



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 20 – PRACTICE OF FAMILY LAW*

Time allowed: 3 hours plus 15 minutes reading time

Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials 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 paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- 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, 21st 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**

Question 1

Reference: Question relates to **Document 2** of the case study materials.

Paul Irving attends at the office. He confirms that he wishes to proceed with a divorce and asks you to prepare the paperwork that he will need. He tells you that he has produced a draft of the divorce petition and he hands this to you, (**Document A**) together with a copy of his marriage certificate (**Document B**).

- (a) Advise Mr Irving which fact you think he should rely on for the divorce and why and what statutory defences, if any, his wife can rely on.

(10 marks)

- (b) **Explain in your answer booklet** what amendments you would need to make to the draft petition prepared by Mr Irving (**Document A**) and why those amendments are necessary.

(15 marks)

PLEASE WRITE YOUR AMENDMENTS IN YOUR ANSWER BOOKLET, DO NOT AMEND DOCUMENT A.

(Total: 25 marks)

Question 2

Reference: Question relates to **Document 3** of the case study materials.

Naomi Bloomfield makes an appointment to see you to discuss her case. She explains that further to her appointment with Graham she would like you to clarify certain aspects of both the divorce case and finances to her.

- (a) Mrs Bloomfield asks you to explain the remaining procedure and timescale before her divorce is finalised, including whether her husband can finalise the divorce and if so how. She also asks you to explain any additional requirements she will need to consider resulting from the Jewish faith.

(6 marks)

- (b) In relation to the parties' finances, applying the factors which the court will consider, advise Mrs Bloomfield of the types of orders you think the court would make in relation to the former matrimonial home, the parties' pensions and the parties' income position.

(24 marks)

PLEASE NOTE THAT YOU DO NOT NEED TO DEAL WITH THE AMOUNTS WHICH YOU THINK THE COURT WOULD ORDER.

(Total: 30 marks)

Question 3

Reference: Question relates to **Document 4** of the case study materials.

Further to his e-mail to Graham, Stuart Ovenby attends at the office for an appointment with you.

- (a) Advise Mr Ovenby which section 8 order (Children Act 1989) he can apply for to resolve the difficulties he is having in seeing his children and the basis on which he is entitled to apply.

(5 marks)

- (b) Explain to Mr Ovenby the next steps that need to be taken to enable him to make the application to the court.

(5 marks)

- (c) Assume that Mr Ovenby instructs you to make the application required. With reference to the factors which the court will consider, discuss whether you think that his application is likely to succeed.

(15 marks)

(Total: 25 marks)

Question 4

Reference: Question relates to **Document 5** of the case study materials.

Rita White attends at the office to see you today. She tells you that she is very frightened and would like to know about all of her possible options to protect herself from Dale's violence.

- (a) Explain to Miss White the availability and appropriateness of the out of court and statutory options should she not wish to proceed with an application for an injunction under the Family Law Act (FLA) 1996.

(5 marks)

- (b) Assume that having considered her options, Miss White now wishes to proceed using the FLA. Using the attached blank form (**Document C**), draft Form FL401.

IMPORTANT: Write your candidate number clearly on Document C and attach it securely to your answer booklet.

(15 marks)

(Total: 20 marks)

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Document A
(to be used with Question 1)

**Divorce/dissolution/
(judicial) separation petition**

To be completed by the Court	
Name of court	BEDFORD COUNTY COURT
Case No.	
Date received by the court	
Date issued	
Time issued	

Notes to Petitioners

- This form should be used if you are making an application to the court for divorce/dissolution to end your marriage or civil partnership or (judicial) separation from your spouse or civil partner.
- Before completing this form, please read the supporting notes for guidance on completing the form.
- Please answer all questions. If you are unsure of the answer to any question, or you do not think that it applies to you, please indicate this on the form.
- If there is not enough room on the form, you may continue on a separate sheet. Please put your name, the Respondent's (your spouse/civil partner) name, and the number of the Part the information relates to, at the top of your continuation sheet.
- If completing this form by hand, please use **black ink and BLOCK CAPITAL LETTERS** and tick the boxes that apply.

See the supporting notes for guidance

I, Paul Irving (please state your full name)

apply for a ☒ divorce

☐ dissolution

☐ (judicial) separation

in respect of my ☒ marriage

☐ civil partnership

and give the following details in support of my application.

