

## 2022 UNIT SPECIFICATION

<b>Title:</b>	(Unit 20) The Practice of Family Law
<b>Level:</b>	6
<b>Credit Value:</b>	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
<b>1. Understand how to terminate a marriage and civil partnership</b>	<b>1.1</b> Explain divorce and dissolution as methods of terminating marriage and civil partnership respectively	<b>1.1</b> Termination of marriage under the Matrimonial Causes Act 1973 (MCA 1973) as amended by the Divorce Dissolution and Separation Act 2020 <ul style="list-style-type: none"> <li>dissolution of civil partnership under the Civil Partnership Act 2004 (CPA 2004) (as amended by the Divorce Dissolution and Separation Act 2020)</li> <li>including analysis of the jurisdiction of the English Courts to deal with the matter by reference to the definition of habitual residence and domicile in the appropriate Council Regulation;</li> </ul>

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	<p><b>1.2</b> Explain the process and effects of divorce and dissolution of a civil partnership</p> <p><b>1.3</b> Explain the costs incurred in these proceedings</p>	<ul style="list-style-type: none"> <li>• relevant case law, eg, <u>R v Barnett LB, exp Shah (1983) 2 AC 309</u>, <u>Mark v Mark (2004) 1 FLR 1069</u>, <u>Ikimi v Ikimi (2001)</u>, <u>EWCA Civ 873</u> and <u>M v M (2007) 2 FLR 1018</u>, <u>Z-v-Z (Divorce: Jurisdiction (2010) 1 FLR 694</u>.</li> </ul> <p><b>1.2</b> A description of the procedure in divorce and the procedure for dissolution of civil partnership;</p> <ul style="list-style-type: none"> <li>• identification of the required documentation;</li> <li>• issues arising:</li> <li>• consideration of the effect on inheritance e.g. under s18 A Wills Act 1837;</li> <li>• ownership of property, pensions entitlement etc;</li> <li>• effect of section 10A MCA 1973 and religious divorces eg the Get</li> <li>• effect of section 10 MCA 1973 on obtaining a final <b>divorce order</b>.</li> </ul> <p><b>1.3</b> An explanation of the approximate costs and disbursements involved in the process from instructions received to final <b>order</b> ;</p> <ul style="list-style-type: none"> <li>• compliance with the requirements of the SRA Code of Conduct 2019 (“the Code”) with regard to costs, eg, ensuring clients receive the best possible information about how their matter will be priced</li> </ul>
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	<p><b>1.4</b> Explain best practice in this area</p> <p><b>1.5</b> Analyse a given legal situation on the termination of marriage and civil partnership in order to offer practical advice and assistance to <b>an applicant</b> or respondent</p>	<p>and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.</p> <p><b>1.4</b> An explanation of the purpose of the Family Law Protocol (the Protocol);</p> <ul style="list-style-type: none"> <li>• its key elements: namely a commitment to resolve a dispute in a non-confrontational and constructive way</li> <li>• best practice in this area is in Part 9 and includes giving notice before issue of proceedings;</li> </ul> <p><b>1.5</b> Analysis of a complex scenario to offer advice and assistance, eg, issues arising from accepting instructions to act such as identity checks, conflicts of interest, confidentiality and client care in compliance with the Code;</p> <ul style="list-style-type: none"> <li>• drafting a competent application <b>for a divorce</b> order in divorce or for the dissolution of a civil partnership (ie, drafting a divorce application in its entirety from information given in a fictitious scenario, to a competent standard, which would be accepted by a family court);</li> </ul>
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		<ul style="list-style-type: none"> <li>commenting on completed documents, which may be either incorrectly or badly drafted;</li> </ul>
<p><b>2. Understand the financial consequences of terminating a marriage or dissolving a civil partnership</b></p>	<p><b>2.1</b> Explain the most commonly used forms of dispute resolution as a means of resolving a financial dispute arising on the termination of a marriage or the dissolution of a civil partnership</p> <p><b>2.2</b> Describe the process of mediation or another form of ADR as may be appropriate</p>	<p><b>2.1</b> An explanation of the different types of dispute resolution: namely, agreement reached between the parties, negotiation between solicitors, mediation or other forms of alternative dispute resolution (ADR)/non-court dispute resolution such as collaborative law or court-based conciliation and arbitration (where available) and adjudication by the court to resolve financial disputes;</p> <ul style="list-style-type: none"> <li>consideration of the benefits and in particular the costs, benefits and or limitations of mediation and other ADR methods;</li> <li>an appreciation of the need to keep the appropriateness of the process of ADR under review.</li> </ul> <p><b>2.2</b> The process involves the parties to the dispute, whether or not legally represented or whether or not legal proceedings have commenced, agreeing to appoint a neutral third party (the mediator) who is impartial and has no authority to make any decision with regard to the subject matter of the dispute (which may relate to separation, divorce, children, property, financial issues or a combination thereof);</p>

