



University of
HUDDERSFIELD

**THE LAW SCHOOL
LLB (HONOURS)**

BHL0017

FAMILY LAW

**COURSE MANUAL
TERM 1 2008-2009**

MARY ATKINSON

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1. Module Code	BHL0017
2. MODULE TITLE	Family Law
3. Schools involved in delivery	HUBS
4. Name of Course(s)	LLB (Hons), LLB (Hons) Business Law
5. Module Leader	Mary Atkinson
6. Location for delivery	Queensgate, Oldham & Holborn
7. Module Type	Optional
8. Credit Rating	20
9. Level	Honours
10. Learning Methods	Lectures: 36 hours Tutorials: 12 hours Self Directed Study: 152 hours
11. Pre-requisites	None
12. Recommended Prior Study	Administration of Justice and Human Rights BIL0006 & BHL0031
13. Co-requisites	None
14. Professional Body Requirements	None
15. Barred Combinations	None
16. Graded or Non Graded	Graded
17. Synopsis	

Family law governs the relationships between members of a family and between the state and the family. This module looks at the law applicable to the breakdown of marriage/civil partnership or cohabitation and the legal powers available to social service departments of local authorities in their function of protecting children.

18. Outline Syllabus

The syllabus examines the legal provisions governing family relationships. Consideration will be given to validity of marriage, divorce, cohabitation, the financial consequences of the ending of a family relationship, the resolution of disputes involving children and protection from domestic violence. The financial consequences will cover those between adults and also adults' financial obligations towards children. The legal basis of state intervention into the life of a family is also examined. Consideration will be given to parental responsibility and a child's rights, the powers and duties of the local authority in respect of family support and preventative action, the acquisition of compulsory powers of protection, the extent to which a local authority's decisions may be challenged in court and to the law of adoption applicable to looked after children.

19. Learning Outcomes

Knowledge and Understanding Outcomes

On completion of this module students will:

- 1 have a knowledge of the main legal elements of family law and practice governing family relationships between adults and between adults and children.
- 2 understand the circumstances in which state intervention in the life of a family is legally justified.

Ability Outcomes

On completion of this module students will be able to:

- 3 advise family members as to their rights, powers and responsibilities with respect to personal and property interests when family relationships breakdown.
- 4 advise parents, the child, others having a legitimate interest in the life of the child and the local authority as to their respective rights, powers and responsibilities with respect to a child at risk.
- 5 critically evaluate the extent to which family law provides an appropriate framework to protect the personal and property interest of adults and children when family relationships breakdown.

20. Assessment Strategy

20.1 **Formative assessment**

A range of formative devices typically in-class tests, formative feedback on summative assessments, reviews of files and folders etc., will be used by tutors to aid learning. The exact nature of these assessment devices is at the discretion of the module tutor.

20.2 **Summative Assessment**

Assessment tasks (including assessment weightings)

1. 3-hour examination (70%) (Learning Outcomes 1-5)
2. Coursework 2500 words (30%) (Learning Outcomes 1-5)

Assessment Criteria

The assessment criteria are as set out in the Huddersfield University Business School Assessment Guidelines. The guidelines provide criteria for the assessment of both coursework's and examinations.

21. Learning Strategy

The syllabus will be taught through lectures and tutorials. Students will be expected to undertake preparation of answers to problem/policy questions for discussion in tutorials. The questions will be related to the learning outcomes of the module. Students will also be expected to participate in self-assessment tests on Blackboard and utilise the additional materials provided on Blackboard in preparation for tutorials.

22. Indicative Reading

Family Law
Statutes on Family Law
Family Law
Bromley's Family Law
Principles of Family Law
Family Law Journal
Child and Family Law Quarterly

K Standley
M Oldham
Welstead & Edwards
Lowe & Douglas
S Cretney & J Masson

AN INTRODUCTION TO FAMILY LAW

ABOUT THIS MODULE

The aim of this module is to provide a broad knowledge of family law. In term one, consideration will be given to the law as it relates to adults within family proceedings; how formal relationships are formed, how they are ended and what happens to property and finances when the relationship ends. Term two looks at the law as it relates to children; what rights parents have over their children, how matters of residence and contact can be resolved when a couple separate and what rights, powers and responsibilities parents and local authorities have with respect to a child at risk.

Term one of the module is broken down into five units which are set out in the teaching programme. Each unit has a series of lectures followed by a linked tutorial, with the exception of Unit 5. Unit 5 is the law on domestic violence. This unit forms the subject of the coursework and students will be expected to conduct their own research into this area of law.

LECTURES

The primary aim of lectures in this module is to give you guidance on the basic principles of family law. The reading specified for the unit tutorial is also the relevant reading for the lecture. Whilst the reading is vital in preparation for the tutorial you will also find it helpful in understanding the lectures.

You are provided with a lecture outline in respect of each unit of study. Lectures are not intended to give you a comprehensive and complete set of notes. Lectures point you in the right direction for your own independent study. Listen carefully to what is said in lectures, use your lecture handout and make brief notes that contain key words. Do not attempt to write down all that the lecturer says. If you try to do this you will not keep up. Remember lecturers are not giving dictation. After the lecture, you should go away and expand on these notes from your reading. Detail is very important here since it is these notes that will form the basis of your revision notes. Time spent on these now will make life a lot easier for you when the exams loom. Furthermore good comprehensive notes will enable you to obtain the highest grades.

TUTORIALS

Tutorials have various aims. These include:

To develop your analytical skills: in particular, to enable you to dissect factual situations in order to pick out the facts which have legal significance and to apply the relevant rules of law to them;

To develop your awareness of the social and to some extent the political environment in which family law operates;

To enable you to deepen your knowledge and understanding of the subject through directed reading;

To give you time to discuss any issues or aspects that you find difficult;

Finally, and not least, tutorials are provided to enable you to develop good techniques that ensure success in the examination which, as stated earlier, is very important in this subject.

None of this can happen unless you make proper preparation for each tutorial. The course contact time allows you approximately 6 hours per week for a 20 credit module to prepare for your tutorial, so there is no reason why you should not prepare thoroughly.

Remember to make a note of any questions you have arising from your reading – any difficult points or ambiguities that you want cleared up – and make sure that you raise these at the tutorial.

Work through the questions on the tutorial sheet and make notes on the answers. These need not be written out in essay style, but the notes should be full enough to be comprehensible. Try to work all the way through to a conclusion.

In doing this bear in mind that every legal statement must be backed up with authority; that means that you need to be able to refer to a case or statutory provision which establishes the point you are making.

Bear in mind also what you have been asked to do: Is it to “Advise X” or “Discuss” or something else? If the question is not a problem-style question, make notes of the points you would make for and against the proposition that is under discussion.

After the tutorial, review the whole topic and ensure that your notes are complete and that there is nothing that you have not understood.

Before some tutorials, students will be required to take electronic tests on Blackboard to check understanding. The results of these tests will be available at the corresponding tutorial.

PARTICIPATION IN PRE-TUTORIAL TESTS IS A COMPULSORY PART OF THE MODULE

ATTENDANCE AT TUTORIALS

Your attendance at tutorials is compulsory and records will be kept.

You are not allowed to change tutorials groups without permission. This is only granted in EXCEPTIONAL circumstances

BOOKS

The recommended textbooks are:

Essential Reading

Family Law – Kate Standley, 5th edition, 2006 (Palgrave Macmillan Law Masters)

OR

Family Law – Jonathan Herring, 3rd edition, 2007 (Pearson Longman)

Blackstone’s Family Law Statutes 2006/07 – 15th edition, **ed. M. Oldham**

Additional Reading

Family Law – **Mary Welstead & Susan Edwards**, 2006 (OUP Core Text Series)

Family Law: Text, Cases & Materials – **Bailey, Harris Short**, 1st edition, 2007 (OUP)

ASSESSMENT

Coursework 30%
Examination 70%

Please note that NO materials or statute books whatsoever are allowed into the examination.

COURSEWORK

The Coursework for Family Law will be put up on Blackboard at the start of term. You will be advised of the submission date during Term one. The penalties for non-compliance with the submission date are set out in your Student Handbook. A coursework front cover sheet will be available during Term one.

REVISION

Start your revision sooner rather than later, do not leave it to the last minute. Experience suggests that until you understand evidence you cannot begin to learn it. Therefore before you try to learn, read, read and read again your notes and textbook.

EXAMINATION

Note that the examination is 3 hours long. Please note that NO materials or statute books whatsoever are allowed into the examination

There is a copy of a sample examination paper within this pack although please note that this is a past examination paper and the Family Law teaching team reserve the right to amend the format and structure of the paper as necessary. You will be advised of any amendments to the structure of the paper prior to the examination.