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Turn over

Part 1 About you (the Petitioner) and the Respondent (your spouse/civil partner)

See the supporting notes for guidance

Petitioner

My current name is

First name(s) (in full)

Paul

Last name

Irving

My address is (including postcode)

10, The Pines,
Green Park,
Clayton, Barnardshire

Postcode B H 1 4 3 L R

My date of birth is

0 1 / 0 2 / 1 9 7 5

My occupation is

Research Scientist

I am



male



female

Respondent

The Respondent's current name is

First name(s) (in full)

Emma

Last name

Irving

The Respondent's address is (including postcode)

2 Juniper Avenue,
Clayton, Barnardshire

Postcode B H 8 5 T P

The Respondent's date of birth is

1 7 / 1 1 / 1 9 7 6

The Respondent's occupation is

Supply Teacher

The Respondent is



male



female

Part 2 Details of marriage or civil partnership

See the supporting notes for guidance

On the 1st day of June

[19 98][20]

(insert your name exactly as it appears on your marriage/civil partnership certificate)

Paul Michael Irving



married



formed a civil partnership with

(insert the name of the Respondent exactly as it appears on your marriage/civil partnership certificate)

Emma Samantha Yateman

at

(insert the place where the marriage/civil partnership was formed, exactly as it appears on your marriage/civil partnership certificate)

St . Mary's Church Clayton

A certified copy of your marriage/civil partnership certificate must be sent to the court with this completed petition (see supporting notes for guidance).

Part 3 Jurisdiction

See the supporting notes for guidance

The Respondent and I last lived together as ☒ husband and wife ☐ civil partners
at

Address

2 Juniper Avenue,
Clayton,
Barnardshire
BH8 5TP

The court has jurisdiction to hear this case under

☐ Article 3(1) of the Council Regulation (EC) No 2201/2003 of 27 November 2003

or

☐ the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005

on the following grounds

☐ The Petitioner and Respondent are both habitually resident in England and Wales and/or

☒ Other (please state any other connection(s) on which you wish to rely)

or

☐ The court has jurisdiction other than under the Council Regulation on the basis that no court of a Contracting State has jurisdiction under the Council Regulation and the ☐ Petitioner ☐ Respondent is domiciled in England and Wales on the date when this application is issued

or

☐ The court has jurisdiction other than under the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations on the basis that no court has, or is recognised as having jurisdiction as set out in the Regulations, and

either:

☐ the ☐ Petitioner ☐ and/or the Respondent is domiciled in England or Wales

or

☐ the Petitioner and Respondent registered as civil partners of each other in England or Wales and it would be in the interests of justice for the court to assume jurisdiction in this case.

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Part 4 Other proceedings or arrangements

See the supporting notes for guidance

- ☒ There are and/or have been
- ☐ proceedings in any court in England and Wales or elsewhere with reference to the
 - ☐ marriage
 - ☐ civil partnership
 - ☐ or to any child of the family
 - ☐ or between the Petitioner and Respondent with reference to any property of either or both of them
 (please enter details below)

or

- ☒ no other proceedings in any court in England and Wales or elsewhere.

- ☐ This is an application based on five years' separation and
- ☐ agreement has been made or is proposed to be made between the parties for the support of
 - ☐ the Petitioner ☐ the Respondent ☐ and any child of the family
 (please enter details below)

or

- ☐ no agreement has been made or is proposed to be made.

Part 5 The fact(s)

See the supporting notes for guidance

I apply for a

- ☒ divorce on the ground that the marriage has broken down irretrievably, or
- ☐ dissolution on the ground that the civil partnership has broken down irretrievably, or
- ☐ (judicial) separation

and

I rely on the following fact(s) in support of my application:

- ☒ The Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent (this fact is not applicable in relation to a civil partnership)
- ☐ The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent
- ☐ The Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of this petition
- ☐ The parties to the marriage/civil partnership have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent consents to a decree/order being granted
- ☐ The parties to the marriage/civil partnership have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

Part 6 Statement of case

See the supporting notes for guidance

(in all cases, please state briefly any relevant details about the fact(s) on which you rely)

