



CHIEF EXAMINER REPORT

June 2024

LEVEL 6 UNIT 20 – THE PRACTICE OF FAMILY LAW

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

It is important for candidates to read each question carefully and answer as instructed.

Where an answer requires reference to factors, or principles, candidates should clearly state the factor with some explanation and then apply to the client situation before moving on to the next factor. In this exam, several candidates listed the factors and then moved on to application but without clearly linking application to the relevant factor.

Well-prepared candidates were able to answer as instructed and to show knowledge and understanding at the standard required. On occasion, responses were too brief and lacking the detail required.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Question 1a	7 marks
<p>A number of candidates wrote about both non-molestation orders and occupation orders despite the question instructing them to “explain the order” (singular) and only allocating 7 marks. A significant number of candidates also referred to a power of arrest being requested. This is now automatically in place when a non-molestation order is issued. A few candidates showed current knowledge by referring to the new DAPN’s and DAPO’S currently undergoing trials and gained credit.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • S42 FLA 1996 Non-molestation order – an order to prevent the defendant molesting the applicant or any relevant child • Domestic Abuse Act (DAA) 2021 now provides a statutory definition of domestic abuse (1) • This includes a wide variety of behaviour including verbal abuse, physical abuse, threats of abuse and financial abuse • The non-molestation order has a power of arrest attached and s42A FLA 1996 makes the breach of a non- molestation order a criminal offence which is punishable with up to five years’ imprisonment • It is an arrestable offence and the applicant can simply telephone the police to report the breach • Here, Mrs Thornton has been subjected to verbal and physical abuse, and also coercive and controlling behaviour. A non-molestation order would protect her and the children. 	

Question 1b	16 marks
<p>Knowledge of home rights, the basis of Mrs Thornton’s entitlement, was on occasion disappointing. Candidates were generally able to identify the 3 key factors and apply and were also able to explain and apply the balance of harm test.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • S33 (1) FLA 1996 Occupation order by an applicant entitled to occupy either because of a beneficial interest in the property or because of home rights • Home rights apply when two people are married/in a civil partnership but the property is only in the sole name of one of them. The non-owning spouse/civil partner will have the protection of home rights • S62 FLA 1996 Applicant and owner must be associated persons – covers a range of relationships • The property concerned must be the family home • Mr and Mrs Thornton are associated persons as they are married. • The property High Trees is the family home • Court can make a range of orders • Court will consider the following factors: <p>Housing needs and resources of applicant and defendant</p> <ul style="list-style-type: none"> • Here Mrs Thornton needs a home for herself and her children and does not have the means to finance one. Her husband could afford alternative accommodation and also has university accommodation available <p>Financial resources of applicant and defendant</p> <ul style="list-style-type: none"> • Mr Thornton is the wage earner currently, while Mrs Thornton cares for their children and is has no income of her own 	

The likely effect of an order on the health, safety and well-being of the parties and children

- Mrs Thornton and the children will become homeless if they cannot stay in High Trees. If Mr Thornton is allowed to return then their safety will be at risk
- The court will also consider the balance of harm test
- If it appears that the applicant or any children are likely to suffer significant harm caused by the defendant if an order is not made then the court must make an order unless
- It appears that the respondent or any child is likely to suffer significant harm if an order is made and that harm is likely to be greater than the harm if an order is not made
- In this case, Mrs Thornton and the children are more at risk of harm if an order is not made, than Mr Thornton is if an order is made.

Question 2a

6 marks

The well-prepared candidates were able to identify the third-party debt order as the “most suitable enforcement action” in the circumstances and were able to explain, with a significant number being able to produce strong responses. Other candidates made a range of suggestions, including taking a charge on the property, which were not the most suitable in light of the situation described.

Suggested Points for Response:

- Re the lump sum order of £150,000, Mr Wilkins did disclose £185,000 in his sole name held with the Kempston Building Society. The most suitable course of action would be to apply for a third-party debt order against these accounts
- An application without notice should be made to the Family court which granted the Consent order
- Must provide evidence of the order sought, the total arrears (here £150,000) and the third party (Kempston Building Society) who owes money to the defaulter (Mr Wilkins)
- The court would initially make an interim order for Mr Wilkins as the defaulter to show cause why the order should not be made
- This interim order would be served on Mr Wilkins and the Kempston Building Society and the proceeds in the account would be frozen
- A date would then be fixed for the full hearing when the court can make a final order requiring the Building Society to pay the monies of £150,000 owed to Mrs Wilkins direct from Mr Wilkin’s account

Question 2b

6 marks

This question has been asked in previous exam series and the pre-release case study clearly indicated an issue with child maintenance. A minority of candidates were able to identify more than a couple of the enforcement actions.