TEACHING STAFF

The following staff teach this module:

Huddersfield: Emma Seagreaves
Vince Pescod

THE FAMILY LAW COURSEWORK
will be put up on Blackboard at the start of Term1.

PERFORMANCE INDICATORS

Your work will be graded accordingly to the following criteria, which are also set in the Assessment Guidelines set out in your Student Handbook.

The criteria are not intended to be either exhaustive or definitive and are to be taken as guidelines rather than imposing absolute standards.

Grade A (70%+) (Excellent Pass)

A piece of work should fall within this class if:

- (a) It displays an ability to analyse and answer questions with a completeness and authority. A high level of comprehension is present. The marker should have an overall impression that a higher overall standard could not have been achieved; or
- (b) The student has produced an original and incisive piece of work that shows a high level of scholarship; or
- (c) The work contains elements of both (a) and (b) above in such a way as to indicate that the work is deserving of the highest grade.

Grade B (60—69%) (Good Pass)

A piece of work in this category should display a high level of competence, having regard in particular to the points specified above.

Grade C (50-59%) (Competent Pass)

A piece of coursework in this grade should display overall competence, however it will be lacking in analytical depth and /or display a limited comprehension of the subject matter so that the work falls short of a B grade. A good deal of the relevant content may have been presented by the student but this will be less well articulated and developed than the grade B student. The more difficult legal concepts will be omitted or dealt with superficially. The application of the law to the problem/question will be more limited and perhaps dealt with in a more “re-gurgitative” manner. The work may contain minor errors of law, however there should be no major misunderstandings.

Grade D (40-49%) (Bare Pass)

Work will fall into this category if it contains relevant material in relation to the issues raised by the problem/question, including the central issue. The law will be presented in a coherent and largely correct manner, although the analytical aspects and comprehension will be of a limited nature. Use of legal authorities will be poor and the overall coverage of the subject matter will be of a limited nature.

Grade E (30-39%) (Marginal Fail – Normally a Referral)

Work in this category has elements that are correct, however the work displays a number of major misconceptions that call into question the student's comprehension of the material. The analytical contents may be very weak or even non-existent. Application of the law to the problem may be weak. Overall coverage may be poor. Reference to legal authorities will be weak or inappropriate. Structure may be weak.

Grade F (0-29%)(Outright Fail)

The work is limited and contains fundamental errors that indicate a substantial lack of comprehension by the student. There will be little or no analytical content and the references to legal authorities will be very limited or non-existent. The presentation and structure of the work may be poor. The work may also be characterised by falling far short of the overall word limit and possibly repetition of material or arguments. Conclusions may be non-existent or limited.



Huddersfield University Business School

LAW SCHOOL

FAMILY LAW

BHL0017

Summer 2008

Time Allowed: 3 hours

Section A of the paper counts for 50% of the total marks available. Attempt **ALL PARTS OF THE QUESTION** in this section.

Section B of the paper counts for 30% of the total marks available. Attempt **ONE** of the questions in this section.

Section C of the paper counts for 20% of the total marks available. Attempt **ALL** questions in this section. The answers are to be written on the Multiple Choice answer sheet provided. Attach your answer sheet to your answer book with the tag provided. Please put your seat number in the space provided.

Students may use an UNMARKED statute book

THIS QUESTION PAPER MUST BE HANDED IN AT THE END OF THE EXAMINATION WITH YOUR ANSWER BOOKLET.

Section A: Attempt **ALL PARTS OF THE QUESTION** from this section.

Sally, now aged 45, married Robert, now aged 61, fifteen years ago. They have two children, Jimmy, who is aged 13 and Katie who is aged 7 years. The marriage for Sally was her first but Robert had been married previously and has one child from that marriage, Heather, who is aged 16 years. Robert's first wife died, leaving him to bring up Heather alone. When he married Sally, Sally accepted Heather as a child of the family.

Robert is an extremely unpleasant man and Heather takes after him. They both treat Sally as just a household drudge, constantly criticising everything she does. They mock all her efforts and interests and her confidence has been totally undermined. She has put up with this over the years for her own children's sake. However, Sally feels now that she cannot live with this unpleasant behaviour much longer and, two months ago, she left Robert, taking the two younger children with her.

Robert has remained with Heather in the family home, a large six bedroomed detached property in the joint names of Robert and Sally. The house is mortgage free – Sally is unsure of its exact value but believes it to be worth in the region of £600,000. Robert is a hospital consultant with a high salary of £120,000. He has also contributed to a pension scheme throughout his working life which is now worth a considerable amount. However, Robert is due to retire in two months time. His salary will, therefore, end – but he will receive an income from his pension and will also take a lump sum from the pension upon retirement. Sally does not know the value of the pension but, prior to separation, she had heard Robert talk of getting a lump sum from the pension of £100,000. She knows that Robert also has some savings but is unsure of the amount.

Sally originally trained as a nurse but gave up work early on in the marriage to run the home and bring up the children. As it is 15 years since she last worked, she is unsure whether she could actually go back to work but has heard that the NHS are accepting nurses in her situation back into the profession with some training. Sally herself has no savings of her own, however, six months ago, her elderly aunt died, leaving Sally her house by way of inheritance. The house has been on the market for sale and has just been sold. Sally is waiting to receive the proceeds of sale from her solicitors, which she understands will be about £70,000.

Sally is currently living in a rented flat with the younger children. She is receiving voluntary maintenance from Robert of £800 per month but this is not enough to meet her monthly outgoings of £1300. She has not approached the CSA for an assessment of Robert's means.

TURN OVER

The children see Robert regularly but Jimmy has announced to his mother that he wishes to return to the family home to live permanently with Robert and Heather. He hates living in the flat and Sally has little money to buy him things, whereas his father spoils him with presents. He also gets on with Heather as they are nearer in age than he is to Katie.

Sally is horrified at the thought of Jimmy returning to live with Robert and has refused to allow this. Jimmy has told his mother that if she will not allow him to live with Robert then he will just go anyway and will never come back to see her. Sally is very upset at this and feels that Robert has been influencing Jimmy to say these hurtful things to her, just to get at her. Katie told her that Robert "says nasty things about you mummy" when the children go to see him.

Advise Sally:

- (a) how the court is likely to resolve the question of ancillary relief (you do not need to advise her about the divorce itself);

[60 marks]

AND

- (b) how, and on what principles, the dispute about with whom Jimmy is to live will be resolved.

[40 marks]

TURN OVER

SECTION B : Attempt only **ONE** question from this section.

1. Maggie and Dave have lived together for the past 8 years and married 8 months ago. They have three children; Leanne aged 7, Max aged 4 and Martin aged 6 months. The relationship was going well until Maggie fell pregnant with the parties' youngest child, Martin. Dave was not convinced that the child was his because, a few months before she fell pregnant, Maggie had admitted to a short affair with their neighbour, Paul and, since then, on a number of occasions Dave has caught Maggie talking to Paul over the garden fence. When Maggie told Dave she was pregnant, he accused her of continuing the adultery with Paul. She denied this but, ever since the relationship has been stormy.

Since Martin's birth, Dave has refused to have anything to do with the child and calls Maggie a "slag" and a "whore" in front of the children. Three months ago, during an argument over Martin, Dave slapped Maggie, again in front of the children. Dave stated that he could not bear to be in the house with her and began to spend as much time as he could at work. This resulted in Maggie becoming depressed and Dave suspects she has started drinking, as he has found a number of empty bottles of vodka hidden around the house and noticed her slurring her words on several occasions. She has difficulty in keeping on top of the housework and seems to feed the children only "microwave" meals. Dave has neither talked to Maggie about this nor assisted her with the children.

Two months ago, Dave told Maggie that he had decided to try to make a go of the marriage for the sake of the children. That night he tried to make love to Maggie but found he could not. He is now blaming his impotence on her, saying that, because it is in the back of his mind about Paul, it is affecting his "manhood". Relations between Dave and Maggie have become even more strained since then and Dave has recently moved out of the family home.

Last month, Dave met Stephanie and now wants to divorce Maggie as soon as possible and marry Stephanie in three months time. Stephanie has not yet told Dave that she used to be called Stephen, as she was born a male but has been living in the female gender for about five years now. She has not yet undergone a sex change operation but is due to do so in six months time.

- (a) Advise Maggie and Dave whether either may petition for divorce;
[75 marks]

AND

- (b) Advise Dave as to the legal issues surrounding his intended marriage to Stephanie.
[25 marks]

TURN OVER

2. "Consultation has confirmed the Law Commission's provisional view that the law relating to cohabiting couples is unsatisfactory. It is complex, uncertain, expensive to rely on and, as it was not designed for family circumstances, often gives rise to outcomes that are unjust."

