

**LEVEL 3 - UNIT 7 – 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.

SECTION A

1. This required candidates to identify that there is only one family court. It is referred to as the single Family Court.
2. Candidates were required to identify three from the following: husbands and wives, parents, step-parents, cohabitees, civil partners, transsexuals, and children.
3. There are a number of Articles under the European Convention on Human Rights (ECHR) that are relevant to family law, including:
 - Article 6 (right to a fair hearing);
 - Article 8 (right to private and family life);
 - Article 12 (right to marry);
 - Article 14 (prohibition of discrimination);
 - Article 1 (right to peaceful enjoyment of possessions).
4. The definition of marriage from Hyde v Hyde (1866) is 'the voluntary union of one man with one woman for life to the exclusion of all others'.
5. The benefits of a cohabitation contract are:
 - it provides a framework to use if the relationship breaks down;
 - it shows clear evidence of the parties intentions;
 - it creates certainty;
 - it allows the division of assets based on fairness rather than property law;
 - it provides protection for the weaker party who may not have his/her name on the property documents but has contributed.
6. The relevant statute for dealing with disputes involving cohabitees is the Trusts of Land and Appointment of Trustees Act (TLATA) 1996.

7. The consequences of a civil partnership are that the parties have similar rights to married couples in terms of property rights on dissolution, same inheritance provisions and the same pension rights. The civil partnership can only come to an end based on statutory criteria similar to the divorce provisions. The parties must financially support each other during and after the civil partnership. A civil partnership can be converted to a same sex marriage under transitional arrangements under Marriage (Same Sex Couples) Act 2014.
8. There are five facts to obtain a decree of divorce. A fact has to support the irretrievable breakdown of the marriage under s.3(1) MCA 1973. The facts are as follows:
 - s.1(2)(a) adultery and intolerability
 - s.1(2)(b) unreasonable behaviour
 - s.1(2)(c) desertion
 - s.1(2)(d) living apart for 2 years with consent of Respondent
 - s.1(2)(e) living apart for 5 years no consent required
9. Consequences of a judicial separation include: financial relief can be granted in the same way it can on divorce, the parties can cease to cohabit, the parties are still legally married so cannot remarry, the parties cannot succeed under the rules of intestacy, the courts cannot make an order in relation to pensions, nor can they consider a clean break order.
10. A Mesher order relates to property, usually the matrimonial home, where it is held on trust by one party usually until the youngest child reaches 18 years or ceases full-time education. The house is then sold and the proceeds are divided.
11. There are a number of examples of parental responsibility, including: the rights and duties in terms of your child, including education, choice of religion, consent to medical treatment, choosing a surname, consenting to marriage, managing the property of the child.

SECTION B

Scenario 1 Questions

1. The only ground for divorce is irretrievable breakdown which must be evidenced by one of the five facts. The facts relevant to the scenario are s.1(2)(a) Matrimonial Causes Act 1973 (MCA 1973) adultery and intolerability, and s.1(2)(d) living apart for 2 years but with consent. There may be the possibility of behaviour under s.1(2)(b) but the scenario does not make reference to any events. In terms of the adultery fact, this would be dependent on Ben admitting to it, as it will be difficult to prove. Also, they must rely on the adultery within the first six months, and after this time they cannot use it. Jogeeta would also need to show that she finds it intolerable to live with Ben, but it need not be related to the adultery, as per Cleary v Cleary (1974). Jogeeta may also be able to establish that they have lived separate lives under the same roof and have been doing so for 2 years. Although they are living in the same house, they have maintained separate households (bedrooms, cooking, cleaning and washing) and candidates should make reference to cases such as Mouncer v Mouncer (1972) and Fuller v Fuller (1973). There must be physical and emotional separation, and Ben must consent to the divorce on this basis. Equally Ben could bring the proceedings and Jogeeta would have to consent.
2. This required candidates to identify orders that are relevant to the scenario only and explain why. They need to consider any of the following:
 - Maintenance Pending Suit – At present Jogeeta has no income, whereas Ben has significant income, so Jogeeta will require maintenance pending the decree absolute.
 - Periodical Payments Order – it will be a considerable period of time before Jogeeta will have an income of her own (perhaps never) in view of the fact that she has not worked for a considerable period of time and will have to retrain. She will need a level of maintenance to support her after decree absolute.
 - Lump Sum Order – this will need to be paid to Jogeeta if the matrimonial home is sold and the proceeds divided, to allow her to purchase another property. She will also be paid a lump sum to compensate her for loss of pension rights when she is no longer married to Ben.
 - Property Adjustment Order – in relation to the former matrimonial home. Assuming the property is to be sold, the court will have to determine who lives there pending sale. It might be that a Mesher order is granted so that sale is postponed until the only child living at home ceases full-time education. The court will then have to decide how the proceeds are to be divided when that happens.
 - Sale of Property – distribution of the proceeds of sale to enable both parties to rehouse themselves.
 - Pension Sharing Order/Pension Attachment Order – Ben has a pension and Jogeeta has none. She has no way of getting a personal pension at this point as she has no career and no income.
3. (a) Candidates needed to state that s.25(1) MCA 1973 requires the court to consider 'all the circumstances of the case, first consideration being given to the welfare of any minor children'.

