

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 2010-11, M Oldham, Oxford University Press 2010.**
- 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.

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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

1. In the case of *Lloyds Bank v Rossett* (1990) Lord Bridge stated "the first question to resolve is whether the parties have reached any agreement, arrangement or understanding that the property is to be shared beneficially".

Critically analyse this statement with reference to the property rights of cohabiting couples, and how they compare to married couples/civil partners.

(25 marks)

2. (a) Evaluate whether English Law should retain the fact of desertion within divorce and dissolution proceedings given the availability of other facts?

(13 marks)

(b) Critically analyse the provisions of s.5 Matrimonial Causes Act 1973.

(12 Marks)

(Total: 25 marks)

3. Analyse the availability of financial provision during marriage in relation to the parties and the children.

(25 marks)

4. (a) Compare and contrast the legal position of married and unmarried fathers in relation to parental responsibility. Assess whether the Human Rights Act 1998 has had any impact.

(18 marks)

(b) Explain the circumstances in which applications may be made for lump sum payments under schedule 1 of the Children Act 1989.

(7 marks)

(Total: 25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Peter and Simon, aged 29 and 34 years respectively, entered into a civil partnership on 3rd January 2009, having lived together for three years.

As the civil partnership ceremony approached, Peter and Simon argued, mainly about money, including the cost of the civil partnership, which had escalated due to Simon's expensive tastes. However, the other issue of adopting a child also created a lot of tension. Peter is anxious to adopt, whilst Simon wants time to enjoy their civil partnership first.

Following the civil partnership Peter has complained that Simon was behaving like a single man. Simon went out to meet up with old friends on a regular basis, often four times a week. Later, he began to stay out overnight, returning home just before work the following morning. When Peter raised the issue, Simon became defensive and aggressive and told him "you are no fun anymore, all you go on about is wanting to adopt a kid." Simon told Peter that he never had any intention of adopting any children. Peter was so upset he moved into the spare bedroom.

The situation then worsened. Peter checked Simon's mobile phone and found several suggestive messages from someone called Terri. When Peter confronted Simon, Simon said that he had been having an affair with Terri (a woman) for the last six weeks. Simon went on to say that he never loved Peter and that he had always preferred women. He then told Peter that Terri was pregnant with his child. Peter was devastated.

Peter has now moved out of the family home and is staying with his parents.

(a) Advise Peter what action he can take to dissolve the civil partnership.

(17 marks)

(b) Would your advice be different if Peter were to tell you that he had been under pressure from Simon and he had not wanted to go through with the civil partnership.

(8 marks)

(Total: 25 marks)

Turn over

Question 2

Karim and Madha have been married for 25 years. They have two grown children who have left home. The matrimonial home is mortgage free, in joint names, and worth £550,000.

Karim is a senior police officer currently earning £90,000 per annum and has an excellent occupational pension plan. He is due to retire next year with a final salary and a massive lump sum payment. He also has substantial savings and investments worth approximately £250,000 in his sole name.

Madha used to work as a secretary, and continued to work even when the children were young, albeit part-time. She has not worked for the last three years due to being clinically depressed and suffering with agoraphobia. At the time she stopped working she was earning £12,000 per annum, and savings in her own account of £4,800.

The marriage has been in name only for sometime and both parties realise that. Karim has been seeing a policewoman, Laura, for the last two months, and has decided to leave Madha to be with Laura.

Karim and Laura have now moved into a flat, owned by Karim's elderly sick father, which is worth £220,000, and they are living there rent free. Karim's father has said it will be his son's soon when he dies. Karim's father is worth an estimated £2.5 million.

Karim has started divorce proceedings. Madha has made an application for ancillary relief within the proceedings. Karim is of the opinion that Madha is quite capable of supporting herself but chooses to hide under the "depression" so she can get more money from him. Madha says she is not well enough to return to work and she is not able to support herself financially, and she cannot manage.

Advise Madha how the court will consider financial provision in her case, and the orders that she could expect to receive.

(25 marks)

Question 3

Mark and Julie have two children, Naomi born in 1997 and Christina born in 1998. Mark and Julie were divorced in 2006. The financial side of the divorce was dealt with amicably by way of a consent order. Julie remained in the former matrimonial home with the children.

Mark and Julie agreed the arrangements for the children without the necessity of court proceedings. They agreed to have shared residence. Julie would look after the children from Monday to Thursday and they would reside in the former matrimonial home. Mark would collect the children from school on Thursday evening, and have them until Monday morning at his new property 15 miles away. The children would remain in the local comprehensive school, close to the former matrimonial home. Aside from a few minor issues over the past four years (usually regarding Christmas, holidays and birthdays), the arrangements have worked well.

Two weeks ago, Mark decided that he wanted Christina to transfer to a specialist fee paying school for music so that she could develop her abilities as singer and musician. Mark also announced that he had given up his job as a full-time director of a bank to travel to Africa, live there, and do voluntary work. He has spoken with the school and the school is happy for Naomi to travel with him for 12 months because it will broaden her education.

Julie is horrified at both suggestions as well as concerned about what will now be a lack of child support for both children. She has forbidden Mark from both courses of action with the girls. Julie believes that Christina's education is best served at the local comprehensive – she is doing well at school and the school has an excellent music department. Julie also believes that it would be detrimental to Naomi's education and a risk to her health to travel to Africa.

Discussions have turned to arguments, and now Julie is refusing to allow Mark to collect the children from school because they have been upset.

Explain and advise Julie on:

- (a) What court application she should make to determine where Naomi and Christina should live and the principles the court should apply in determining such an application.

(13 marks)

- (b) The availability of court order(s) to resolve her other concerns in relation to the children.

(12 marks)

(Total: 25 marks)

Turn over

Question 4

Paul and Amanda married two years ago after living together for six years. Two years ago Paul purchased the house (the family home) where they live and he is the sole owner of the property.

A year ago, Paul and Amanda had a child, Zara. Amanda gave up her job as a successful accountant, to be a full-time mother. This was mainly as a result of Paul insisting that when they had a child she would have to give up work.

Prior to the marriage, there had been two major arguments, one of which resulted in the use of violence, by Paul on Amanda. Paul was under a great deal of pressure at work, and according to Amanda lost his temper. Amanda forgave Paul and went ahead with the wedding.

During the last six months Amanda has accepted that the relationship has been strained, but has told herself that this is because of the pressures of parenting. Paul has constantly belittled Amanda, humiliating her in front of other people. He has also taken over full control of the family finances so that Amanda has had to ask for money.

There have been numerous arguments, and Paul has, on several occasions, threatened to hit Amanda for "not doing as she is told". Matters worsened last week. Paul and Amanda had been out to friends for dinner. Amanda was driving. Paul had a lot to drink. On the way home, Paul started an argument which led to Amanda stopping the car at the side of the road. Paul then attacked Amanda, punching her in the face, causing her a black eye and a broken nose.

The following day Amanda wanted to discuss the argument with Paul, at which point Paul refused and said she was "useless" in every way and threw her out saying "it is my house, and take the brat with you". Paul was shaking his fists at Amanda and was extremely angry. Zara was crying and was frightened.

Amanda took Zara to stay with friends in the nearby village, who have three children in a two bedroom house. The conditions are cramped. Furthermore, all Amanda and Zara's belongings are in the family home.

Analyse how the law may be used to protect Amanda and Zara and any rights they may have in relation to the property.

(25 marks)

End of Examination Paper

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