My Wife committed adultery which I discovered in November 2007

Part 7 Details of the children

See the supporting notes for guidance

Children of the family

Full names of the children of the family	Gender		Date of birth (or state if over 18)	Over 16 but under 18 and in education, training or working full time	(a) Child of both parties	(b) Other child of the family
	male	female				
Xander Irving	<input checked="" type="checkbox"/>	<input type="checkbox"/>	0 5 / 0 8 / 2 0 0 0	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Faith Irving	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 3 / 0 3 / 2 0 0 5	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Statement of arrangements for children

See the supporting notes for guidance

- ☐ I attach a completed statement of arrangements in respect of those children of the family who are either aged under 16, or aged under 18 and at school, college, or in training for a trade, profession or vocation
- or
- ☐ No statement of arrangements is attached, because there are no children of the family, or no children of the family are either aged under 16 or aged under 18 and at school, college, or in training for a trade, profession or vocation.

Turn over

Children of either party who are not children of the family

Full names of the children of either party who are not children of the family	Gender		Date of birth (or state if over 18)	Born to or adopted by Petitioner	Born to or adopted by Respondent
	male	female			
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Part 8 Special assistance or facilities if you attend court

See the supporting notes for guidance

If you are required to attend court during these proceedings will you need any special assistance or facilities?

☐ Yes (please supply details below) ☒ No

continued over the page ➡

Part 9 Service details

See the supporting notes for guidance

- ☐ I am not represented by a solicitor in these proceedings
- ☐ I am not represented by a solicitor in these proceedings but am receiving advice from a solicitor
- ☒ I am represented by a solicitor in these proceedings, who has signed Part 10, and all documents for my attention should be sent to my solicitor whose details are as follows:

Box 1 Solicitor's details

Name of solicitor			
Name of firm			
Address to which all documents should be sent for service	Telephone no.		
	Fax no.		
	DX no.		
	Your ref.		
Postcode	<input type="text"/>	<input type="text"/>	
E-mail			

Box 2 Petitioner's address for service

Address (including postcode)
Postcode <input type="text"/> <input type="text"/>

Box 3 Respondent's address for service

Address (including postcode)
Postcode <input type="text"/> <input type="text"/>

Box 4 Co-Respondent's details, if any

- ☐ There is no Co-Respondent
- ☐ There is a Co-Respondent whose details are as follows:

First Name	
Last Name	
Address (including postcode)	
Postcode	<input type="text"/> <input type="text"/>

Turn over

Part 10

See the supporting notes for guidance

Prayer

The Petitioner therefore prays

(1) The application

- ☒ That the ☒ marriage ☐ civil partnership be dissolved
 or
☐ That the Petitioner be (judicially) separated from the Respondent.

(2) Costs (if you wish to claim costs from the Respondent or Co-Respondent)

- ☒ That the ☒ Respondent ☐ Co-Respondent shall be ordered to pay the costs of this application

(3) Financial Order (if you wish to make an application for a Financial Order)

- ☐ (a) That the Petitioner may be granted the following Financial Order(s):
- ☐ an order for maintenance pending suit/outcome
 - ☐ periodical payments order
 - ☐ secured provision order
 - ☐ lump sum order
 - ☐ property adjustment order
 - ☐ order under section 24B, 25B or 25C of the Act of 1973/paragraph 15, 25 or 26 of Schedule 5 to the Act of 2004 (Pension Sharing/Attachment Order)
- ☐ (b) For the children
- ☐ a periodical payments order
 - ☐ a secured provision order
 - ☐ a lump sum order
 - ☐ a property adjustment order

Signed

Petitioner [s Solicitor]

Dated / /

Document B (to be used with Question 1)
CERTIFIED COPY of an ENTRY OF MARRIAGE
Pursuant to the Marriage Act 1949

Registration District of Clayton				St. Mary's Church				in the			
Marriage solemnized at				County of Barnardshire							
1	2	3	4	5	6	7	8				
When married	Name and surname	Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname	Rank or profession of father				
1 June 1998	Paul Michael Irving	23	Bachelor	Assistant Researcher	2 Juniper Avenue, Clayton, Barnardshire	Terence Irving	Mechanic				
	Emma Samantha Yateman	21	Spinster	Teacher	2 Juniper Avenue, Clayton, Barnardshire	David Yateman	Bank Manager				

performed in the Parish Church according to the rites and ceremonies of the Church of England after Banns by me

marriage solemnized between us	Paul Michael Irving	in the presence	T. Irving
	Emma Samantha Yateman	of us	D. Yateman

I, the Vicar of St Mary's Church Clayton do hereby certify that this is a true copy of entry No. 95 in the Register Book of Marriages in the said Church.
WITNESS MY HAND this 1st day of June 1998

NOTICE: Any person who (i) falsifies any of the particulars on this certificate or (ii) uses a falsified certificate as true, knowing it to be false is liable to prosecution.