Cohabitation: The Financial Consequences of Relationship Breakdown - Law Commission Report: No 307 (July 2007)

Critically discuss this statement, with particular reference to the remedies available to cohabitants under the current law on the termination of their relationships, whether reform of the law is necessary and, if so, whether the proposed reforms would address the difficulties highlighted in the statement.

3. Lynne and Sam are the unmarried parents of Zoe aged three. Sam does not have parental responsibility. Sam and Lynne both alcoholics and addicted to Heroin and as a result have a very chaotic life style. They have both spent time in prison for burglary and theft. 18 months ago, under pressure from her social worker, Lynne agreed for Zoe to be accommodated by the local authority under s.20 of the Children Act 1989 and she was placed with foster parents.

Lynne and Sam agreed to regularly attend a clinic where they would be given treatment to deal with their drug addictions. Whilst this was taking place the local authority arranged for supervised contact to take place weekly at a Family Centre, where the parents would be given help in learning parenting skills.

Lynne and Sam have only attended three out of a possible eighteen appointments for supervised contact and have also missed ten sessions at the clinic dealing with their drug addiction. On five occasions they have taken Zoe away from the foster parents against the wishes of the local authority, only to return Zoe a few days later saying that they could not manage her care. They have also failed to attend the statutory reviews held to discuss Zoe's future.

Their excuse for these failures was that that they had temporarily separated and 'needed to sort their lives out'. They now say they are back together for good and are trying for another child. At the last review the local authority decided that they were unable to focus on Zoe and it was now in Zoe's best interests for her to be placed with prospective adopters. Lynne and Sam are adamantly opposed to Zoe's adoption.

If the adoption is to take place Lynne and Sam would like to have some contact with Zoe.

Beryl, Lynne's mother, a widow, aged 60 has recently retired and returned to live in the area and would like to take over as a full time carer for Zoe.

Discuss the legal position with regard to the local authority's plan to place Zoe for adoption, Fiona's wish to take over care of Zoe, and Sam and Lynne's desire to have some contact with Zoe, if the adoption takes place.

TURN OVER

4. Anna is the mother of three children, Donna aged 5, Wayne aged 7 and Jake aged 9. The father of the children was not married to Anna and moved to America soon after the children were born. Since moving to America he has had no contact with Anna or the children. Two years ago Anna was admitted to a residential unit for treatment of her chronic depression. Donna and Wayne were accommodated by Greenwood Social Services and placed with foster parents Mr and Mrs Murphy. Jake was looked after by Jean, Anna's mother aged 45.

Six months ago Anna was released from hospital and the children were returned to her but she proved unable to cope with them. They suffered severe neglect during the time in her care and Jake was regularly absent from school. With Anna's agreement Jake was then returned to the Murphy's, while Wayne and Donna returned to live with Jean. These arrangements have continued for the last ten months.

Anna has recently begun to live with Frank who has several convictions for offences of violence and indecent assaults on children. Anna has told social services that she believes he was wrongly convicted and that she and Frank are due to move into a new house next month. She then wants all three children to live with her and Frank.

Social Services are very concerned about this proposal in view of Anna's record as a parent and Frank's criminal record. Jean wishes to continue to look after Donna and Wayne. Jake wishes to continue to live with the Murphys. Social services consider that these arrangements would be in the best interests of the children.

Advise social services what steps they or any other of the parties involved can take in relation to Donna, Wayne and Jake to achieve this objective.

TURN OVER

SECTION C – attempt **ALL** questions in this section

Indicate by circling the appropriate letter on the attached multiple choice answer sheet, which of the answers (a), (b), (c) or (d) is correct.

1. A marriage is void if the parties are within the prohibited degrees of relationship. Which of the following relationships is **not** prohibited?
- (a) A woman and her father's father; or
 - (b) A 40 year old widower and his wife's widowed mother; or
 - (c) An adopted man and his natural mother's sister; or
 - (d) A divorced woman and her former husband's 20 year old son from an earlier marriage.

2. Kiran and Tariq have lived together in a flat for just over a year. Recently, their relationship has ended and they can now hardly bear to be in the same room together. Kiran is concerned that there may be violence if one of them does not leave the flat, however, she does not feel able to go because she has no alternative accommodation.

Can Kiran apply for an occupation order under s33 of Part IV of the Family Law Act 1996?

- (a) Yes - because she is an 'associated' person under the Family Law Act; or
- (b) No - because she is not married; or
- (c) Don't know - it depends on whether or not their flat is jointly owned or rented;
or
- (d) No - because there has been no violence.

TURN OVER

- 3 S1(2)(b) of the Matrimonial Causes Act 1973 states that a court on hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

Which of the following sorts of behaviour would not amount to behaviour under s1(2)(b)?

- (a) A wife unable to show her husband any demonstrative affection; or
 - (b) A wife who, through mental illness, behaved unpredictably and was unable to cook or do housework; or
 - (c) A husband prone to bouts of drinking and verbal abuse when under the influence of alcohol; or
 - (d) A husband who kept his wife short of money causing her to have to go out to earn money to pay for the family's food.
- 4 Adam and Shona are married. After several years of trying to conceive a child, they seek medical help and it is discovered that, whilst Shona is fertile, she is incapable of carrying a child. They approach Lily, who agrees to become a surrogate mother. She carries an embryo which has been created using one of Shona's eggs and Adam's sperm. Lily become pregnant and gives birth to Wayne. Wayne is brought up by Adam and Shona.

Which of the following statements is/are correct?

- (i) Wayne's biological mother is Shona;
 - (ii) Wayne's social mother is Shona;
 - (iii) Wayne's legal mother is Shona;
 - (iv) Wayne's legal mother is Lily.
- (a) (i) and (iii) only; or
 - (b) (i), (ii) and (iii) only; or
 - (c) (i), (ii) and (iv) only; or
 - (d) (ii) and (iv) only.

TURN OVER

- 5 Shefali has three children, Farooq, Asam and Fatima. Farooq is the child of her first marriage from which she was widowed. Asam and Fatima are the children of her second husband, Khashif. Farooq is 18 and is studying for his A-Levels. Adam is 17 and has just left his old school and is going to tech college to do a vocational qualification. Fatima is 14. Shefali and Khashif have just separated.

Which **one** of the following statements is correct?

- (a) All three children are qualifying children for the purposes of the Child Support Agency; or
 - (b) Only Asam and Fatima are qualifying children for the purposes of the Child Support Agency; or
 - (c) Only Fatima is a qualifying child for the purposes of the Child Support Agency; or
 - (d) Only Farooq and Fatima are qualifying children for the purposes of the Child Support Agency.
6. Simon and Debbie have one son, Nigel, aged 3. When Nigel was born Debbie wanted to return to work as soon as possible so Simon agreed to give up work to stay at home caring for Nigel. Simon was Nigel's full time carer until three months ago, when the relationship between he and Debbie broke down. At the same time, Debbie obtained a new job in Newcastle and moved there, taking Nigel with her. Simon has struggled to get to see Nigel on a regular basis because of Debbie's reluctance to negotiate contact. Simon has also just found out that Debbie is about to change Nigel's surname to her own from Simon's. Simon is advised about the following types of court orders:-
- (i) s8 residence order
 - (ii) s8 contact order
 - (iii) s8 specific issue order
 - (iv) s8 prohibited steps order

Which of the above orders would you advise Simon to apply for?

- (a) (i) and (iv) only; or
- (b) (i) and (iii) only; or
- (c) (ii) and (iv) only; or
- (d) (i), (ii) and (iv) only.

TURN OVER

7. James is aged 14 and subject to a care order. He lives with foster parents, Mr and Mrs Khan. James' father is dead and his mother's whereabouts are unknown. James was injured when he fell out of a tree in the Khan's garden. He is taken to hospital. The doctors say that surgery is required.

To comply with the law as to medical consent:

- (a) the local authority can consent, as can the Khans, and James if he is 'Gillick competent'; or
 - (b) only the Local Authority can give valid consent; or
 - (c) James' mother must give her consent, or the court make a specific issue order giving consent; or
 - (d) both James' mother and the Local Authority must give consent.
8. Joseph is the subject of a care order. His social worker has told Joseph's parents that the Local Authority is considering removing Joseph from the children's home, where the parents have visited him each weekend, to foster parents where contact will be reduced to four times a year. The parents are very unhappy about this proposal which is due to be discussed at a Review meeting.

Which of the following is accurate?

