



## THE CHARTERED 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, 2012-2013, 21<sup>st</sup>. edition, M Oldham, Oxford University Press 2012.**
- Candidates must comply with the CILEX 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 CILEX 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. Separating spouses can regulate their own financial affairs whilst they are still married by entering into a binding agreement.

Critically evaluate the law relating to such agreements and whether the courts thereafter have any powers of variation.

**(25 marks)**

2. When determining property disputes between cohabitants the focus is on whether the parties intended to share rather than establishing a particular type of trust.

Evaluate this statement with reference to recent case law.

**(25 marks)**

3. (a) Evaluate the content and effectiveness of the court's powers under s.40 Family Law Act 1996 (FLA 1996).

**(15 marks)**

- (b) Evaluate the usefulness of *Hale v Tanner* (2000) in view of the criminalisation of breach of non-molestation orders.

**(10 marks)**

**(Total: 25 marks)**

4. (a) In deciding whether the English courts have jurisdiction to hear cases in nullity, divorce and judicial separation relating to foreign marriages, analyse the case law relating to "habitual residence".

**(13 marks)**

- (b) Analyse the requirements of s.1(2)(a) Matrimonial Causes Act 1973 (MCA 1973) in pursuing a matrimonial order to bring a marriage to an end.

**(12 marks)**

**(Total: 25 marks)**

## SECTION B

(Answer at least one question from this section)

### Question 1

Timothy is a wealthy investment fund manager, with a personal net worth of £40 million. Timothy sold some of his investments in 2010 and is now a consultant to a large city bank. He owns properties in London, New York and Thailand, but resides in Cambridge.

In January 2012 Timothy met Amber, a waitress, whilst entertaining business clients in London. They went home together and had sexual intercourse. They never saw each other again.

In May 2012 Timothy was horrified to be contacted by Amber and told that she was pregnant with his child. Amber said she wanted him to know about the pregnancy and to be involved in the baby's life. Timothy was shocked and admits that he never wanted children. He told Amber that he did not accept that the child was his, and there could be a number of candidates for father. Amber became very upset and said if necessary she would get a DNA test to prove he was the father. Timothy stated that she would not get any money from him.

In October 2012, Timothy received a letter from a firm of solicitors acting for Amber asking for a financial contribution to the child, a boy, named Isaac. They have confirmed that Amber and the child will undergo the necessary DNA testing to confirm paternity.

Amber is living in rented accommodation and can no longer work as a waitress due to Isaac's recent birth, and is unlikely to be returning to work soon in view of child care issues.

Advise Timothy:

(a) whether he has any parental rights in relation to Isaac.

**(7 marks)**

(b) whether he can be forced to pay any money to Amber for the benefit of Isaac under the Children Act 1989 (CA 1989), and, with reference to case law, the principles the court will apply.

**(18 marks)**

**(Total: 25 marks)**

## Question 2

Sarah Palmer and John Grayson have been together in a sexual relationship for five years. They have two children, Stacey who is three years old and Camille who is just one year old.

Sarah, a secretary, and John, a lorry driver, have lived together for the past four years at 23 Broadbent Avenue, Kempston. It is a three bedroom terrace property, which they purchased together and it is in their joint names on a beneficial joint tenancy.

There is a history of violence between Sarah and John. Recently John has been made redundant, and as a result the couple are struggling financially. John has become depressed and started to drink excessively. He has been verbally abusive towards Sarah, and has screamed at her, in the presence of the children.

One week ago, when John returned home in the early hours of the morning, an argument took place, whereupon he assaulted Sarah causing bruising to her cheek, a black eye, and a fractured collar bone. The children heard their mother's screams and became distressed. John immediately left the house and has not returned. She obtained a non-molestation order which has been served.

John is now staying with friends, drinking and taking drugs. Sarah does not want him to return to the house but fears he may do so at any moment.

Sarah has nowhere else to go. She has no family or friends to stay with, and wishes to remain in her home with the children. She has decided that the relationship is at an end.

Sarah fears that John will return to see the children, and although he has always been a good father, she is scared of him and worried by his behaviour as well as the effect it is having on the children.

Advise Sarah:

- (a) what action she can take to prevent John returning to the property, and how the matter is likely to be decided, having already obtained a non-molestation order.

**(18 marks)**

- (b) what the court's view is likely to be if John makes an application for contact.

**(7 marks)**

**(Total: 25 marks)**

**Question 3**

James aged 33 years and Elizabeth aged 35 years met in 2009 and married in 2010. Throughout their one year relationship, they lived at home with their respective parents. They both believed that marriage was to be respected and made the decision not to have sexual intercourse before marriage.

On the wedding day, before the ceremony, Elizabeth told James that she was a male to female transsexual and that she had undergone successful gender reassignment surgery, and for all purposes she was now a woman.

James was shocked, but made the decision that irrespective of Elizabeth's previous gender, she was now a woman, and he loved her and wanted to marry her.

On the wedding night James felt unable to have sexual intercourse with Elizabeth, and is completely repulsed by the thought of it ever. Although he still loves Elizabeth, she has to understand they cannot have a physical relationship.

The relationship has continued to be strained, with Elizabeth wanting more from the marriage. Numerous arguments have taken place, and James has become aggressive towards Elizabeth. The parties have grown apart. They have been sleeping in separate bedrooms since the wedding night. They have both started to lead their own lives.

James wants to end the marriage.

Advise James how he can terminate his marriage and would your answer be different had the marriage taken place in 2004.

**(25 marks)**

**Question 4**

Ben and Jason aged 40 and 22 years respectively, entered into a civil partnership in October 2012, having lived together for a year.

The relationship had not started well. Jason had met Ben when he applied for a job in one of Ben's restaurants. Soon after starting work as a chef in Ben's restaurant in Birmingham, he and Ben started a relationship. Jason's family were horrified because of the age difference, and they had heard that Ben always "went for younger men", had fun then moved onto someone else. Jason would not listen, and very soon moved into Ben's house.

The relationship was volatile even before the civil partnership ceremony, and Ben and Jason separated on numerous occasions, each time Ben going off with another man. On the last occasion, Ben cancelled the civil ceremony with only two days' notice.

A new date for the civil partnership ceremony was set. Jason's father threatened Ben that if the civil partnership did not go ahead he would kill him. Jason's father did not want Jason disappointed yet again.

The civil partnership went ahead, but Ben was extremely unhappy about it. Since that time, Ben and Jason have lived almost separate lives. Ben going out with friends and regularly having sexual intercourse with both men and women. Jason has attempted to make the civil partnership work, but Ben has told him he does not want him either at home or at work.

Matters came to a head last week following an argument. Ben became aggressive, punching and kicking Jason out into the street.

Jason is now staying with his parents. He feels that Ben has not given the civil partnership time to work and wonders whether it is over or whether a period of separation would be best for both of them. Ben has made it quite clear that he wants the civil partnership to end as soon as possible.

Explain what options Ben and Jason have available in relation to their civil partnership and any problems they may encounter.

**(25 marks)**

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