - The nature of the parties' relationship - Rebekah and Ismael have not married, but they have cohabited for a number of years and have lived as a family with their children.

- Length of time of cohabitation - Rebekah and Ismael have lived together for a number of years.
- Whether there are any children for whom both parties have parental responsibility. Here, there are 2 children for whom Ismael has been the parent with day-to-day responsibility.
- The length of time that has elapsed since they ceased to live together. This is a very short period – but due to Rebekah's behaviour.

Question 4

- (a) Matthew should apply for a child arrangements order. This is an order to regulate with whom a child should reside and with whom a child should have contact. Contact can be direct contact (face to face) or indirect contact (through phone calls and letters). It will place arrangements for Penny on a formal basis that Lydia must adhere to.
- (b) Section 10(4) Children Act (CA) 1989 lists the categories of people who can apply for a s.8 order, including a parent or guardian. Matthew is Penny's father and so can apply for an order.
- (c) Two from the following list of factors from the welfare checklist that will be considered by the court:
- Ascertainable wishes and feelings of the child (considered in the light of their age and understanding) - how much weight is placed on a child's wishes depends on the child's age and maturity. The courts will apply the Gillick test of competence. Here, Penny is only 7 years old, but how much importance is attached to her stated wishes depends on her maturity.
 - Child's physical, emotional and educational needs - the court will consider a range of factors including the effect of having no contact with a parent. Penny has a close relationship with her father and this factor will be considered.
 - Likely effect on child of change in circumstances - courts are reluctant to upset the status quo. Penny has had her life unsettled by her parents' break up but this has been minimised until recently by regular contact with her father. It appears that Greg may be the cause of the problems, and that regularising contact may help.
 - Child's age, sex and background – age is relevant in weight given to expressed wishes, and sex is relevant if a teenager. Here, Penny is young and living with her mother.
 - Any harm the child is at risk of suffering - harm may be physical or emotional. It may include harm through witnessing domestic violence. Here, Matthew is concerned about Lydia's relationship with her new partner and its effect on Penny.
- (d) The role of CAFCASS if Matthew decides to apply for a s.8 Children Act order is as follows:

- must be present at FHDRA;
- given notice of s.8 application within 48 hours;
- role – facilitate early dispute resolution;
- help court to understand what is best for child;
- carry out initial safeguarding checks to identify any issues;
- meet with child and parents;
- meet with other interested parties e.g. local authority, police;
- may be required to write a report with recommendations.