- (a) They can apply for a Prohibited Steps Order to stop any removal of Joseph without the consent of the court; or
- (b) They can challenge any reduction in contact by application to the court; or
- (c) They can attend the Review and appeal to the court if unhappy with the result of the Review; or
- (d) They can seek a specific issue order to resolve the issue of Joseph's future placement.

TURN OVER

9. Nigel is being looked after by Greenwood Council as an accommodated child. His parents, David and Sonia are not married but David's name is entered on Nigel's birth certificate as his father.

Whose consent is required for Nigel to be placed for adoption without a placement order?

- (a) Either David or Sonia; or
 - (b) Greenwood Council and Sonia; or
 - (c) David and Sonia; or
 - (d) Sonia.
10. George is the subject of a care order and lives with foster parents. His elder sister, Kate, wishes to look after him. The Council do not consider her to be a suitable person to take care of George, or to have contact with him.

Which of the following order or orders can Kate apply for with leave of the court?

- (a) A contact order under s.8; or
- (b) A residence order under s.8, or a contact order under s.34; or
- (c) A specific issue order under s.8; or
- (d) An order for discharge of the care order under s.39.

TURN OVER

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SECTION C

Multiple choice answer sheet

Student Seat Number

Your answers in this section are to be indicated by drawing a circle around the appropriate letter in the answer sheet provided at the end of this section. If you change your mind, please put a cross through your previous choice and circle your new choice of letter. You should choose the best answer of the four available.

You must hand in the entire question and answer sheet at the end of the examination.

In each question 2% will be awarded for a correct answer. No marks will be deducted for an incorrect answer or where there is no attempt to answer the question.

1	A	B	C	D
2	A	B	C	D
3	A	B	C	D
4	A	B	C	D
5	A	B	C	D
6	A	B	C	D
7	A	B	C	D
8	A	B	C	D
9	A	B	C	D
10	A	B	C	D

END OF EXAMINATION

BHL 0017



FAMILY LAW

LECTURE SYLLABUS & OUTLINES

TERM 1

Emma Seagreaves

FAMILY LAW

TERM 1 - AIMS AND LEARNING OUTCOMES

- 1) To teach both the legal theory and the practical application of family law;
- 2) To consider policy issues arising from the substantive law;
- 3) To examine proposals for reform;
- 4) To explain, analyse, apply and evaluate the legal rules and concepts governing and regulating family relationships;
- 5) To encourage an ability to critically analyse the impact of family law on individuals and the family unit;
- 6) To provide practice in the development of a number of key skills, in particular, conducting legal research, applying principle and statute to family problems, oral communication, use of IT resources and the ability to work in teams.

TERM 1 - LECTURE SYLLABUS

Unit 1:

- An Introduction to Family Law
- What is a 'family'?

Unit 2:

- Marriage
- Cohabitation

Unit 3:

- Divorce
- Mediation

Unit 4:

- Family Property
- Financial Support on Divorce
- Agreement and Settlement
- Child Support

Unit 5:

- Domestic Violence

UNIT 1 – AN INTRODUCTION TO FAMILY LAW

AIMS AND LEARNING OUTCOMES

The aims of this Unit are:

To provide you with an introduction to the areas of law to be covered within this module;

To promote informed debate on the changing role of the family within society;

At the end of this Unit you should be able to:

Recognise and evaluate the demographic changes and/or socio-economic factors which may affect the modern 21st century family;

Understand the scope and concept of Family Law.

What is Family Law?

Definitions

What aspects will be studied within this course?

What is a ‘family’?

Definitions

R v Inhabitants of Darlington (1792) 4 TR 798

Blackwell v Bull (1836) 48 ER 274

Gammans v Ekins [1950] 2 KB 328

Wason v Lucas [1980] 1 WLR 1493

Key case:-

Fitzpatrick v Sterling Housing Association Ltd [2000] 1 FCR 21 HL

Ghaidan v Mendoza [2004] 2 FLR 600

What is not a 'family' for the purposes of gaining protection from legislation?

- (1) heterosexual cohabitants/same sex cohabitants (not registered partnership)
- (2) those living together in a platonic relationship

Joram Developments Ltd v Sharratt [1979] 1 WLR 928

UNIT 2 MARRIAGE AND COHABITATION

AIMS AND LEARNING OUTCOMES

The aims of this Unit are:

To enable you to acquire an understanding of the law relating to the formation of a marriage;

To gain a comprehensive knowledge of the law as it relates to nullity of marriage;

To promote an understanding of the law relating to cohabiting couples and the issues in respect of proposed reforms.

At the end of this Unit you should be able to:

Demonstrate an understanding of the formalities required to create a valid marriage;

Demonstrate in-depth knowledge of the distinction between void and voidable marriages and the grounds on which a marriage is void or voidable;

Identify relevant facts and issues and identify their relative importance;

Critically analyse the current legal position in relation to cohabiting couples and the proposed reforms.

Unit 2 Part 1

COMMENCING THE FORMAL RELATIONSHIP

MARRIAGE

'the family ideal'

What is marriage?

Meaning

Legal Definition

Hyde v Hyde and Woodhouse [1866] LR 1 PD 130 at 135

"the voluntary union for life of one man and one woman to the exclusion of all others"

Is this correct?

The Valid Marriage

Capacity to marry

The parties must:-

- (1) NOT be within the prohibited degrees of relationship;
See the *Marriage Act 1949 Sch1/Marriage (Prohibited Degrees of Relp) Act 1986*
- (2) be over the age of 16;
- (3) NOT be already married;
- (4) be respectively male and female;
For transgender couples – see later.

Formalities of Marriage

Marriage Act 1949

Public access; when the ceremony can take place; notice period

Civil ceremonies

Religious Ceremonies

Church of England

Quaker and Jewish
Other religions

Common Law Marriage

Presumption of marriage by cohabitation and repute

A-M v A-M (Divorce: Jurisdiction: Validity of Marriage) [2001] 2 FLR 6

Martin v Myers [2004] EWHC 1947

CIVIL PARTNERS

Civil Partnerships Act 2004

Capacity to Register a Civil Partnership

The parties must:-

- (1) NOT be within the prohibited degrees of kindred;
See the *Civil Partnerships Act 2004 Sch 1 Part 1*
- (2) be over the age of 16;
- (3) NOT be already married or a civil partner;
- (4) be of the same sex.

Formalities of Civil Partnership

See *Civil Partnerships Act 2004 s5-27*

The absence of same sex marriage

Wilkinson v Kitzinger [2006] EWHC 2022

THE EFFECT OF NON COMPLIANCE WITH CAPACITY OR FORMALITIES- THE LAW OF NULLITY

What is nullity?

Definitions:

- *Non-marriage
- *Void marriage
- *Voidable marriage
- *Valid marriage

Non Marriage

What is a non marriage?

Void Marriage

What is a void marriage?

Grounds on which a marriage is void

S11 Matrimonial Causes Act 1973

S11(a)(i) The prohibited degrees of relationship

Marriage Act 1949

Marriage (Prohibited Degrees of Relationship) Act 1986 s6(2)

Key Case: *B v UK [2005] 3 FCR 353*

S11(a)(ii) Age

Marriage Act 1949

S11(a)(iii) Formalities

Marriage Act 1949

Marriage Act 1995

S11(b) Either party already married or in a registered civil partnership

The crime of bigamy

Dredge v Dredge [1947] 1 All ER 29

S11(c) The parties must be respectively male and female

(1) Transsexuals

Corbett v Corbett (otherwise Ashley) [1970] 2 All ER 33

Rees v UK [1987] 2 FLR 111

Cossey v UK [1991] 2 FLR 492

Goodwin v UK [2002] 2 FCR 577

Key Case: *Bellinger v Bellinger [2003] 1 FLR 1043*

Gender Recognition Act 2004

(2) Intersexuals

W v W (Nullity) [2000] 3 FCR 748

(3) Same Sex Marriages

Grant v South West Trains [1998] 1 FLR 839

X, Y, Z v UK [1997] 2 FLR 892

Da Silva Mouta v Portugal [2001] 1 FLR 653

London Partnerships Register

Civil Partnerships Act 2004

S11(d) Polygamous marriages outside England and Wales

Grounds on which a civil partnership is void

See Civil Partnerships Act 2004 – similar to above

Voidable Marriage

What is a voidable marriage?

Grounds on which a marriage is voidable

S12 Matrimonial Causes Act 1973

S12(a) Inability to consummate

S12(b) Wilful refusal to consummate

Definition of consummation

D-E v A-G (1845) 1 Rob Eccl 279

Baxter v Baxter [1948] AC 274

P v P [1964] 3 All ER 919

What does “inability to consummate” mean?