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	<p><b>2.3</b> Explain the costs incurred in these proceedings including consideration of how the costs will be met</p> <p><b>2.4</b> Summarise the ancillary relief procedure</p>	<ul style="list-style-type: none"> <li>• the mediator helps them to reach their own informed decisions by negotiation without adjudication;</li> <li>• an understanding of the role of the advisor to a client engaged in the ADR process and adopting best practice in relation to ADR as set out in the Protocol</li> </ul> <p><b>2.3</b> An explanation of the approximate costs and disbursements involved in applications for a financial order;</p> <ul style="list-style-type: none"> <li>• compliance with the requirements of the Code with regard to costs and generally being aware of possible conflicts of interest, eg, Money Laundering Regulations 2007 and the effect of the case of <u>Bowman v Fels (2005) EWCA Civ 226</u> and the duty to report.</li> </ul> <p><b>2.4</b> MCA 1973/CPA 2004;</p> <ul style="list-style-type: none"> <li>• applications and typical directions/timelines, the requirement for mediation, the duty of full and frank disclosure, expert evidence, costs, the procedure from issue to final hearing (including the First Directions Appointment and the Financial Dispute Resolution Hearing), the use of Consent Orders.</li> </ul>
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	<p><b>2.5</b> Explain the factors the court will take into account in making an order for ancillary relief</p>	<p><b>2.5</b> The application of section 25 MCA 1973 including the impact of pre-nuptial agreements;</p> <ul style="list-style-type: none"> <li>• analysing the strengths and weaknesses of a client’s case and predicting a possible outcome;</li> <li>• orders available and their use: maintenance pending suit, lump sum, periodical payments, clean break, transfer, settlement, including consideration of Mesher Martin and Harvey orders;</li> <li>• sale of family home, pensions, identifying and explaining a package of orders to comprise a resolution of the financial claims; justifying each term;</li> <li>• relevant case law, eg, <u>White v White</u> (2000) 2 FLR 927; <u>Miller v Miller</u>; <u>McFarlane v McFarlane</u> (joined cases) (2006) UKHL 24 and <u>Charman v Charman</u> (2007) EWCA Civ 503 and its implications. <u>Radmacher v Granatino</u> (2010) UKSC 42 and its impact on pre-nuptial agreements.</li> </ul>
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	<p><b>2.6</b> Explain the consequences of the breakdown of a marriage or civil partnership in relation to the ownership and/or occupation of the family home</p> <p><b>2.7</b> Explain the appropriate action to be taken in order to prevent disposals or set aside disposals of assets made with a view to frustrate financial claims</p> <p><b>2.8</b> Explain enforcement provisions in relation to financial orders</p>	<p><b>2.6</b> An analysis of how the family home is treated by the courts in situations of marriage/civil partnership breakdown;</p> <ul style="list-style-type: none"> <li>• an explanation of home rights under the Family Law Act (FLA) 1996 section 30;</li> <li>• the acquisition and registering of home rights;</li> <li>• severance of joint tenancy and application of other relevant legislation, eg, Section 24 MCA 1973 or Schedule 7 FLA 1996 in relation to the transfer of tenancies.</li> </ul> <p><b>2.7</b> The role of injunctive action under section 37 MCA 1973 to prevent a disposal (section 37 (2) (a)) or set aside a disposition already made with a view to frustrate a claim being made in relation to it for financial provision (section 37 (2) (b));</p> <ul style="list-style-type: none"> <li>• analysis of a ‘reviewable disposition’ as set out in section 37 (2) (c) and the requisite intention required to satisfy the court in order to obtain an injunction.</li> </ul> <p><b>2.8</b> Methods available to enforce an order, eg, attachment of earnings;</p> <ul style="list-style-type: none"> <li>• warrant of execution;</li> <li>• third party debt order;</li> <li>• charging order;</li> </ul>
