

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 2011-12, M Oldham, Oxford University Press, 2011-2012**
- 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. (a) Pre-nuptial agreements are not legally binding, and have significance in English Law.

Critically analyse this statement in the light of *Radmacher v Granatino* (2009).

(15 marks)

- (b) Compensation for economic disadvantage caused by the way in which a marriage has been conducted is no longer just a concept but a reality.

Evaluate this statement with reference to recent case law.

(10 marks)

(Total: 25 marks)

2. The Gender Recognition Act 2004 allows transsexuals to gain formal recognition of their new gender.

Critically analyse this development within English Law, how such recognition is gained, and assess whether the Act has eroded the legal definition of marriage.

(25 marks)

3. (a) Evaluate whether English Law in relation to non-molestation and occupation orders under the Family Law Act 1996 complies with the European Convention on Human Rights 1998

(15 marks)

- (b) We now have greater freedom to travel and marry in different countries, and we must recognise those marriages as valid in English Law.

Discuss.

(10 marks)

(Total: 25 marks)

4. In order to accommodate evolving scientific and social change, recent domestic legislation has moved away from the traditional mother and father approach to parentage.

Critically evaluate how this statement relates to assisted reproduction.

(25 marks)

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

Question 1

Keith and Leah were married for seven years and have a four year old daughter Rebecca. Their divorce was made absolute five weeks ago. A financial application has been issued, but they are still arguing over the assets of the marriage. They both still reside at the family home, a Local Authority rented property, in Keith's sole name.

Keith is a bus driver and works long and varied hours. The relationship started to deteriorate due to work pressures, and following the birth of their daughter Rebecca. As part of the divorce proceedings, Leah cited Keith's excessive drinking, verbal abuse, and threats of violence, as the basis of the unreasonable behaviour. Following the divorce, Keith has accepted that the marriage is over and rarely speaks to Leah, but he wants her and Rebecca to leave the family home.

Leah does not have anywhere else to go with Rebecca, and she wishes to remain in the family home with her and to maintain stability. Rebecca has her friends nearby and the family home is close to school. Leah really wants the tenancy transferred into her sole name. Leah has very little money and has made an application for State Benefits.

Because Leah is refusing to leave the family home, Keith is drinking heavily and has become verbally abusive towards Leah, sometimes in front of Rebecca. Matters worsened last week when, in front of Rebecca, Keith pinned Leah up against the kitchen door and told her he would "slit her throat" if she did not get out. Leah is extremely frightened but has nowhere else to go.

What rights does Leah have to remain in the family home with Rebecca, and how will the court determine those rights?

(25 marks)

Turn Over

Question 2

Peter and Anna aged 56 and 43 respectively, married in 1999. Anna has two children Joshua and Emma, now 13 and 16 years respectively from her previous marriage.

The matrimonial home was purchased with a deposit of £100,000 from Anna, and Peter paid the rest. The house is worth approximately £600,000 and is mortgage free.

At the time of the marriage Peter insisted that Anna be a housewife and look after the children, hopefully have more children, and support him in his career as a Property Developer. As a result Anna gave up her job as a senior lecturer. By virtue of her business drive and social skills, she was a considerable asset to Peter and soon his business expanded.

Peter and Anna were unable to have a baby of their own. The constant visits to the hospital for tests placed an immense amount of strain on them. The tests proved inconclusive, but Peter said on many occasions it was Anna's fault.

Recently, Anna discovered that Peter has been having an affair with his work colleague Tom. She is shocked, embarrassed and disgusted at his betrayal and wants to end the marriage as soon as possible.

Because Anna is unable to conceive a child and Peter's affair with a man, she feels humiliated and is unable to leave the house.

As well as the matrimonial home, there is also a holiday home in France, worth £350,000 mortgage free, and Peter has savings of £200,000. Peter's business is valued in the region of £500,000.

During their marriage they enjoyed a high standard of living, holidaying five times a year, and the children attending an expensive private school.

(a) Briefly advise Anna what steps she can take to dissolve her marriage.

(5 marks)

(b) Advise Anna on the likely financial provision she can expect for herself and her children, and the considerations the court will take into account.

(20 marks)

(Total: 25 marks)

Question 3

Brian, a part-time Doctor and researcher, and Mary, a part-time teacher, married in 1996 and have two children: Grace aged 13 years and Dominic aged 8 years. Around 2005, due to research activities, Brian began spending time away from home. His position required him to travel and so he spent less time with Mary and the children. The couple drifted apart. Brian and Mary divorced in 2006.

Brian's only request was that he was always involved in the important decisions that would affect his children, and that he would always have generous contact, including holiday contact, not only for himself but also for his parents. Mary gave her promise that would be the case.

Mary then met Tony and they moved to Weymouth, 100 miles away from Brian and his parents. A house was purchased in Weymouth in Tony's sole name. The deposit was paid from Mary's savings.

Brian has extensive contact with the children, going to Weymouth twice per month to see them, and taking them on holiday four times a year. Brian's parents are also close to the children and they feel it is important to maintain the links so travel to see the children once per month.

The arrangements have worked well until recently. Tony has become less tolerant of the "visits" and says that it upsets the children and their family life. Tony insists that any contact, particularly from the grandparents, should take place over the telephone. Furthermore, he sees no reason for Brian to see the children twice per month, and insists it goes to once each month.

Recent contact visits have become more and more hostile. Recently Brian and Mary argued over whether or not Grace should have the cervical cancer immunisation which is now recommended to all girls over the age of 12 years. Brian, as a Doctor and researcher is anxious for Grace to have the vaccination, whilst Mary says it is not necessary. The argument became so heated that Mary has insisted that Brian can only have telephone contact with the children as can his parents, once per month.

Brian is not seeking residence but wishes to enforce his rights in relation to his children.

(a) Advise Brian what orders the court can make regarding the children and the considerations the court will take into account.

(15 marks)

(b) Advise the grandparents what steps they can take to ensure they see their grandchildren.

(5 marks)

(c) Advise Mary of any rights she may have in relation to the property in the event that she and Tony separate.

(5 marks)

(Total: 25 marks)

Turn Over

Question 4

Pauline and Dylan met whilst on holiday in Cornwall. They enjoyed a romance and continued their relationship when they returned home. They are both in their mid 30s. Pauline lives in Wales, whilst Dylan lives in London. Dylan is a successful investment banker with a comfortable lifestyle. Pauline is a dental nurse.

The relationship flourished and Pauline and Dylan met every weekend, and spoke over the phone during the week. Although their relationship was serious and they had decided they wanted to spend their lives together, they had agreed that they wanted to wait until they were married before they had sexual intercourse.

Unknown to Dylan, Pauline was in fact Paul, until he underwent gender reassignment which was completed just before the holiday in Cornwall where they met.

Dylan is happy to be getting married, but his parents are concerned that he is rushing into it. Undeterred, the couple married in a short registry office ceremony. On the wedding night Pauline explained that she still did not feel ready for a sexual relationship, and Dylan said he could wait. She said that in time, she wants to have a sexual relationship with him.

Some months later, Dylan has had enough. He wants a sexual relationship with his wife (and he has become extremely frustrated). They have been arguing and now have separate bedrooms. They go out separately and Dylan is constantly working and at the gym. Dylan has recently admitted to Pauline that he had met a woman briefly and that he had sexual intercourse with her.

On hearing this Pauline screamed at him and told him that she used to be a man but now she is a woman.

Dylan told Pauline to get out of the flat and never return. He never wanted to see her again.

Advise Pauline and Dylan how they can bring their marriage to an end.

(25 marks)

End of Examination Paper

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