G v G [1924] AC 349

Singh v Singh [1971] P 226

Definition of wilful refusal

Horton v Horton [1947] 2 All ER 871 HL
Key Case: Kaur v Singh [1972] 1 All ER 292
A v J [1989] 1 FLR 110

S12(c) Lack of consent

(i) Duress

That is: forced marriage

Szechter v Szechter [1971] 2 WLR 170
Objective test 'Overborne will by a fear of danger to life, limb or liberty'

Buckland v Buckland [1968] P 296
Singh v Singh [1971] 2 All ER 828

Key Case: Hirani v Hirani [1982] 4 FLR 232, CA
'whether the pressure...is such as to destroy the reality of consent and overbear the will of the individual'

P v R (Forced Marriage: Annulment) [2003] 1 FLR 661

The distinction between forced and arranged marriage

A Choice By Right: The Report of the Working Group on Forced Marriage (2000)
Forced Marriage: A Wrong not a Right (2005)

(ii) Mistake

Moss v Moss [1897] P 263

(iii) Unsoundness of mind

(iv) Otherwise

Examples include drunkenness, fraud.

S12(d) Mental disorder

Mental Health Act 1983

S12(e) Venereal disease

S12(f) Pregnant by another

S12(g) An interim gender recognition certificate under the GRA2004 has been issued to either party to the marriage

S12(h) The respondent is a person whose gender at the time of the marriage had become the acquired gender under the GRA2004

Grounds on which a civil partnership is voidable

See Civil Partnerships Act 2004 – similar to above

Circumstances which prevent a person from seeking to annul a voidable marriage

Matrimonial Causes Act 1973 s13(1)

Ending a void or voidable marriage

The decree of nullity

Ending a valid marriage

The decree of divorce

Unit 2 Part 2

COHABITATION

What is cohabitation?

Meaning

Heterosexual and same-sex cohabitation

A comparison of the rights of a married couple and those of a heterosexual cohabiting couple

- *Financial maintenance
- *Property
- *Children
- *Domestic Violence
- *Inheritance

Ownership of the Family Home: the current law

Legal Ownership

Joint owners

- *joint tenants
- *tenants in common

Goodman v Gallant [1986] 1 FLR 513

Key Case: *Stack v Dowden [2007] UKHL 17*

Property in the name of one person

“Equity follows the law”

Equitable Ownership

(a) Express Declaration of Trust

s53(1)(b) LPA 1925

(b) Resulting Trusts

Pettit v Pettit [1970] AC 777
Gissing v Gissing [1971] AC 886
Springette v Defoe [1992] FLR 388

(c) **Constructive Trusts**

Burns v Burns [1984] 1 All ER 244
Grant v Edwards [1986] 2 All ER 426
Key Case: *Lloyds Bank v Rossett* [1990] 1 All ER 1111
Midland Bank v Cooke [1995] 2 FLR 915
Oxley v Hiscock [2004] 2 FLR 669
Key Case: *Stack v Dowden* [2007] UKHL 17

(d) **Proprietary Estoppel**

Pascoe v Turner [1979] 2 All ER 945
Matharu v Matharu [1994] 2 FLR 597
Gillet v Holt [2000] FCR 705

Criticism of the Current Law

Is reform of the law necessary for cohabiting couples?

Law Commission Consultation Paper 179 (2006)

“Cohabitation: The Financial Consequences of Relationship Breakdown”

What is an “intimate relationship”?

What are the “eligibility” criteria?

What claims can be made?

Law Commission Report on the Consultation due August 2007

UNIT 3 DIVORCE AND MEDIATION

AIMS AND LEARNING OUTCOMES

The aims of this Unit are:

To consider the current law governing divorce proceedings within this jurisdiction and any proposals for reform;

To enable you to acquire a comprehensive understanding of s1 of the Matrimonial Causes Act 1973 and in particular the five facts in s1(2);

To appreciate the law as it relates to Civil Partnerships and their dissolution;

To acquire an understanding of how the mediation process fits into the current law on divorce.

At the end of this Unit you should be able to:

Demonstrate understanding of the historical and social context in which the law operates;

Evaluate the rules governing divorce;

Discuss the law both constructively and critically and synthesise policy issues in relation to the area of divorce reform.

Understand how the mediation process fits into the current law on divorce.

Unit 3 Part 1

DIVORCE

Why do people divorce?

Historical Background to the Matrimonial Causes Act 1973

Canon Law

Matrimonial Causes Act 1857

Later Acts – 1923 and 1937

An increase in divorce

“Putting Asunder – A Divorce Law for Contemporary Society”

Law Commission Report 6 (1966)

Divorce Reform Act 1969

The current law: the Matrimonial Causes Act 1973

The Ground for Divorce s1(1)

The five facts in s1(2)

The one year rule

The Special Procedure under the MCA 1973

Overview of what needs to be done to obtain a divorce

Focus on the facts in detail

The ‘fault’ based facts:

- (a) **The Respondent’s adultery – “the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent” MCA1973 s1(2)(a)**

Key Case: *Cleary v Cleary* [1974] 1 All ER 498

Dennis v Dennis [1995] 2 All ER 51

Goodrich v Goodrich [1971] 2 All ER 1340

The cohabitation rule

Matrimonial Causes Act 1973 s2(1)

- (b) **The Respondent's behaviour – “the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent” MCA1973 s1(2)(b)**

Pheasant v Pheasant [1972] 1 All ER 587

Key Case: *Livingstone-Stallard v Livingstone-Stallard [1974] 2 All ER 766*

O'Neill v O'Neill [1975] 3 All ER 289

Thurlow v Thurlow [1976] 2 All ER 979

Buffery v Buffery [1988] 2 FLR 365

Birch v Birch [1992] 1 FLR 564

Hadjimilitis (Tsavliris) v Tsavliris [2003] 1 FLR 81

The cohabitation rule

Matrimonial Causes Act 1973 s2(3)

- (c) **The Respondent's desertion – “the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition”**

Quoraishi v Quoraishi [1985] FLR 780

The ‘no-fault’ facts:

- (d) **Two years separation with Respondent's consent to the divorce – “lived apart for a continuous period of at least two years preceding the presentation of the petition and the respondent consents to a decree being granted”**

What is “living apart”?

Matrimonial Causes Act 1973 s2(6)

Hollens v Hollens (1971) 115 SJ 327

Key Case: *Mouncer v Mouncer [1972] 1 All ER 289*

Santos v Santos [1972] 2 All ER 246

The cohabitation rule

Matrimonial Causes Act 1973 s2(5)

- (e) **Five years separation – “lived apart for a continuous period of at least five years immediately preceding the presentation of the petition”**

Fuller v Fuller [1973] 2 All ER 650

The cohabitation rule

Matrimonial Causes Act 1973 s2(5)

Defences to a divorce petition

(i) s5 MCA 1973 – the grave hardship defence

Le Marchant v Le Marchant [1977] 3 All ER 610

Rukat v Rukat [1975] 1 All ER 343

K v K (Financial Provision) [1997] 1 FLR 35

(ii) s 10(2) MCA 1973

(iii) Delay making absolute a decree nisi

Dissolution of a Civil Partnership

See *Civil Partnerships Act 2004*

The problem with the current law

“Family Law: The Ground for Divorce” Law Commission Report 192 (1990)

“Looking to the Future: Mediation and the Ground for Divorce” White Paper (1995)

A possible solution: the Family Law Act 1996

The failure of Part II of the Family Law Act 1996

Problems with:-

- The timetable for divorcing
- The information meeting
- The stage when reconciliation was encouraged
- The timing of the divorce order
- The removal of “fault based” divorce

Where next?

Currently, no proposals to reform divorce law in England and Wales

Unit 3 Part 2

MEDIATION

What is mediation?

Definition

In-court mediation

Independent mediation

The role of the mediator

The advantages/disadvantages of mediation

Why do people choose lawyers?

UNIT 4 FINANCIAL ASPECTS OF SEPARATION AND DIVORCE

AIMS AND LEARNING OUTCOMES

The aims of this Unit are:

To enable you to acquire an understanding of the law as it relates to family property, both within and outside the context of divorce proceedings;

To enable you to gain a comprehensive understanding of the law relating to financial support on divorce, to include in particular an analysis of s25 of the Matrimonial Causes Act 1973;

To gain an appreciation of how financial cases can be settled without the need for a final hearing;

To understand the current law relating to child support and any proposals for reform.

