

INSTITUTE OF LEGAL EXECUTIVES

UNIT 7 - FAMILY LAW*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Family Law 2010-2011 by Mika Oldham.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ball point pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

SECTION A
(Answer at least ONE question from this section)

1. (a) Lord Scarman said "Duress, whatever forms it takes, is coercion of the will, so as to vitiate consent."

Pao On -v- Lau Yiu Long (1980).

Assess the statement in the context of the law of nullity.

(18 marks)

- (b) The Divorce (Religious Marriages) Act 2002 came into force in February 2003.

Explain the reasons for and implications of the legislation.

(7 marks)

(Total: 25 marks)

2. The division of assets on divorce used to depend on the reasonable requirements of the financially weaker party, with the financially dominant party receiving all the surplus capital.

Critically analyse how this has changed and is still developing since the case of *White v White* (2000).

(25 marks)

3. Critically consider the impact of the Human Rights Act 1998 in relation to Family Law.

(25 marks)

4. (a) S.33(7) Family Law Act 1996 makes reference to the Applicant satisfying the "balance of harm" test so as to impose a duty on the court to make an occupation order.

Analyse the nature and application of this test.

(10 marks)

- (b) Cohabitation is a form of adult partnership but lacks the recognition attached to marriage and civil partnership.

Analyse how, and to what extent, cohabiting couples can regulate their legal relationship.

(15 marks)

(Total: 25 marks)

SECTION B

(Answer at least ONE question from this section.)

Question 1

Raj aged 48 years and Jaswinder aged 36 years married in March 1996.

The matrimonial home, a four bedroomed detached property, was inherited from Raj's Uncle a year before they married and is in Raj's sole name. The property is free of mortgage and valued at approximately £500,000.

At the time of the marriage Jaswinder worked as a primary school teacher earning £26,000 per annum. Raj had his own IT consultancy business and was extremely successful, with an income of £100,000 per annum.

At the time of the marriage Raj insisted that Jaswinder resign from her post so that she could focus on being a good wife and to prepare for children.

Since that time Jaswinder has worked tirelessly to make a beautiful family home. She maintains the home and gardens to an extremely high standard. She has also been the perfect hostess to Raj's numerous business clients preparing lavish dinner parties, so much so that Raj's business is now worth in the region of £1 million and his annual income has doubled.

Raj has purchased a property in France worth £150,000, and an apartment in Florida worth £200,000, both of which are free of mortgage and in his sole name. Raj and Jaswinder use the properties several times a year, but otherwise let them out which brings in additional income of approximately £25,000 per annum.

During the marriage the parties have enjoyed an extremely good standard of living.

Despite all their attempts Raj and Jaswinder have been unable to have children. This has caused numerous arguments and Raj has been spending more and more time away from home. Raj has decided that the marriage has ended and has moved out of the matrimonial home.

Divorce proceedings have not been started by either party. He has told Jaswinder that all the properties and money are due to his hard work and she can go and find a job because she is not having his money now or in the future. Jaswinder is devastated, having devoted the last 14 years to her husband and their home and she is worried how she will cope financially as well as emotionally.

1. (a) Advise Jaswinder of what action she can take now for financial provision.

(5 marks)

(b) Advise Jaswinder of the likely financial provision she can expect on divorce and the factors the court will take into account.

(20 marks)

(Total: 25 marks)

Question 2

Paul and Hannah married on 5th April 2010, having lived together for six years. During the course of their relationship Hannah told Paul that she wanted to have children. Paul continually refused, insisting that having children did not fit in with his lifestyle. Hannah believed that Paul would eventually change his mind.

In the build up to the wedding Paul and Hannah argued, mainly about money and the cost of the wedding, but also about the issue of having children, which Paul was adamant he never wanted.

Only six weeks before the marriage Hannah went out with her friends and in a drunken moment she met a male work colleague and had sex on one occasion.

Hannah discovered two days before the marriage that she was pregnant. When she told Paul of the impending birth he was extremely angry and upset, and threatened to call off the wedding. Hannah pleaded with him not to and the marriage went ahead.

Since the marriage Paul has slept in the spare bedroom. There has not been any sexual relationship. The thought of Hannah being pregnant repulses Paul to the point of sickness. Paul is very subdued and has asked Hannah on numerous occasions not to have the baby. Paul has told Hannah that he feels trapped.