Suggested Points for Response:

- The CMS has a range of powers that are used against the non-resident parent. Deductions from earnings orders can be served on the non-resident parent’s employer requiring them to make deductions from salary and pay this to the CMS who pay it to the resident parent. The charge for this is £50
- This is not available where the non-resident parent is self-employed
- 2) Deductions from banks or building societies are used where the non-resident parent is self-employed. Require the bank to pay money directly to the CMS. The charge for this is £50
- If a DEO is not effective the court action can be taken.
- A liability order is obtained where the CMS apply to the Family Court giving the non-resident parent 7 days’ notice of the application. Where the court is satisfied the payments are due then a liability order will be issued
- The CMS then consider the means of enforcement which can include:

- registration of a charge at HMLR
- seizure of goods
- freezing bank accounts
- third party debt orders
- deductions orders
- attachment of earnings order
- committal order

Question 2c

11 marks

Another topic that has been examined previously and an issue that is increasing in importance as marriage rates fall and cohabitation increases.

Suggested Points for Response:

- The main remedy for a co-habitant if a relationship breaks down is to claim a beneficial interest (an express, resulting or constructive trust) in the home under s14-15 Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996).
- Anton cannot establish an **express trust** as the property will be held in Mrs Wilkin's name.
- Anton cannot establish a **resulting trust** as this requires a contribution to the purchase price. The property is to be transferred into Mrs Wilkin's name, Anton, who is unemployed, will not have contributed .
- Anton would have to try to claim a **constructive trust**. This requires a common intention between the parties and action by the non-legal owner to their detriment, Lloyds Bank v Rosset [1990].
- The common intention can be either express or implied through conduct. Financial contributions such as paying for home decoration or buying furniture is not enough, Lloyds Bank v Rosset (1990).
- Payment of household expenses may suggest a beneficial interest if this has allowed the beneficial owner to pay the mortgage ie a sharing of costs.
- Currently, Mrs Wilkins has the responsibility for paying household bills, subject to a small contribution from Anton. She needs to continue on this basis and not receive any significant payments towards household expenses from Anton.
- Further protection could be provided by preparing a cohabitation contract addressing arrangements whilst Mrs Wilkins and Anton are co-habiting and on the breakdown of the relationship.
- The contract should include reference to Mrs Wilkins as the sole owner of the property and also that any payment by Anton towards household bills does not count as a contribution which entitles him to claim an interest in the house.

Question 3a	12 marks
Several candidates listed the s10(9) factors, and then proceeded in a follow up paragraph to attempt application. However, this approach did not always provide clarity on which factor was being applied.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Mr and Mrs Cotton should apply for a Child Arrangements Order (CAO) under s8 Children Act (CA) (1989) in order to formalise contact with Lottie. This is an order which states who a child should live with and who a child should have contact with. Contact can be direct or indirect (e.g. phone calls, letters, texts). M/s Madison would have to comply with the order. • As grandparents Mr and Mrs Cotton do not come within the list of those automatically entitled to apply for a section 8 order under the Children Act 1989 (s.10(4) and (5)). They will need leave of the court to apply for a CAO • (s. 10(2)(b)) • The court would need to consider their application for leave (usually at a hearing) using the factors in s.10(9) <p>The nature of the proposed application:</p> <ul style="list-style-type: none"> • Mr and Mrs Cotton should be advised to apply for a CAO to identify when they should see and spend time with Lottie <p>The applicant's connection with the child :</p> <ul style="list-style-type: none"> • The Court of Appeal has said that grandparents ought to have a special place in any child's affection worthy of being maintained by contact, <i>Re M</i> [1995] 2 FLR 86. • Mr and Mrs Cotton are Lottie's paternal grandparents and so have a biological connection to her. Until recently Mr and Mrs Cotton were actively involved in Lottie's life, providing child care while her mother worked <p>Any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it:</p> <ul style="list-style-type: none"> • In <i>Re M</i> the court said the risk had to be disruption to an extent that the child would be harmed by it. Harm here meant impairment of health and development. A child's upset unhappiness, confusion or anxiety needed to be particularly severe before it could amount to an impairment of emotional, social or behavioural development • It is highly unlikely on the current facts that M/s Madison can establish there is any risk of harm as Lottie has until recently had regular contact. • Applying the s 10(9) criteria it therefore seems likely that Mr and Mrs Cotton would be granted leave to apply as they have a very strong relationship with their grandchild. However the fact that leave has been granted does not create a presumption in favour of a substantive order or elevate a person who is not a natural parent to the position of a natural parent. This would mean that the court would consider the application for the subsequent section 8 order separately 	

Question 3b	18 marks
Where witnessed, poor performance was often due to candidates not being able to clearly state the factors and not being able to show understanding through application. Again, several candidates listed factors, the welfare checklist factors, and then proceeded in a follow up paragraph to attempt application. However, this approach did not always provide clarity on which factor was being applied or show application of all factors.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • In deciding whether to grant a s8 order, the court will consider the principles under the Children Act (CA) 1989. The "welfare principle" states that the welfare of the children will be the court's paramount consideration. The welfare of the children must be considered above all other wishes including those of the parents. The welfare checklist lists factors to be considered. 	