At the end of this Unit you should be able to:

Understand the general principles relating to ownership of family property;

Critically analyse the factors in s25(2) MCA 1973 and the types of property orders which can be made within divorce proceedings;

Consider how the general principles established in case law since *White v White* impact upon the statutory rules and extend them;

Determine and explain how financial cases can be settled without the need for a hearing;

Understand the law as it relates to child support and be able to critically analyse both past and proposed reforms.

Unit 4 Part 1

FAMILY PROPERTY

Who owns the Family Property?

Personal Property:

Who owns what?

Generally title to property passes to the person who purchases it provided no contrary intention (eg. to own it jointly)

Income belongs to the person who earned it.

Special cases:-

- joint bank accounts

Jones v Maynard [1951] Ch 572

- housekeeping

s1 Married Women's Property Act 1964

- gifts

Ownership passes to the recipient if the donor intended to transfer the gift and it was handed over

NB. The presumption of advancement

The act of marriage (or cohabitation) does not change ownership of personal property.

Real Property: the Family Home

See earlier

Improvements to the home

S37 Matrimonial Proceedings and Property Act 1970

Rights to Occupy the Family Home

*Of a Spouse

s30 Family Law Act 1996

*Of a Cohabitee

Trust Law (see earlier)

Sale of the Family Home:

By a Spouse/Civil Partner on divorce/dissolution

See later – *Matrimonial Causes Act 1973/Civil Partnerships Act 2004*

By a Cohabitee

s14 and 15 Trusts of Land and Appointment of Trustees Act 1996

Bankruptcy and the Family

What happens on a bankruptcy?

Setting aside transactions

s423 Insolvency Act 1986

s339 Insolvency Act 1986

Order for Sale by trustee in bankruptcy

s14 Trusts of Land and Appointment of Trustees Act 1996

Protecting the bankrupt's family from creditors

s336 and 337 Insolvency Act 1986

Key Case: *Hill v Haines [2008] 1 FLR 1192*

Unit 4 Part 2

FINANCIAL SUPPORT ON DIVORCE

Where does a family's income come from?

- Joint income
- One party as breadwinner – husband or wife
- State support for income
- The lone-parent family

Historical Background

Pre – Divorce Reform Act 1969

- the 'innocent' wife
- the 'guilty' wife

Divorce Reform Act 1969

Matrimonial Proceedings and Property Act 1970

The Matrimonial Causes Act 1973

“The Financial Consequences of Divorce – the Basic Policy”

Law Commission Report (1980)

Matrimonial and Family Proceedings Act 1984 amending part of MCA 1973

The current law: the Matrimonial Causes Act 1973

What can the Court do to make financial provision for a spouse?

The MCA 1973 provides for a range of orders which the Court can make:-

ss22, 23, 24, 24B, 25B and 25C MCA 1973

Income Orders

- periodical payments *s23(1)(a)*
- secured periodical payments *s23(1)(b)*

Capital Orders

- lump sums *s23(1)(c)*
- property adjustment orders eg.
- transfer of home to one spouse's name *s24(1)(a)*

- ordering a sale of property s24A

Interim orders

- maintenance pending suit s22

Pensions orders

What benefits does a pension give?

What must a Court consider whenever there is a pension?

s25B(1) MCA 1973

What options does the Court have?

(i) set off

(ii) earmarking

(iii) pension splitting - *Welfare Reform & Pensions Act 1999*

(iv) commutation

(v) undertakings

Key Case: *T v T [1998] 1 FLR 1072*

S v S (Rescission of Decree Nisi: Pension Sharing Provision) [2002] 1 FLR 457

D v D (Financial Provision: Periodical Payments) [2004] 1 FLR 988

Should there be a 'clean break' between the parties?

What is a 'clean break'? s25A

Advantages/disadvantages

When is a clean break order appropriate and when not?

Ashley v Blackman [1988] 2 FLR 278

Hobhouse v Hobhouse [1999] 1 FLR 961

Burgess v Burgess [1997] 1 FLR 89

Key Case: *Suter v Suter and Jones [1987] 2 FCR 52*

M v M (Financial Provision) [1987] 2 FLR 1

SRJ v DWJ (Financial Provision) [1999] 2 FLR 17 CA

Deferred clean break

Flavell v Flavell [1997] 1 FCR 332

How does the Court exercise its powers in relation to financial matters?

Note it is at the Court's discretion – s25 merely lists factors to be taken into account

What is the Court's duty when considering what orders to make?

s25(1) "all the circumstances of the case, first consideration given to the welfare while a minor of any child of the family who has not attained the age of eighteen"

What factors must the Court take into account?

s25(2)

No one factor is given priority over any others

The s25(2) factors:

s25(2)(a) – the financial resources of the parties

s25(2)(b) – the needs, obligations and responsibilities of the parties

s25(2)(c) – the standard of living prior to breakdown

s25(2)(d) – the ages of the parties and duration of the marriage

s25(2)(e) – any disabilities

s25(2)(f) – the contributions of the parties to the welfare of the family

s25(2)(g) – conduct of the parties

s25(2)(h) – loss of any benefit upon dissolution of the marriage

The factors in practice - relevant Case Law

S25(2)(a)

Pre-2000

A v A (Financial Provision) [1998] 2 FLR 180

Post-2000

H v H (Financial Provision: Special Contribution) [2002] 2 FLR 1021

Norris v Norris [2003] 2 FCR 245

GW v RW [2003] 2 FLR 108

P v P [2005] 1 FLR 576

S25(2)(b)

Pre-2000

Duxbury v Duxbury [1987] 1 FLR 7
Gojkovic v Gojkovic [1990] FLR 140

Post-2000

Key Case: *White v White* [2000] 2 FLR 981

S25(2)(c)

Pre-2000

Leadbeater v Leadbeater [1985] FLR 789
F v F (Ancillary Relief: Substantial Assets) [1995] 2 FLR 45
Dart v Dart [1996] 2 FLR 286

Post-2000

Key Case: *Miller v Miller* [2006] 1 FLR 1186

S25(2)(d)

Pre-2000

Krystman v Krystman [1973] 3 All ER 247
Attar v Attar [1985] FLR 649
C v C (Financial Provision: Short Marriage) [1997] 2 FLR 26
A v A (Elderly Applicant: Lump Sum) [1999] 2 FLR 969

Post-2000

Foster v Foster [2003] 2 FLR 299
GW v RW [2003] 2 FLR 108
Key Case: *Miller v Miller* [2006] 1 FLR 1186

S25(2)(e)

C v C (Financial Provision: Personal Damages) [1995] 2 FLR 171

S25(2)(f)

Pre-2000

Conran v Conran [1997] 2 FLR 615

Post-2000

White v White [2000] 2 FLR 981
Cowan v Cowan [2001] 2 FLR 192
Key Case: *Lambert v Lambert* [2003] 1 FLR 139

S25(2)(g)

Beach v Beach [1995] 2 FLR 160

Clark v Clark [1999] 2 FLR 498 CA

H v H (Financial Relief: Attempted Murder as Conduct) [2006] Fam Law 264

S25(2)(h)

Most important in relation to pensions

Outdated - the Duxbury approach

Duxbury v Duxbury [1987] 1 FLR 7

Important Updates in the law – post 2000

The ‘Yardstick of Equality’ – the Impact of *White v White* to capital assets

Key Case: *White v White* [2000] 2 FLR 981

What is the “yardstick of equality”?

When should it be departed from?

What is “matrimonial property”?

Cowan v Cowan [2001] 2 FLR 192

H-J v H-J (Financial Provision: Departing from Equality) [2002] 1 FLR 415

Norris v Norris [2003] 2 FCR 245

GW v RW [2003] 2 FLR 108

Key Case: *Lambert v Lambert* [2003] 1 FLR 139

R v R (Lump Sum Repayments) [2004] 1 FLR 928

Key Case: *Miller; McFarlane* [2006] 1 FLR 1186

Key Case: *Charman v Charman (No 4)* [2007] 1 FLR 1246

L v L [2008] 1 FLR 142

What about periodical payments after *White v White*?

MCA s22 and s23(1)

Approaches to periodical payments as considered by the Courts:-

Saunders v Saunders (1980) FLR 121....”the right approach is rather...fair and just in all the circumstances”

- (i) balancing needs and disposable income
- (ii) problems with this approach

- (iii) the “net effect” calculation
Stockford v Stockford (1982) 3 FLR 58
- (iv) s25(2) factors and their consideration by the court
CO v CO (Ancillary Relief: Pre Marriage Cohabitation) [2004] EWHC 287
- (v) lump sum by instalments
R v R (Lump Sum Repayments) [2003] EWHC 3197
- (vi) capital element in periodical payments
 - *McFarlane v McFarlane : Parlour v Parlour [2004] 2 FLR 893*
 - **Key Case: Miller; McFarlane [2006] 1 FLR 1186**
 - *CR v CR [2008] 1 FLR 323*

What about the spouse in receipt of welfare benefits – should they receive maintenance?