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	<p><b>2.9</b> Explain best practice in this area</p> <p><b>2.10</b> Explain the rules as to admissibility of evidence and the duty to provide full and frank disclosure in applications made to court</p>	<ul style="list-style-type: none"> <li>• execution of transfer deed by District Judge;</li> <li>• collection and enforcement by the Child Maintenance Service;</li> <li>• circumstances of their use and analysis of their effectiveness.</li> </ul> <p><b>2.9</b> Main sections of the Protocol;</p> <ul style="list-style-type: none"> <li>• examples of best practice include pre-application disclosure and negotiation so that parties are in a position to settle the case fairly and early in the process without litigation;</li> <li>• the Protocol encourages the narrowing of issues in dispute to aid the effective and timely resolution of the dispute.</li> </ul> <p><b>2.10</b> In outline only, the relaxation of rules of evidence in relation to applications made under the MCA 1973 or the CPA 2004;</p> <ul style="list-style-type: none"> <li>• the admissibility of offers to settle during the procedure and the general duty of disclosure;</li> <li>• relevant case law, eg, <u>Livesey (formerly Jenkins) v Jenkins (1985) AC 424</u>;</li> <li>• <u>P v P (Financial Relief: Non-Disclosure) (1994) 2 FLR 381</u>;</li> <li>• <u>Kimber v Brookman Solicitors (2004) 2 FLR 221</u>.</li> </ul>
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	<p><b>2.11</b> Explain, in outline only, the impact of welfare benefits and the duty of a local authority to provide housing</p> <p><b>2.12</b> Explain the overriding objective in relation to the proportionality of costs, including tactics for making offers to settle</p>	<p><b>2.11</b> Child benefit;</p> <ul style="list-style-type: none"> <li>• Income Support and the ‘passport benefits’ automatically gained, eg, free school meals;</li> <li>• Jobseeker’s Allowance;</li> <li>• working tax credit and child tax credit;</li> <li>• Universal credit;</li> <li>• housing benefit;</li> <li>• council tax reduction;</li> <li>• duty of a local authority to provide accommodation as set out in Housing Act 1996 and the Homelessness Act 2002, eg, where the former matrimonial home is sold either because of large mortgage arrears or because on relationship breakdown neither party can afford it alone.</li> </ul> <p><b>2.12</b> An explanation of the principle of proportionality, eg, that it is unacceptable for the costs of any case to be disproportionate to the value of the subject matter of the dispute, eg, valuation of family businesses and joint instruction of experts;</p> <ul style="list-style-type: none"> <li>• the pre-application protocol annexed to the Practice Direction (Ancillary Relief Procedure) (2000) 1 FLR 997;</li> <li>• eg, pre-application disclosure and negotiation with a view to try to settle fairly before proceedings;</li> </ul>
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	<p><b>2.13</b> Analyse a given legal situation on the financial consequences of terminating a marriage and dissolving a civil partnership in order to offer practical advice and assistance</p>	<ul style="list-style-type: none"> <li>• tactics: eg, open offers to settle;</li> <li>• costs orders, eg, litigation conduct being taken into account in the discretion to make costs orders against one party.</li> </ul> <p><b>2.13</b> Analysis of a complex scenario to offer advice and assistance, eg, re mediation and an application for a financial order, where agreement is reached or otherwise, the drafting of an agreement to include heads of agreement and consent orders;</p> <ul style="list-style-type: none"> <li>• drafting documentation required in relation to applications for financial orders (ie, explaining and drafting documentation such as a Statement of Issues, specific parts of Form E etc;</li> <li>• commenting on completed documents, which may be either incorrectly or badly drafted).</li> </ul>
<p><b>3. Understand the legislation, provisions and remedies available in cases of domestic violence and molestation</b></p>	<p><b>3.1</b> Explain the alternative options to court proceedings and their appropriateness</p>	<p><b>3.1</b> The role of the police as the first point of contact where there has been domestic violence; the necessity to have considered alternative methods of dealing with domestic violence, eg, writing a warning letter to the respondent (especially in the context of legally aided clients), police prosecution under the criminal law;</p> <ul style="list-style-type: none"> <li>• support for victims, eg, refuges and places of safety and regional differences in support.</li> </ul>

