

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 2011-2012, M Oldham, Oxford University Press, 2011
- 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**

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

1. (a) Domicile governs a person's capacity to marry and may determine the validity of the marriage itself.

Critically analyse this statement with reference to case law.

(13 marks)

- (b) Evaluate whether the status of marriage still gives rise to "consortium".

(12 marks)

(Total: 25 marks)

2. The question of whether a contact order of any kind is appropriate where there is a history of domestic violence has long troubled the courts.

Critically evaluate, with reference to case law, the court's approach in such cases.

(25 marks)

3. The need to prove or disprove parentage will often arise in the course of family proceedings.

Analyse the court's ability to establish parentage and the implications of Article 8 European Convention on Human Rights (ECHR) 1998.

(25 marks)

4. (a) Analyse the extent to which the introduction of civil partnerships by the Civil Partnership Act 2004 has given same sex couples equality with married couples.

(12 marks)

- (b) Analyse the contexts in which a marriage can be ended as a result of the failure to consummate.

(13 marks)

(Total: 25 marks)

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

Question 1

Having lived together for nine years Peter and Claire, aged 46 and 40 years respectively, recently married in July 2011, as a result of pressure from Claire. Peter is an accountant, Claire is a housewife. They have two children, Matthew aged nine and Hannah aged five.

Peter has always insisted on having his "freedom". He socialises with work colleagues and other friends at least three evenings each week, and goes on holidays with his male friends. Peter spends very little time with Claire and the children, never taking Claire out socially, and having minimal involvement in the children's schooling and other activities.

Peter refuses to attend family celebrations, often leaving Claire to attend with the children and make apologies for his absence. Peter will not allow Claire to socialise with friends, or to attend computer classes with a view to her obtaining some part-time work, insisting that her role is in the house.

Claire thought Peter would settle down if they were married. Peter considered, after nine years, it was about time he married Claire, and he promised he would make changes.

After the marriage Peter has continued to live the same lifestyle. Claire has become increasingly upset and lonely by Peter's actions and his lack of involvement with her and their children. Recently, Claire received a message through 'Facebook' from an old friend to say that she had seen Peter, on more than one occasion, with other women.

Claire has confronted Peter, and he has admitted several affairs. Claire has moved into the spare bedroom and has stated to Peter that they will now live separate lives.

Claire wants a divorce.

Peter has told Claire that she had better find a job, because he is not wasting his money on her any longer. Claire is anxious as to how she is going to manage financially at the current time.

Discuss whether Claire can divorce Peter and obtain any financial help in the intervening period.

(25 marks)

Question 2

Alison and Jane have lived together as partners for three years in a jointly owned Local Authority property. Alison is a solicitor earning £60,000 per annum. Jane is a part-time librarian earning £6,000 per annum. Jane was previously married and received £25,000 as part of her divorce settlement.

Six months ago they purchased a stone cottage, but it was in need of substantial repair. It was intended to be their "perfect" home for their life together. Jane used her £25,000 as the full deposit. Alison has taken out a mortgage for the balance of £150,000 and the property is in Alison's sole name. Alison has said, on more than one occasion, that the property belongs to them both.

Whilst Alison has worked long hours Jane has attended the property on a daily basis, knocking down walls, restoring original features, decorating, and even fitting a new kitchen and bathroom. The house is almost ready for them to move in.

The strain of long working hours and constant work on a rundown property has caused Alison and Jane to argue. They have decided that the relationship is not going to work.

Jane is anxious to remain in the Local Authority property as the sole tenant. She does not have sufficient income to purchase a property. She wants Alison to move into the cottage that has been purchased because Alison has more than enough income to pay the mortgage and the bills. Jane wants recompense for all the money and work she has put into the cottage.

Alison is refusing to leave the Local Authority accommodation. She intends to sell the cottage (for £220,000) rather than live in it, and has told Jane she is not entitled to anything from the cottage because it is not her house. She wants Jane out of the Local Authority accommodation as soon as possible.

Advise Jane:

(a) what action she can take to remove Alison from the Local Authority accommodation and how the matter will be decided.

(17 marks)

(b) of any rights she may have in relation to the cottage.

(8 marks)

(Total: 25 marks)

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Question 3

Amira, aged 25 years had been living separate from her family for an unknown number of years having had a relationship with a man of whom her parents disapproved.

She was contacted by her mother with news of the death of her grandfather in Pakistan, and reluctantly agreed to attend the funeral in Pakistan, with the family.

Whilst in Pakistan, after the period of mourning, Amira was informed that arrangements had been made for her to marry her cousin Tanwar. Amira refused. She was then held by her family, against her will, under constant supervision. She was not allowed to leave the village, and her brother even threatened her with violence if she did not go ahead with the marriage. She was also told that unless she took part in the ceremony and was committed to her marriage, she would never return to England.

On the day of the wedding Amira was forced to dress for the wedding, and was escorted to the wedding by several family members, who remained next to her throughout the wedding, prompting her to agree.

Tanwar, Amira and their six month old son, Fezan, recently returned to the UK. Amira and Tanwar now live separately.

Amira and Fezan are now living in London with her friend, Saima. Tanwar lives in Birmingham.

Amira has been to see a solicitor with a view to ending the marriage as soon as possible. She never loved Tanwar and never wanted to marry him. As soon as she was allowed to return to England from Pakistan, she left Tanwar and moved into a flat, taking Fezan with her.

Amira is hostile towards Tanwar and has refused him having any type of contact with Fezan, not because he is a bad father, but because the whole experience has been traumatic and Amira is extremely bitter. She will do everything she can to ensure that Tanwar does not see Fezan.

Amira's friend Saima is concerned that her family may be planning a forced marriage for her in Pakistan.

(a) Assuming the English Courts have jurisdiction in this case, advise Amira on how she can bring her marriage to an end.

(12 marks)

(b) Advise Amira on the risks associated with her refusal of contact.

(8 marks)

(c) Advise Saima on what action the Courts may take to protect her.

(5 marks)

(Total: 25 marks)

Question 4

Andrew and Eleanor, aged 36 and 31 respectively, married in December 2007 after a whirlwind romance during the summer of 2008. There are no children in the family.

Andrew is a young entrepreneur, who has made a fortune from the creation of a new house cleaning device – the “air duster”. Prior to the marriage, his estimated fortune was £10 million. He invested the money in stocks and shares, and also purchased a property in Orlando, Florida, currently worth £600,000. He has several pension plans. His annual income is in excess of £3.5 million.

Eleanor has always worked in retail, and prior to the marriage, was a regional manager for a famous store chain, earning £46,000 per annum.

Prior to the marriage Andrew insisted that they enter into an agreement settling the finances in the event of the marriage breaking down. Eleanor did not take independent legal advice. In essence, the parties would only take from the marriage what they had brought to it. Each would retain pre-marriage assets, and share post-marriage assets equally.

Following the marriage, Andrew insisted that Eleanor give up her career to look after the matrimonial home, and to host dinner parties for his business associates and clients. Eleanor agreed.

During the marriage they have enjoyed a lavish lifestyle, with numerous holidays, and the ability to spend large amounts of money on luxuries and Eleanor no longer wishes to work.

The matrimonial home is in the sole name of Andrew and is worth £750,000 free of mortgage.

Andrew has been working overseas a lot recently. Eleanor has discovered that he is in a relationship with another woman. Andrew says the marriage is over and he wants Eleanor out of the house within the next six months, and is relying on their agreement in relation to the finances.

Advise Eleanor on the likely financial provision, and the considerations the court will take into account.

(25 marks)

End of Examination Paper

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