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Document C (to be used with Question 4)

Application for:
 a non-molestation order
 an occupation order

Family Law Act 1996 (Part IV)

The court

To be completed by the court

Date issued

Case number

Please read the accompanying notes as you complete this form.

1 About you (the applicant)

State your title (Mr, Mrs etc), full name, address, telephone number and date of birth (if under 18):

State your solicitor's name, address, reference, telephone, FAX and DX numbers:

2 About the respondent

State the respondent's name, address and date of birth (if known):

3 The Order(s) for which you are applying

This application is for:

- ☐ a non-molestation order
- ☐ an occupation order
- ☐ Tick this box if you wish the court to hear your application without notice being given to the respondent. The reasons relied on for an application being heard without notice must be stated in the statement in support.

Turn over

**4 Your relationship to the respondent
(the person to be served with this
application)**

Your relationship to the respondent is:

(Please tick only one of the following)

- 1 ☐ Married
 - 2 ☐ Civil Partners
 - 3 ☐ Were married
 - 4 ☐ Former civil partners
 - 5 ☐ Cohabiting
 - 6 ☐ Were cohabiting
 - 7 ☐ Both of you live or have lived in the same household
 - 8 ☐ Relative
State how related:
 - 9 ☐ Agreed to marry.
Give the date the agreement was made.
If the agreement has ended, state when.
 - 10 ☐ Agreed to form a civil partnership.
Give the date the agreement was made.
If the agreement has ended, state when.
 - 11 ☐ Both of you are parents of, or have parental responsibility for, a child
 - 12 ☐ One of you is a parent of a child and the other has parental responsibility for that child
-

- 13 ☐ One of you is the natural parent or grandparent of a child adopted, placed or freed for adoption, and the other is:

- (i) the adoptive parent
- or (ii) a person who has applied for an adoption order for the child
- or (iii) a person with whom the child has been placed for adoption
- or (iv) the child who has been adopted, placed or freed for adoption.

State whether (i), (ii), (iii) or (iv):

- 14 ☐ Both of you are the parties to the same family proceedings (see also Section 11 below).

5 Application for a non-molestation order

If you wish to apply for a non-molestation order, state briefly in this section the order you want.

Give full details in support of your application in your supporting evidence.

6 Application for an occupation order

If you do not wish to apply for an occupation order, please go to section 9 of this form.

- (A) State the address of the dwelling-house to which your application relates:
- (B) State whether it is occupied by you or the respondent now or in the past, or whether it was intended to be occupied by you or the respondent:
- (C) State whether you are entitled to occupy the dwelling-house: ☐ Yes ☐ No

If yes, explain why:

Turn over

-
- (D) State whether the respondent is entitled to occupy the dwelling-house: ☐ Yes ☐ No

If yes, explain why:

On the basis of your answers to (C) and (D) above, tick one of the boxes 1 to 6 below to show the category into which you fit

- 1 ☐ a spouse or civil partner who has home rights in the dwelling-house, or a person who is entitled to occupy it by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation.
- If you tick box 1, state whether there is a dispute or pending proceedings between you and the respondent about your right to occupy the dwelling-house.
- 2 ☐ a former spouse or former civil partner with no existing right to occupy, where the respondent spouse or civil partner is so entitled.
- 3 ☐ a cohabitant or former cohabitant with no existing right to occupy, where the respondent cohabitant or former cohabitant is so entitled.
- 4 ☐ a spouse or former spouse who is not entitled to occupy, where the respondent spouse or former spouse is also not entitled.
- 5 ☐ a civil partner or former civil partner who is not entitled to occupy, where the respondent civil partner or former civil partner is also not entitled.
- 6 ☐ a cohabitant or former cohabitant who is not entitled to occupy, where the respondent cohabitant or former cohabitant is also not entitled.
-

Home Rights

If you do have home rights please:

State whether the title to the land is registered or unregistered (if known):

If registered, state the Land Registry title number (if known):

If you wish to apply for an occupation order, state briefly here the order you want. Give full details in support of your application in your supporting evidence:

7 Application for additional order(s) about the dwelling-house

If you want to apply for any of the orders listed in the notes to this section, state what order you would like the court to make:

8 Mortgage and rent

Is the dwelling-house subject to a mortgage?