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	<p><b>3.4</b> Explain, in outline only, the rules as to admissibility and how the weight of evidence in proceedings of this nature is evaluated</p> <p><b>3.5</b> Summarise the methods of enforcement of both non-molestation and occupation orders including an explanation of the use of undertakings given to the court</p> <p><b>3.6</b> Describe best practice in this area</p>	<ul style="list-style-type: none"> <li>• on a decision to issue proceedings without notice then telephoning the court to make an appointment before the judge further arranging for the personal service of the order on the respondent</li> </ul> <p><b>3.4</b> The rules of evidence in relation to oral applications;</p> <ul style="list-style-type: none"> <li>• evaluating the strengths and weaknesses of evidence, including the weight of evidence;</li> <li>• predicting a possible outcome.</li> </ul> <p><b>3.5</b> The courts' and the police powers of enforcement, under FLA 1996 eg, the criminal offence of breach of a non-molestation order, the power of arrest on occupation orders and the possibility of undertakings (in the absence of violence).</p> <p><b>3.6</b> Relevant sections of the Protocol;</p> <ul style="list-style-type: none"> <li>• examples of best practice include: where domestic violence is an issue and the parties have children care should be taken to ensure the client's safety is not compromised by meetings arranged by third parties, eg, CAFCASS officers for negotiations in relation to children.</li> </ul>
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	<p><b>3.7</b> Analyse a given legal situation on the legislation, provisions and remedies available in cases of domestic violence and molestation in order to offer practical advice and assistance to both an applicant and a respondent in these proceedings</p>	<p><b>3.7</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting documentation in relation to the application for an order, including a FL401 and the statement in support of the application;</p> <ul style="list-style-type: none"> <li>• be familiar with the contents of orders and requirements of a statement in support (ie, evaluating the documentation so as to be able to advise on the strengths and weaknesses, including the weight of evidence and predicting a possible outcome).</li> </ul>
<p><b>4. Understand the Children Act (CA) 1989 in relation to private law</b></p>	<p><b>4.1</b> Explain the overall intent and purpose of section 1 of the CA 1989</p> <p><b>4.2</b> Explain the concept of parental responsibility (PR)</p>	<p><b>4.1</b> The welfare principle: section 1 (1), the no delay principle: section 1 (2) the presumption of parental involvement: section 1(2A and 2B);and the no order principle: section 1 (5) of the Children Act 1989 (CA 1989) (as amended);applying the legislation.</p> <p><b>4.2</b> Identification of how PR arises automatically or how it can be acquired under the CA 1989 and how it may be lost;</p> <ul style="list-style-type: none"> <li>• the factors and considerations under section 4 A of the CA 1989 which a court will take into account and apply to private proceedings;</li> <li>• analysis and interpretation of legislation and case law relevant to PR, eg, Re G (PR: Education) (1994);</li> <li>• Re C (Change of Surname) (1998);</li> </ul>

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	<p><b>4.3</b> Explain the availability and effect of orders under section 8 CA 1989</p>	<ul style="list-style-type: none"> <li>• Re H (PR) (1998);</li> <li>• <u>Dawson v Wearmouth</u> (1999) and Re P (Terminating PR) (1995);</li> <li>• evaluating the strengths and weaknesses in situations and predicting a possible outcome.</li> </ul> <p><b>4.3</b> Orders available (child arrangements orders specific issue and prohibited steps orders): who may apply (including when leave of the court is required);</p> <ul style="list-style-type: none"> <li>• interim and without notice applications;</li> <li>• the factors/considerations under section 1 (3) of the CA 1989 and their application to private proceedings;</li> <li>• analysis and interpretation of relevant case law, eg, <u>Re L (Domestic Violence &amp; Contact)</u> (2000);</li> <li>• <u>Re A (section 8 Order: Grandparent Application)</u> (1995);</li> <li>• <u>Re M (Intractable Contact Dispute: Interim Care Order)</u>(2003), <u>Re D (Shared residence)</u> (2001) <u>1 FLR 495</u> and <u>Re B (A Child)</u> (2009);</li> <li>• evaluating the strengths and weaknesses in situations and predicting a possible outcome in relation to section 8 of the CA 1989 (as amended).</li> </ul>
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	<p><b>4.4</b> Explain, in outline only, removal from the jurisdiction, child abduction and change of name with regard to the relevant legislation and the current practice directions</p> <p><b>4.5</b> Identify when a family assistance order may be made</p> <p><b>4.6</b> Summarise the procedure for entering into a PR Agreement, obtaining a PR order or applying for a section 8 order</p>	<p><b>4.4</b> The limitations imposed by section 13 of the CA 1989 in relation to changes of surname and travelling abroad, eg, holidays or emigration;</p> <ul style="list-style-type: none"> <li>• application of the legislation, eg, applications to be made or transferred to the High Court in cases of child abduction and relevant case law in relation to child abduction and the Hague Convention, eg, <u>Payne v Payne (Leave to Remove) (2001) MK-v-CK (2011) EWCA CIV 793</u> and <u>Re C (Change of name) (1998) 1 FLR 549</u>.</li> </ul> <p><b>4.5</b> A summary of the provisions under section 16 of the CA 1989.</p> <p><b>4.6</b> An explanation of the procedures to be followed in entering PR Agreements, eg, the requirement for registration;</p> <ul style="list-style-type: none"> <li>• or obtaining a PR order under section 4 of the CA 1989;</li> <li>• section 8 order procedures;</li> <li>• the role of CAFCASS and the nature and effect of related documentation such as expert reports or medical evidence;</li> <li>• an awareness of regional variations in procedures;</li> <li>• the Child Arrangements Programme.</li> </ul>
