



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 2013-14, 22nd edition, M Oldham, Oxford University Press, 2013.**
- 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 ballpoint 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. Evaluate the impact and significance of the Human Fertilisation and Embryology Act 2008 (HFEA 2008) on the concept of parentage and assisted reproduction.

(25 marks)

2. In the case of *Lloyds Bank v Rossett* (1990), the House of Lords stated 'there must be a distinction between cases where there is an agreement between the parties to share the property, and cases where there was no express common intention to share'.

Critically analyse this statement with reference to sole name constructive trusts.

(25 marks)

3. (a) Critically analyse how the conduct of the parties can affect the distribution of assets on divorce.

(10 marks)

- (b) Critically assess the availability of financial relief for children under Schedule 1 Children Act 1989 (CA 1989) and what the court would take into consideration when making an order.

(15 marks)

(Total: 25 marks)

4. (a) With reference to case law, analyse how the European Court of Human Rights played a major role in the enactment of the Gender Recognition Act 2004 (GRA 2004).

(18 marks)

- (b) With reference to a civil partnership, explain the significance of the decision in *Wilkinson v Kitzinger* [2006].

(7 marks)

(Total: 25 marks)

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

Question 1

Paul and Thomas have had a sexual relationship for eight years. Three years ago they decided to purchase a home together. At the time, Paul was working as a quantity surveyor, whilst Thomas was undertaking voluntary work, in conjunction with his self-employed work as an artist. The mortgage was granted to Paul, and the house was placed into Paul's sole name.

Shortly after they moved into the property, Thomas gave up his work as an artist, but he continued with the voluntary work. Although Thomas had not sold many paintings, Paul was furious that the only income now coming into the household was his. As time went on, Paul was feeling the strain of paying all the household bills and working long hours. He would often arrive home in a terrible state to find Thomas playing computer games. Paul has started to drink excessively and has become argumentative. He has frequently referred to Thomas as 'lazy and untidy'. Paul has threatened to throw Thomas out of the house on several occasions, and has also threatened him with violence.

Last week, following another argument, Paul grabbed Thomas by the throat, pinned him up against the door and threatened to kill him if he did not get out of the house that night. When Thomas refused, Paul dragged him out of the house into the garden, threw him to the ground and began kicking him, and shouted 'if I see you around this area again I will kill you'. Thomas ran from the property, terrified. He has been living with friends. He has no family in the area and is upset that he has been forced out of his home.

The relationship has broken down, and Paul and Thomas are no longer together.

Advise Thomas:

- (a) what action he can take, if any, in an attempt to prevent further violence from Paul;

(8 marks)

- (b) what action he can take, if any, to remove Paul from the home, and allow him to return.

(17 marks)

(Total: 25 marks)

Turn over

Question 2

Adil and Sundus are both aged 49 years. They have been married for 15 years. They have two children, Jaspreet and Mohammed, aged 11 and 4 respectively. Adil has recently admitted that he no longer loves Sundus and has started divorce proceedings.

Adil is a successful barrister, generating an income of £300,000 per annum. Sundus was his clerk, and she worked in that role until the birth of their daughter Jaspreet, 11 years ago. Her income was £20,000 per annum. She gave up her role as a clerk at the request of Adil, whose career was thriving. Adil made it quite clear that Sundus would need to focus her attentions on the home and the children.

The matrimonial home is a five-bedroomed property. It is worth £600,000 with a mortgage of only £46,000. They also have holiday homes in Florida and Madeira, both free of mortgage, and valued at £230,000 and £210,000 respectively.

Sundus has a small amount of savings, £6,000, but otherwise no sole assets. Adil has savings of £34,000 and a private pension.

Both children attend private school, with monthly fees of £2,000. Sundus has a privileged lifestyle in terms of having beauty treatments, regular shopping trips and weekends away with friends. Sundus feels that she has earned those privileges because she has supported Adil in his career by hosting dinner parties, dealing with his accounts and being responsible for all matters relating to the home and the children.