The court will also consider the no delay principle, the no order principle and the presumption of parental involvement.

- The court will apply the s.1(3) welfare checklist:-

The ascertainable wishes and feelings of the child (considered in light of age and understanding):

- Lottie is 5 years old. She has told her father that she misses her grandparents. At the age of 5 years she will be considered too young for the court to attach much weight to her views.

The child's physical, emotional and educational needs:

- the courts have recognised the important part that grandparents can play in their grandchildren's lives.
- Until recently Lottie was regularly cared for by her grandparents. In light of her the fact that her father's work makes it very difficult for him to see her, her relationship with her grandparents will be important in meeting her emotional needs. Provided visits could be arranged at suitable times they need not affect her educational needs.

the likely effect on the child of any change in circumstances:

- the court will aim to preserve the status quo
- Lottie is used to seeing their grandparents on a very regular basis and stopping contact is a change to the status quo. Requesting this to be reinstated will be considered.

the child's age sex, background etc:

- This involves a wide range of considerations.
- In Lottie's case, she can no longer see her father due to the location of his job so seeing her paternal grandparents would help to maintain the link to that side of her family

any harm that the child has suffered or is at risk of suffering:

- harm can be physical harm or emotional harm
- The court is likely to find that Lottie could suffer (emotional) harm by not seeing her grandparents particularly in light of lack of previous contact with her father due to his work.

how capable the parents or grandparents are of meeting the child's needs:

- this is not an issue here. There is no suggestion that Mr and Mrs Cotton cannot look after Lottie as they have done so regularly for the first 5 years of her life

the range of powers available to the court:

- the court could make any section 8 order e.g. CAO etc
- although realistically they will only make a child arrangements order here. As the parties appear to be in dispute the court will have to make an order to resolve the issue (no order principle)

Question 4a

9 marks

Most candidates were able to state the ground for divorce, referencing the DDSA 2020. However, a number of candidates failed to recognise that a divorce cannot be requested within the first year of marriage. Very few candidates picked up on the issue of domicile and whether an English court would have jurisdiction.

Suggested Points for Response:

- S3(1) Matrimonial Causes Act (MCA) 1973 Divorce proceedings cannot be commenced during the first year of marriage
- Mrs Downes will have to wait until June 2025 before she can make an application
- S5(2) Domicile and Matrimonial Proceedings Act (DMPA) 1973 sets out the basis on which the court has jurisdiction
- The key factors considered are "domicile" (main and permanent home) and "habitual residence" (where the parties are currently living)
- Here Mr and Mrs Downes are both domiciled in England and Wales and habitually resident here so Mrs Downes can apply for a divorce here

- S1(1) Divorce, Dissolution and Separation Act (DDSA) 2020
- The ground for divorce is irretrievable breakdown of marriage
- The DDSA 2020 introduced the concept of “no fault” divorce – there is no longer a requirement to satisfy a “fact”
- Mrs Downes simply needs to state that her marriage has irretrievably broken down and does not need supporting evidence,
- Mr Downes cannot object

Question 4b	9 marks
Most candidates were able to show sufficient knowledge of procedure.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Complete and submit application form (on-line via divorce portal or by form D8 by post) • Need to send marriage certificate and fee • Must also include a statement that the marriage has broken down irretrievably • A copy of application must be served on Mr Downes, the respondent, together with an acknowledgement of service form which must normally be returned within 14 days • The respondent can no longer contest the divorce, unless there is an issue with procedure • Once service is acknowledged there is a 20 week “cooling off” period to consider position and to sort out finances etc • After 20 weeks can apply for a conditional order and if all documents in order a certificate of entitlement will be issued • After 6 weeks and a day can apply for the final order which ends the marriage • A divorce should be obtained within 6 months 	

Question 4c	6 marks
Candidates often struggled on this question relating to the costs of a divorce and funding.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Filing fee is currently £593 and additional costs will be incurred if using services of a solicitor • Legal aid is only available where there has been or is a risk of domestic abuse • It is possible to apply to have the court fees waived or reduced by applying for help with costs using Form EX160 • Eligibility depends on the applicant’s income and savings and what benefits they are in receipt of • Alternatively, it is possible for the respondent to agree to accept some responsibility for the cost • In view of Mrs Downes current financial position, she should be advised to apply for the divorce herself using the online application and also apply for help with the fee 	