☐ Yes ☐ No

If yes, please provide the name and address of the mortgagee:

Is the dwelling-house rented?

☐ Yes ☐ No

If yes, please provide the name and address of the landlord:

9 At the court

Will you need an interpreter at court?

☐ Yes ☐ No

If yes, specify the language:

If you require an interpreter, you must notify the court immediately so that one can be arranged.

If you have a disability for which you require special assistance or special facilities, please state what your needs are. The court staff will get in touch with you about your requirements.

10 Other information

State the name and date of birth of any child living with or staying with, or likely to live with or stay with, you or the respondent:

State the name of any other person living in the same household as you and the respondent, and say why they live there:

11 Other Proceedings and Orders

If there are any other current family proceedings or orders in force involving you and the respondent, state the type of proceedings or orders, the court and the case number. This includes any application for an occupation order or non-molestation order against you by the respondent.

This application is to be served upon the respondent

Signed:

Date:

Application for non-molestation order or occupation order

Notes for guidance

Section 1

If you do not wish your address to be made known to the respondent, leave the space on the form blank and complete Confidential Address Form C8. The court can give you this form.

If you are under 18, someone over 18 must help you make this application. That person, who might be one of your parents, is called a 'next friend'.

If you are under 16, you need permission to make this application. You must apply to the High Court for permission, using this form. If the High Court gives you permission to make this application, it will then either hear the application itself or transfer it to a county court.

Section 3

An urgent order made by the court before the notice of the application is served on the respondent is called an ex-parte order. In deciding whether to make an ex-parte order the court will consider all the circumstances of the case, including:

- any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately
- whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately
- whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved.

If the court makes an ex-parte order, it must give the respondent an opportunity to make representations about the order as soon as just and convenient at a full hearing.

'Harm' in relation to a person who has reached the age of 18 means ill-treatment or the impairment of health, and in relation to a child means ill-treatment or the impairment of health and development.

'Ill-treatment' includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse. The court will require evidence of any harm which you allege in support of your application.

Section 4

For you to be able to apply for an order you must be related to the respondent in one of the ways listed in this section of the form. If you are not related in one of these ways you should seek legal advice.

Cohabitants are two persons who, although not married to each other, nor civil partners of each other, are living together as husband and wife or civil partners. People who have cohabited, but have then married or formed a civil partnership will not fall within this category but will fall within the category of married people or people who are civil partners of each other.

Those who live or have lived in the same household do not include people who share the same household because one of them is the other's employee, tenant, lodger or boarder.

You will only be able to apply as a relative of the respondent if you are:

(A) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson, granddaughter of the respondent or of the respondent's spouse, former spouse, civil partner or former civil partner.

(B) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or by civil partnership) of the respondent or of the respondent's spouse, former spouse, civil partner or former civil partner.

This includes, in relation to a person who is living or has lived with another person as husband and wife or as civil partners, any person who would fall within (A) or (B) if the parties were married to, or civil partners of, each other (for example, your cohabitee's father or brother).

Agreements to marry: You will fall within this category only if you make this application within three years of the termination of the agreement. The court will require the following evidence of the agreement:

evidence in writing

or the gift of an engagement ring in contemplation of marriage

or evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

Agreements to form a civil partnership: You will fall within this category only if you make this application within three years of the termination of the agreement. The court will require the following evidence of the agreement:

evidence in writing

or a gift from one party to the agreement to the other as a token of the agreement

or evidence that a ceremony has been entered into in the presence of one or more other persons assembled for the purpose of witnessing it.

Parents and parental responsibility:

You will fall within this category if

both you and the respondent are either the parents of the child or have parental responsibility for that child

or if one of you is the parent and the other has parental responsibility.