Advise Sundus on the likely financial provision she can expect for herself and the children from the divorce, and the factors the court are likely to take into account.

(25 marks)

Question 3

Mark and Caroline have been married for 13 years. They have two children, William and James, aged 12 and 8 respectively. Caroline also has a child from her previous marriage, Annabel, who is 14 years old. Mark has always treated Annabel as his own child.

Annabel does see her natural father, Peter, an airline pilot, a few times a year. This usually involves special occasions and holidays. Contact is limited due to Peter's work commitments.

Mark and Caroline live with the three children in Dorset. Peter has a base in Spain and London.

Caroline is a successful professor of psychology, and has run her own consultancy business for two years. Recently the work has reduced because of the economic climate. Mark, a mechanic in a local garage, is currently working reduced hours. Caroline has been offered the opportunity to work in Australia, and all the family are keen to take it. Caroline has said she will accommodate contact between Peter and Annabel at Peter's convenience, and that he can even have holiday contact for two weeks each year. Peter has stated that he is not prepared to allow his daughter to be taken so far away, and he will do what is necessary to prevent this. He is also saying that due to his job, the long hours and transatlantic travel, he could not have Annabel living with him.

Caroline and Mark are devastated that Peter has said he will not allow them to take Annabel and move to Australia. They are angry because Peter hardly sees Annabel. Mark has taken the situation particularly badly. He was looking forward to a bright future in a new country. He has become depressed and started to drink excessively. As a result of showing up at work drunk, he has now lost his job. This has led to arguments between Caroline and Mark. Mark has repeatedly said 'having Annabel is the problem, and it has always been a problem, putting her before my boys all the time'. Mark spends a lot of time at his parents' house and staying with friends, and Caroline is struggling to see a future together.

Explain:

- (a) what application Peter can make to prevent removal of Annabel to Australia, the factors to be considered including specific case law, and the impact of Article 8 European Convention of Human Rights (ECHR);

(17 marks)

- (b) what action Caroline can take to end her marriage if she decides it is over.

(8 marks)

(Total: 25 marks)

TURN OVER

Question 4

Cara and Fiona, both aged 21 years, met in September 2011 when they arrived at Kempston University to start their degrees in Law. They were allocated accommodation near to each other in the halls of residence. Their relationship started as friends, but then they fell in love with each other. Until recently, they have managed to keep details of their relationship with each other secret from their families. They also made the decision, because of Fiona's wishes, not to have a sexual relationship until they had entered into the civil partnership.

In September 2013, they both announced to their respective families that they were a couple, that they had a flat together and that they had booked their civil partnership ceremony for 24th December 2013. Cara's family, although shocked, were pleased for their daughter and like Fiona very much. Fiona's family were shocked and angry and told her that she is no longer their daughter.

Fiona had been extremely upset by the events and feels guilty because she had not told Cara that as a child she was a boy, and that she had been undergoing a gender change with the final surgery scheduled for early February 2014.

Fiona became depressed. Fiona and Cara started to argue a lot. Fiona noticed that Cara became possessive. Fiona told Cara that she wanted to cancel the civil partnership ceremony and wait a while. Cara was extremely angry and told Fiona that the ceremony would go ahead even if she had to drag Fiona there. Cara's family also made it quite clear to Fiona that they would not allow her to break their daughter's heart, and if Fiona did not go through with the civil partnership they would make sure she never had another relationship. Fiona then told Cara about being born a boy and undergoing the sex change in an attempt to stop the ceremony. Cara chose not to believe this.

On 24th December 2013, the civil partnership ceremony went ahead. Cara, using force, dressed Fiona for the ceremony. Cara dragged Fiona into the hotel where the ceremony was due to take place and gripped her hand tightly throughout, nudging her to answer questions. That evening, it became apparent to Cara that Fiona was telling the truth about her sex change.

The relationship has broken down.

Advise the parties how they can end the civil partnership.

(25 marks)

End of Examination Paper

© 2014 The Chartered Institute of Legal Executives

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com