When Hannah refused to terminate the pregnancy, Paul started to live the life of a single man, partying with friends most weekends into the early hours and sometimes not coming home for days. Paul has recently arranged to go on a golfing holiday with friends to Magaluf for two weeks. He is drinking excessively.

Hannah cannot take the strain and has become very depressed. In a fit of temper she has told Paul that he may not be the father of the child because she had sex with a male work colleague and has stayed over at his flat on several occasions not wanting to be in the house with Paul.

The relationship with her husband has broken down and Paul and Hannah have realised that their very short marriage has ended. Paul has told Hannah "I wish I had never met you, you have ruined my life" followed by a barrage of verbal abuse in a very threatening manner.

Paul has placed information on his facebook page with his status as "single now" and has made reference to his wife being "a cheat, liar, and that his wife is providing sexual favours for money". He has also telephoned Hannah's employers, a reputable private school, informing them of the liaison with a colleague and the impending pregnancy.

Advise the parties what action they can take to bring the marriage to an end and any problems that may be envisaged.

(25 marks)

Question 3

Simon and Mary married in 1994. They have three children: Paul aged 11, Peter aged seven and Teresa aged three. Last year Simon was promoted to Regional Manager for a supermarket chain. The position came with immense responsibility and he was spending more and more time away from home. As a result, Simon and Mary drifted apart. Mary felt lonely and unloved and Simon said what he wanted out of life had changed. They both agreed that the marriage was over. The divorce and the finances were resolved amicably and they retain a good relationship for the sake of the children. Simon has regular contact with the children in the week and at the weekends.

They are both devout Catholics and Simon's request was that the children were brought up in the Catholic faith and attended Catholic schools. Mary assured Simon that would continue to be the case.

Soon after the divorce Mary met Tom. Tom is an atheist. He does not believe in work and spends most of his time watching television or going out on his motorbike. They married in a Registry Office. Tom then moved into Mary's house. Mary soon became pregnant and gave birth to Sky, now aged eight months old.

Mary has now returned to work as a primary school teacher and Tom is the main childminder for the children. The children like Tom despite him constantly telling the children there is no such thing as God. Simon's children referred to Tom as their second dad and they are very attached to him and their half sister Sky. They are very settled at home.

Simon has already expressed concerns to Mary about her immoral behaviour and how the children's religion is being affected. He has told her that if it continues he will consider applying to court to have the children live with him.

In an accident at work Mary has been killed. Simon wants his children to live with him in his four bedroomed property and he wants his children to have no contact with Tom. Tom says that Mary would have wanted all the children to stay together and therefore he is not letting that happen.

3. (a) Advise Tom regarding his position in terms of parental responsibility, and whether he can apply for a Court order to keep Simon's children with him.

(5 marks)

- (b) Advise Simon on what factors the court will take into account in deciding whether to make a residence order and his chances of success.

(20 marks)

(Total: 25 marks)

Turn over

Question 4

John and Molly have had a sexual relationship for six years. Two years ago they decided to buy a house and live together. At the time John was working but Molly had been made redundant. John was able to obtain a mortgage and they purchased a two bedroomed property in his sole name. Molly used her redundancy money of £10,000 as the deposit.

Soon after they moved into the property Molly became pregnant. Both she and John were already struggling financially and the announcement of the pregnancy did not please John. Since that time there have been frequent arguments, and on one occasion John raised his hand to Molly but stopped short of hitting her. Although John showed remorse his temper tantrums continued. He has frequently called Molly lazy and untidy.

Their daughter Amy is six months old. With the sleepless nights John's temper has worsened and the arguments have become more violent. On several occasions John has pushed Molly and made threats of violence to her in the presence of Amy. Molly has threatened to leave John, and on the last occasion he held a knife to her throat telling her "I will track you down and kill you".

Last night, following yet another argument, John punched Molly in the face and threatened to slit her throat. When he went out to meet his friends she quickly put some clothes in a bag for herself and Amy and walked to her mother's house a mile away. Although her mother will help her indefinitely, she lives in a one bedroomed property. Molly and Amy will have to sleep in the living room on the sofa bed.

Molly is terrified that John will find her and kill her. She is also upset and annoyed that she and Amy have been forced from their home because of John.

Advise Molly what action she can take to prevent further violence from John, and what action she can take to get John out of the family home so that she and Amy can return.

Explain to Molly how the courts will decide these matters.

(25 marks)

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