Section 4 continued

Under the Children Act 1989, parental responsibility is held automatically by a child's mother, and by the child's father if he and the mother were married to each other at the time of the child's birth or have married subsequently. Where, a child's father and mother are not married to each other at the time of the child's birth, the father may also acquire parental responsibility for that child, if he registers the birth after 1st December 2003, in accordance with section 4(1)(a) of the Children Act 1989. Where neither of these circumstances apply, the father, in accordance with the provisions of the Children Act 1989, can acquire parental responsibility.

From 30 December 2005, where a person who is not the child's parent ("the step-parent") is married to, or a civil partner of, a parent who has parental responsibility for that child, he or she may also acquire parental responsibility for the child in accordance with the provisions of the Children Act 1989.

From 1st September 2009, specific provision has been made in relation to parental responsibility in certain cases involving assisted reproduction. Parental responsibility is held automatically by a woman if—

- she and the child's mother were in a civil partnership with each other at the time of treatment unless that woman did not consent to the treatment; or
- she is a parent of the child by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and subsequently enters into a civil partnership with the mother.

A woman who is a parent of the child by virtue of section 43 of the 2008 Act but who does not subsequently enter into a civil partnership with the mother may acquire parental responsibility in accordance with the provisions of section 4ZA of the Children Act 1989

Section 5

A non-molestation order can forbid the respondent from molesting you or a relevant child. Molestation can include, for example, violence, threats, pestering and other forms of harassment. The court can forbid particular acts of the respondent, molestation in general, or both.

Section 6

If you wish to apply for an occupation order but you are uncertain about your answer to any question in this part of the application form, you should seek legal advice.

(A) A dwelling-house includes any building or part of a building which is occupied as a dwelling; any caravan, houseboat or structure which is occupied as a dwelling; and any yard, garden, garage or outhouse belonging to it and occupied with it.

(C) & (D) The following questions give examples to help you to decide if you or the respondent, or both of you, are entitled to occupy the dwelling-house:

- Are you the sole legal owner of the dwelling-house?
- Are you and the respondent joint legal owners of the dwelling-house?
- Is the respondent the sole legal owner of the dwelling-house?
- Do you rent the dwelling-house as a sole tenant?
- Do you and the respondent rent the dwelling-house as joint tenants?
- Does the respondent rent the dwelling-house as a sole tenant?

If you answer

- **Yes to (a), (b), (d) or (e)** you are likely to be entitled to occupy the dwelling-house
- **Yes to (c) or (f)** you may not be entitled (unless, for example, you are a spouse or civil partner and have home rights – see notes under 'Home Rights' below)
- **Yes to (b), (c), (e) or (f)**, the respondent is likely to be entitled to occupy the dwelling-house
- **Yes to (a) or (d)** the respondent may not be entitled (unless, for example, he or she is a spouse or civil partner and has home rights).

Box 1 For example, if you are sole owner, joint owner or if you rent the property. If you are not a spouse, former spouse, civil partner, former civil partner, cohabitant or former cohabitant of the respondent, you will only be able to apply for an occupation order if you fall within this category.

If you answer yes to this question, it will not be possible for a magistrates' court to deal with the application, unless the court decides that it is unnecessary for it to decide this question in order to deal with the application or make the order. If the court decides that it cannot deal with the application, it will transfer the application to a county court.

Box 2 For example, if the respondent is or was married to you, or if you and the respondent are or were civil partners, and he or she is sole owner or rents the property.

Box 3 For example, if the respondent is or was cohabiting with you and is sole owner or rents the property.

Home Rights

Where one spouse or civil partner "(A)" is entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse or civil partner "(B)" is not so entitled, then B (who is not entitled) has home rights.

The rights are

- if B is in occupation, not to be evicted or excluded from the dwelling-house except with the leave of the court; and
- if B is not in occupation, the right, with the leave of the court, to enter into and occupy the dwelling-house.

Section 6 (continued)

Note: Home Rights do not exist if the dwelling-house has never been, and was never intended to be, the matrimonial or civil partnership home of the two spouses or civil partners. If the marriage or civil partnership has come to an end, home rights will also have ceased, unless a court order has been made during the marriage or civil partnership for the rights to continue after the end of that relationship.