Should a poorly paid spouse be ordered to make payments?

Ashley v Blackman [1988] 2 FLR 278

Housing

How should the matrimonial home be dealt with on divorce?

Who should occupy the home?

Piglowska v Piglowski [1999] 2 FLR 763 HL

Options in respect of the owner-occupied home:-

- (a) buying out the other’s share
- (b) selling the house and splitting the proceeds between the parties in specified shares
- (c) postponing a sale of the property and allowing one spouse to remain in the home until a specified event happens:-

(1) the *Mesher* order

Key Case: *Mesher v Mesher and Hall [1980] 1 All ER 126 CA*
Elliott v Elliott [2001] 1 FCR 477
B v B (Mesher Order) [2003] FL 482

(2) the *Martin(Harvey)* order

Martin BH v Martin D [1978] Fam 12
Harvey v Harvey [1982] 1 All ER 693

Clutton v Clutton [1991] 1 FLR 242

- (d) transferring the house into one spouse's sole name, with the other spouse receiving a charge over the property in his/her favour

Ancillary Relief for Civil Partners

See *Civil Partnerships Act 2004*

Unit 4 Part 3

AGREEMENT AND SETTLEMENT

Consent Order

How much does the Court consider the contents?

Xydhias v Xydhias [1999] 1 FLR 683
Soulsbury v Soulsbury [2007] EWCA 969

Agreements before a court order is made

Edgar v Edgar [1980] 2 FLR 19 CA
X v X (Y and Z Intervening) [2002] 1 FLR 508
M v M (Prenuptial Agreement) [2002] 1 FLR 654

Changes of circumstances after an order has been made

What do we mean?

What can be done?

(i) Variation

s31 MCA 1973

Note which types of orders may be varied under this section

Flavell v Flavell [1997] 1 FLR 353

(ii) Setting the order aside

Livesey v Jenkins [1985] AC 424
B v B (Consent Order: Variation) [1995] 1 FLR 9

(iii) Appeal

Barder v Barder (Caluori Intervening) [1988] AC 20 HL
Cordle v Cordle [2002] 1 FLR 207

Unit 4 Part 4

CHILD SUPPORT

Historical Background

Current Law

Child Support Act 1991
Child Support Act 1995
Child Support, Pensions and Social Security Act 2000

Duty to Maintain

Child Support Act 1991 s1(1)

Jurisdiction

Child Support Agency – when?

Courts – when is the jurisdiction exclusive?

Courts – when is the jurisdiction in addition to the Agency's jurisdiction?

Proof of Paternity

Child Support Act 1991 s27

Child Support, Pensions and Social Security Act 2000 s15

Refusing to name the father

Reasons - *Child Support Act 1991 s46(3)*

Penalties - *Child Support Act 1991 s46(1)(c)*

How was Child Support under CSA1991 calculated?

Complex formula

Criticisms of the Child Support Acts

A new system: Child Support, Pensions and Social Security Act 2000

Simplification of the formula:-

Stage 1:-

- The qualifying child *CSA 1991 s55*

- Basic rate – when income exceeds £200 per week and is less than £2000
 - 15% of income for one qualifying child
 - 20% of income for two qualifying children
 - 25% of income for three or more qualifying children
- Reduced Rate
- Flat Rate
- Nil Rate

Stage 2:-

- Adjustments to Rate

Criticisms of this new system?

Delay
 Children in Poverty
 No discretion in formula

The Current Problem with the Child Support Agency

“A failing organisation needing rapid and radical change” House of Commons Work and Pensions Committee (2005)

Communication difficulties
 Administrative difficulties
 Low staff morale
 Enforcement difficulties

Government has announced a complete review of child support “A Fresh Start”

What now for child support?

An Alternative: application under s15 Children Act 1989

What factors will the court take into account?

CA 1989 Sch 1, para 4

Orders which can be made?

Phillips v Pearce [1996] 2 FLR 230
J v C (Child: Financial Provision) [1999] 1 FLR 152
Re P (Child: Financial Provision) [2003] 2 FCR 481

UNIT 5 DOMESTIC VIOLENCE

AIMS AND LEARNING OUTCOMES

The aims of this Unit are:

To consider the current law governing domestic violence within differing family relationships;

To gain an understanding of the different statutes covering this area of law and in which situation each statute is most appropriate;

To appreciate the methods of protection which the Court can order.

At the end of this Unit you should be able to:

Demonstrate understanding of the current law governing domestic violence;

Evaluate through research the effectiveness of this law;

Discuss the law both constructively and critically;

Demonstrate an ability to advise family members of their rights in a given situation;

Unit 5

DOMESTIC VIOLENCE

What is 'domestic violence'?

Government's definition: "Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality" (Home Office 2005)

Possible causes of domestic violence

- Personality of abuser
- Domination of women by men
- Lack of effective law

Historical Aspects

The Current Law:

Family Law Act 1996 Part IV

Protection from Harassment Act 1997

Domestic Violence, Crime and Victims Act 2004

Focus on Family Law Act 1996 Part IV

What orders are available?

The Non-Molestation Order

Who can apply?

The associated person

FLA 1996 s 62

Key Case: *G v F (Non-Molestation Order: Jurisdiction) [2000] 2 FCR 638*

Grounds for obtaining the order

FLA 1996 s 42(5)

What order can be made?

Johnson v Walton [1990] 1 FLR 350

C v C (Non-molestation Order: Jurisdiction) [1998] 1 FLR 554

Banks v Banks [1999] 1 FLR 726

Enforcement

Breach of a non-molestation order is now be a criminal offence under *s42A of FLA 1996*, as amended by the DVCVA 2004

The Occupation Order

Who can apply?

The associated person

FLA 1996 s 62

Which section of FLA 1996 should be used?

s33, s35, s36, s37, s38

FLA 1996 s33

Who can apply?

The 'entitled' applicant

Which property can the order be sought over?

A dwelling house which is the home or intended home of the applicant and respondent

Grounds for obtaining the order

The Mandatory Exercise

FLA 1996 s 33(7) – the 'significant harm' test

"if it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section...is not made, the court shall make the order unless it appears to it that –

- (a) *the respondent or any relevant child is likely to suffer significant harm if the order is made; and*
- (b) *the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made"*

Key Case: B v B (Occupation Order) [1999] 1 FLR 715

Banks v Banks [1999] 1 FLR 726

Re Y (Children)(Occupation Order) [2000] 2 FCR 470 CA

Definition of 'harm'

FLA1996 s63(1)

What is 'significant harm'?

Chalmers v Johns [1999] 1 FLR 392 CA

What is 'attributable'?

B v B (Occupation Order) [1999] 1 FLR 715

What is 'likely to suffer'?

Children Act 1989 s31

The Discretionary Exercise

FLA 1996 s 33 (6)

What orders can be made?

FLA 1996 s 33(3) – (5)

FLA s40

Nwogbe v Nwogbe [2000] 2 FLR 744

FLA 1996 s35

Who can apply?

The 'non-entitled' applicant

Grounds for obtaining the order

FLA 1996 s33(6) and s 35(6)

s35(8) Same as FLA 1996 s 33(7) - the 'significant harm' test

What orders can be made?

FLA 1996 s 35(3) – (5)

FLA 1996 s36

Who can apply?

The 'non-entitled' applicant

Grounds for obtaining the order

FLA 1996 s 33(6) and s36(6)

FLA 1996 s 36(7) - the 'significant harm' questions

What orders can be made?

FLA 1996 s 36(3) – (5)

FLA 1996 s37

Who can apply?

The 'non-entitled' applicant

Grounds for obtaining the order

Same as FLA 1996 s 33(7) - the 'significant harm' test
Same as FLA 1996 s 33(6)

What orders can be made?

FLA 1996 s 37(3)

FLA 1996 s38

Who can apply?

The 'non-entitled' applicant

Grounds for obtaining the order

Same as FLA 1996 s 36(7) - the 'significant harm' questions
Same as FLA 1996 s 36(6)

What orders can be made?

The ex parte order

FLA 1996 s45

The Power of Arrest

FLA 1996 s47

Enforcement

Contempt of court

Domestic Violence, Crime and Victims Act 2004 (FLA 1996 s42A)

Protection from Harassment Act 1997

Creation of the statutory tort of harassment

Use of both civil and criminal law

What does the claimant have to prove?