(b) This required candidates to identify and explain the factors as set out in s.25(2) that are relevant to the scenario. They need to consider any of the following:

- Current and Future Financial Resources of the Parties – Ben has a significant income and bonuses, whilst Jogeeta has no income and a very poor earning capacity. The matrimonial home is a significant asset, as is Ben’s pension.
 - Current and Future Financial Needs of the Parties – both need a home to live in. Jogeeta needs an income and some pension provision. She also needs to support the last remaining child through university.
 - Standard of Living Before Breakdown – based on the assets available it would appear that the parties enjoyed a very good lifestyle prior to the breakdown of the marriage. There may not be sufficient assets for the parties to maintain that standard, but any loss should be equally felt.
 - Age of the Parties and the Duration of the Marriage - we are not told their ages, but they must be middle-aged in view of the age of the children. It is a lengthy marriage. Jogeeta will struggle to find a job and build up a pension in middle to older years.
 - Contributions – Ben has contributed financially, whilst Jogeeta has been the carer and the homemaker. As stated in White v White (2000) financial and non-financial contributions are of equal value.
 - Benefits Lost – as a spouse Jogeeta would have had rights under Ben’s pension which will be lost on decree absolute.
4. The courts have a duty to consider a clean break under s.25A MCA 1973, but not to impose one. This is about terminating ongoing financial obligations between the parties. It may be in this case that, instead of long-term periodical payments to Jogeeta, Ben capitalises the maintenance and pays by way of a lump sum order/property adjustment order/pension sharing order. However, in view of the age of the parties and Jogeeta’s earning capacity being extremely limited, the court may consider this inappropriate and order periodical payments but fix them for a period of time, which can often be referred to as a deferred clean break.

Scenario 2 Questions

1. (a) Parental responsibility is defined under s.3(1) Children Act 1989 (CA 1989) as ‘all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’.
 - (b) Elizabeth will have parental responsibility in relation to Alexander as his biological mother, and also the biological father (not named in the scenario) will have parental responsibility.
 - (c) In relation to Niamh both Elizabeth and Suzanne will have parental responsibility by virtue of the Adoption and Children Act 2002, as they both adopted her.
2. Candidates will discuss that under s.8 CA 1989 as amended, the relevant order is a Child Arrangement Order, which will deal with who the children will live with (residence) and who the children will see (contact). This will also

involve some discussion of what would be involved in seeing the children, whether it be a direct form of contact (visits including overnight stays) or an indirect form (telephone calls, letters).

3. Under s.44 Civil Partnership Act 2004 (CPA 2004), Suzanne could rely on the fact of behaviour; that the respondent has behaved in a way that the petitioner can no longer reasonably be expected to live with the respondent. Suzanne could rely on Elizabeth's long working hours and Elizabeth's relationship with the work colleague to establish the fact and support irretrievable breakdown. Reference to the subjective and objective test from the case of Livingstone-Stallard v Livingstone-Stallard (1974). Candidates need to state there is no fact of adultery for dissolution of a civil partnership but that the infidelity can be cited as unreasonable behaviour.
4. Candidates were required to cite s.72 or Schedule 5 CPA 2004, in terms of the orders that can be made. The court may make an order for periodical payments in favour of Suzanne, as there is a disparity in income. Elizabeth earns significantly more than Suzanne. The court may also make a lump sum order in favour of Suzanne, as Elizabeth has savings. There is also the potential for a pension sharing order or a pension attachment order as Elizabeth has a pension and Suzanne does not. Also, the property needs to be dealt with by way of a property adjustment order, which may involve a Mesher-type order settled on trust for Suzanne and it is only sold when the youngest child reaches 18 years old or ceases full-time education.

Scenario 3 Questions

Kieran and Tanya

1. (a) The marriage is voidable under s.12 Matrimonial Causes Act 1973 (MCA 1973). This provision states that a marriage is voidable if at the time of the marriage the respondent was pregnant by another man and the petitioner was unaware. The petition must be issued within 3 years of the marriage, which is no problem here because Tanya and Kieran have only been married for 2 months. However, the court must be satisfied that the petitioner, in this case Kieran, did not have knowledge of this prior to entering into the marriage to Tanya.

(b) Kieran must petition for an annulment and his marriage will be valid until it is annulled. Any reasonable responses including consequences relevant to Kieran and Tanya will be credited for this question, including that the parties can still have the finances dealt with on the annulment.

Liam and Daniella

2. Candidates are required to advise Liam and Daniella that in law there is no such things as a common law husband and wife. Marriage is the voluntary union for life of one man to one woman to the exclusion of all others as defined in the case of Hyde v Hyde (1866). The Marriage Act 1949 sets out that to contract a valid marriage, individuals must have capacity and comply with formalities. Here Liam and Daniella are of sufficient age and understanding, but the formalities are not present. There is no official person residing over the ceremony, and it is in premises that are not licensed. They therefore have the status of cohabiters.

3. Candidates are required to advise Daniella that, on the breakdown of the cohabitation, the ordinary law relating to property applies. This refers to implied trusts (formerly known as resulting trusts and constructive trusts), governed by the Trusts of Land and Appointment of Trustees Act 1996. A resulting trust is dependent on contribution to purchase price or deposit. A constructive trust is dependent upon a common intention to share plus detriment. Since Daniella has not contributed to the purchase price/deposit she cannot claim a resulting trust, which only leaves available a constructive trust. Relevant case law includes Lloyds Bank v Rossett (1989), Oxley v Hiscock (2004), Stack v Dowden (2007) and Jones v Kernott (2011). Answers should consider whether Daniella's renovations will constitute a contribution entitling her to a share.