Occupation Orders

The possible orders are:

If you have ticked box 1 above, an order under section 33 of the Act may:

- enforce the applicant's entitlement to remain in occupation as against the respondent
- require the respondent to permit the applicant to enter and remain in the dwelling-house or part of it
- regulate the occupation of the dwelling-house by either or both parties
- if the respondent is also entitled to occupy, the order may prohibit, suspend or restrict the exercise by him, of that right
- restrict or terminate any home rights of the respondent
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house
- declare that the applicant is entitled to occupy the dwelling-house or has home rights in it
- provide that the home rights of the applicant are not brought to an end by the death of the other spouse or civil partner or termination of the marriage or civil partnership.

If you have ticked box 2 or box 3 above, an order under section 35 or 36 of the Act may:

- give the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for a specified period
- prohibit the respondent from evicting or excluding the applicant during that period
- give the applicant the right to enter and occupy the dwelling-house for a specified period
- require the respondent to permit the exercise of that right
- regulate the occupation of the dwelling-house by either or both of the parties
- prohibit, suspend or restrict the exercise by the respondent of his right to occupy
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house.

If you have ticked box 4 or box 5 above, an order under section 37 or 38 of the Act may:

- require the respondent to permit the applicant to enter and remain in the dwelling-house or part of it
- regulate the occupation of the dwelling-house by either or both of the parties
- require the respondent to leave the dwelling-house or part of it
- exclude the respondent from a defined area around the dwelling-house.

You should provide any evidence which you have on the following matters in your evidence in support of this application. If necessary, further statements may be submitted after the application has been issued.

If you have ticked box 1, box 4 or box 5 above, the court will need any available evidence of the following:

- the housing needs and resources of you, the respondent and any relevant child
- the financial needs of you and the respondent
- the likely effect of any order, or any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise.

If you have ticked box 2 above, the court will need any available evidence of:

- the housing needs and resources of you, the respondent and any relevant child
- the financial resources of you and the respondent
- the likely effect of any order, or of any decision not to make an order on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise
- the length of time that has elapsed since you and the respondent ceased to live together
- where you and the respondent were married, the length of time that has elapsed since the marriage was dissolved or annulled
- where you and the respondent were civil partners, the length of time that has elapsed since the dissolution or annulment of the civil partnership

Section 6 (continued)

- the existence of any pending proceedings between you and the respondent:
 - under section 23A of the Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.)
- or under Part 2 of Schedule 5 to the Civil Partnership Act 2004 (property adjustment on or after dissolution, nullity or separation)
- or under Schedule 1 para 1(2)(d) or (e) of the Children Act 1989 (orders for financial relief against parents)
- or relating to the legal or beneficial ownership of the dwelling-house.

If you have ticked box 3 above, the court will need any available evidence of:

- the housing needs and resources of you, the respondent and any relevant child
- the financial resources of you and the respondent
- the likely effect of any order, or of any decision not to make an order, on the health, safety and well-being of you, the respondent and any relevant child
- the conduct of you and the respondent in relation to each other and otherwise
- the nature of your and the respondent's relationship
- the length of time during which you have lived together as husband and wife or civil partners
- whether you and the respondent have had any children, or have both had parental responsibility for any children
- the length of time that has elapsed since you and the respondent ceased to live together
- the existence of any pending proceedings between you and the respondent under Schedule 1 para 1(2)(d) or (e) of the Children Act 1989 or relating to the legal or beneficial ownership of the dwelling-house.

Section 7

Under section 40 of the Act the court may make the following additional orders when making an occupation order:

- impose on either party obligations as to the repair and maintenance of the dwelling-house
- impose on either party obligations as to the payment of rent, mortgage or other outgoings affecting it
- order a party occupying the dwelling-house to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy it
- grant either party possession or use of furniture or other contents

- order either party to take reasonable care of any furniture or other contents
- order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

Section 8

If the dwelling-house is rented or subject to a mortgage, the landlord or mortgagee must be served with notice of the proceedings in Form FL416. He or she will then be able to make representations to the court regarding the rent or mortgage.

Section 10

A person living in the same household may, for example, be a member of the family or a tenant or employee of you or the respondent.

End of Examination Paper