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	<p><b>4.7</b> Explain financial provision for children on the breakdown of a relationship</p> <p><b>4.8</b> Describe best practice in this area</p> <p><b>4.9</b> Explain, in outline only, the rules as to admissibility of evidence and disclosure in applications made to court under the CA 1989</p> <p><b>4.10</b> Analyse a given legal situation on the Children Act 1989 in order to offer practical advice and assistance to both an applicant or a respondent</p>	<p><b>4.7</b> Financial provision for children available through Child Support legislation;</p> <ul style="list-style-type: none"> <li>• an awareness of the courts' limited jurisdiction to deal with financial provision under the MCA 1973 or CPA 2004 (if appropriate) and the limited scope of Section 1 Schedule 15 of CA 1989.</li> </ul> <p><b>4.8</b> Relevant sections of the Protocol;</p> <ul style="list-style-type: none"> <li>• examples of best practice include the requirement to avoid draft statements using emotive and or inflammatory language or expressing subjective opinion;</li> <li>• the discouragement of statements or letters written by children.</li> </ul> <p><b>4.9</b> The relaxation of rules of evidence and the requirement for leave of the court in relation to CA 1989 applications.</p> <p><b>4.10</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting the appropriate documentation to be used in an application for a section 8 order;</p> <ul style="list-style-type: none"> <li>• drafting a PR Agreement.</li> </ul>
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<p><b>5. Understand the financial consequences of relationship breakdown for the unmarried family/couple</b></p>	<p><b>5.1</b> Compare and contrast the financial consequences of ending a marriage, a civil partnership and a cohabitation</p> <p><b>5.2</b> Explain the consequences of the breakdown of a relationship for the unmarried family/couple in relation to the ownership and or occupation of the family home</p> <p><b>5.3</b> Explain the impact of express and implied trusts in relation to the family home for the unmarried family/couple</p>	<p><b>5.1</b> The differing financial consequences for married couples/civil partnerships and unmarried couples, eg, unmarried couples have very limited rights against the estate of a former partner in the event of death;</p> <ul style="list-style-type: none"> <li>• wills;</li> <li>• Inheritance (Provision for Family and Dependents) Act 1975;</li> <li>• cohabitation/separation agreements, their contents and the enforceability of these agreements in outline only.</li> </ul> <p><b>5.2</b> Relevant statutes: Law of Property Act 1925, and legal and beneficial interests in land, eg, the existence of a declaration of trust setting out entitlement;</p> <ul style="list-style-type: none"> <li>• Trusts of Land and Appointment of Trustees Act 1996, in particular sections 14 and 15, which relate to the power of sale;</li> <li>• the strengths and weaknesses, including the weight of evidence;</li> <li>• predicting a possible outcome.</li> </ul> <p><b>5.3</b> Identification of express and implied trusts;</p> <ul style="list-style-type: none"> <li>• the impact of relevant case law, eg, <u>Stack v Dowden</u> (2007), <u>Jones-v-Kernott</u> (2011) <u>UKSC 53</u> and <u>Lloyds Bank plc v Rosset</u> (1990) <u>2 WLR 867</u>.</li> </ul>
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	<p><b>5.4</b> Summarise proposals for reform and identify areas of concern</p> <p><b>5.5</b> Analyse a given legal situation on the financial consequences of relationship breakdown for the unmarried family/couple in order to offer practical advice and assistance</p>	<p><b>5.4</b> A summary of the proposals for reform of the law set out in the Law Commission report <i>Cohabitation: “The Financial Consequences of Relationship Breakdown”</i> in relation to the ownership and occupation of the family home by the unmarried family/couple.</p> <p><b>5.5</b> Analysis of a complex scenario to offer advice and assistance.</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of the Practice of Family Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 63 First Line Family Law Advice and Unit 64 Family Law Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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