PFHA 1997 s1

What amounts to a 'course of conduct'?

PFHA 1997 s7(3)

R v Hills [2001] 1 FLR 580 CA

Lau v Director of Public Prosecutions [2000] 1 FLR 799

The Criminal Offence

PFHA 1997 s2 and s4

Restraining order s5

The Civil Remedy

s3 the statutory tort of harassment

Provides for damages and an injunction

Domestic violence: civil or criminal law (DVCVA 2004 s10 and s11)

BHL 0017



FAMILY LAW

TUTORIAL PROGRAMME

TERM 1

Emma Seagreaves

TUTORIAL 1 – THINKING LIKE A FAMILY LAWYER

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To provide you with an introduction to the areas of law to be covered within this module;

To promote informed debate on the changing role of the family within society;

To introduce you to the skills required to be a successful family lawyer.

At the end of this tutorial you should be able to:

Recognise and evaluate the demographic changes and/or socio-economic factors which may affect the modern 21st century family;

Demonstrate understanding of the context in which the law operates;

Explain the arguments and factors which a family lawyer must consider when looking at a case.

Reading:

Standley Chapter 1, p3-9

Booth and Kennedy, 'The Traditional Family and the Law', [2005] Fam LJ 482

Preparation:

Read your lecture notes and the relevant sections of the prescribed texts as detailed above.

Read the case study in Task 2 and consider what issues arise.

At the class:

The class will commence with students working in groups to complete Task 1, followed by presentation of each group's conclusions.

The class will continue with consideration of the issues which arise in Task 2.

Task 1

In the class you will be given a list of demographic and socio-economic factors which may have affected families in the late 20th/early 21st century. Working in small groups, you will consider these factors and decide what effect these trends have had on family law. You are free to reject any of the factors and to propose alternatives.

Task 2

Consider the following case study:

Linda has been married to Phillip for 13 years. They have three children, Amy, aged 12 years, Joanne, aged 10 years and Michael, aged 7 years. Phillip is a builder by trade and Linda has worked part time in his business for several years, doing general secretarial work.

About 10 months ago, Phillip told Linda that he had purchased an old Victorian property to convert into luxury flats. However, instead of doing so, he began to convert the house into two parts only. Six months ago, Phillip told Linda that he did not love her anymore and was moving out of the family home and into one part of the converted Victorian house.

Linda was very shocked by Phillip's announcement and took the news badly. She became somewhat depressed and began to drink quite heavily. Her depression worsened when she realised that Phillip had moved into the property with another woman, Jane, with whom he has been having a relationship for the past 12 months.

Matters have recently taken a further turn for the worse when Linda found out that Phillip's business, which had not been doing well, had gotten so bad that Phillip has considered going into bankruptcy. He wants to sell the family home in order to pay the debts of the business. Linda has found out that the Victorian property was purchased, not by Phillip but by Jane and so is not owned by Phillip or his business. Jane has put the remaining half of the property up for sale.

Michael has been affected very badly by his parent's split. He goes regularly to Phillip's house to see his dad and gets on well with Jane. Phillip has told Linda that he feels that it would be best for Michael if he were to live with his dad for a while. He feels that Linda is obviously not capable of looking after Michael properly with her drinking habit.

The two girls do not want to see their father – they blame him for all the family's problems and for the fact that their mother is in the state she is in.

Linda agrees to the house being put on the market for sale to pay off the debts of the business – however, she then discovers that they owe so much on the mortgage that, by the time that is paid off there will be little money left for the debts and none for her.

She survives at present on child benefit and the cash which Phillip occasionally gives her – she has not worked in the business since the parties split. She has just received a letter from the Inland Revenue stating that she owes a large amount of tax as she was earning money from the business during the time she worked there and not declaring tax. Linda did not know that she had not been paying tax – Phillip always sorted out her wages for her and she got cash in hand every Friday.

What family law issues do the above facts raise?

What skills do you consider you would need as a family lawyer to be able to represent Linda?

TUTORIAL 2 – VALIDITY OF MARRIAGE

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To enable you to acquire an understanding of the law relating to the formation of a marriage;

To gain a comprehensive understanding of the law as it relates to nullity of marriage;

To enable you to acquire a practical understanding of the approach to analysing problem cases in this area.

At the end of this tutorial you should be able to:

Demonstrate in-depth knowledge of the distinction between void and voidable marriages and the grounds on which a marriage is void or voidable;

Identify relevant facts and issues and identify their relative importance;

Demonstrate ability to use primary legal sources and discuss legal materials;

Critically analyse and apply key cases and statutes to a given problem scenario.

Reading:

Standley Chapter 2 p25-44

Probert R, 'How would Corbett v Corbett be decided today?' [2005] Fam LJ 382

The Gender Recognition Act 2004

Forced Marriage: A Wrong not a Right (2005) Executive Summary, Chapters 2 and 4.

Preparation:

Read your lecture notes and the relevant sections of the prescribed texts as detailed above.

Obtain a copy of the Gender Recognition Act 2004 using **electronic** resources and be prepared to explain in the workshop how you used these resources to reach the required statute. Consider the main points arising out of this statute.

Draft an outline written answer to the questions and be prepared to discuss your answer at the class.

Consider the points raised by the Forced Marriage Consultation document in relation to whether it would be advantageous to create a criminal offence in this area.

At the class:

The first part of the tutorial will involve whole group consideration of question 1, together with group discussion on the issues raised in this question by the Gender Recognition Act 2004.

The latter part of the tutorial will involve whole group consideration of question 2 and the benefits and risks of criminalisation of forced marriage.

After the class:

Prepare final written answers to the questions. All students will find preparing the answers an invaluable check on their progress and aid towards revision for the examination.

Question 1

Nadia and Jason went through a ceremony of marriage in 1998. They have one adopted child who is now aged 5. Their relationship has broken down and they wish to make the separation a permanent one. Nadia has moved out of the family home and it has been agreed that Jason will remain in the home caring for the child. He does not work and has always stayed at home to look after the child.

What advice would you give to Jason if:-

- (a) Prior to the marriage, Nadia, whose birth certificate records her as male, had undergone a sex-change operation. At the time of the marriage ceremony, Nadia genuinely believed that she could get married as a female. However, she did not tell Jason that she was a transsexual. Jason has only just discovered the truth.
- (b) The position as in (a) except that at the time of the marriage, Jason knew that Nadia had had a sex-change operation.

How would your advice differ if Nadia and Jason had married after the coming into force of the Gender Recognition Act 2004 and Nadia had applied for and obtained a full gender recognition certificate before marrying Jason?

Question 2

Nisreen, a Muslim woman, aged 18, met and fell in love with Inam, a British Muslim man. She was very worried that her family would never agree to her marrying him.

However, Nisreen decided to get engaged and to break the news to her family as soon as a suitable opportunity arose; Nisreen and Inam hoped that if her family were to meet him they might agree to their relationship.

Before Nisreen had chance to break the news of her engagement, her father told her that all the family were worried about her friendship with Inam and decided that an immediate marriage to someone more suitable was the best solution. He told her they had booked a flight to Pakistan in two weeks time so she could meet a prospective husband and that she should never speak to Inam again. He told her that if she did not like the prospective husband she did not have to go through with the marriage.

Nisreen was very unhappy at having to stop seeing Inam but agreed to go to Pakistan. She hoped that if she did not like the prospective husband, her parents might agree to her marrying Inam. When she arrived in Pakistan, she was introduced to Mohammed, her prospective husband but felt straightaway that it was not right. Although she tried to tell her parents that she did not like Mohammed, she was told that a ceremony of marriage was already arranged for the next day and that she had to marry him. Friends of her prospective husband threatened her and she was told that 'Inam would be hurt' if she did not go through with the marriage. Nisreen was very scared and felt she had no alternative but to go through with the marriage

Since the marriage she has returned to the UK with her husband but he has been constantly rude and abusive to her. He recently assaulted her physically so she ran away.

Advise Nisreen on the validity of her marriage to Mohammed.

TUTORIAL 3 – REFORM OF LAW RELATING TO COHABITING COUPLES

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To promote informed debate on the reform of the law relating to cohabiting couples.

At the end of this tutorial you should be able to:

Discuss the law both constructively and critically and synthesise policy issues in relation to a proposed area of reform.

Reading:

Standley Chapter 2 p35-37

The Law Commission Report:

COHABITATION: THE FINANCIAL CONSEQUENCES OF RELATIONSHIP

BREAKDOWN, reading as directed on Blackboard

Chandler A, ‘**Stack v Dowden**’ [2007] Fam LJ 533

Bull L, ‘**Cohabitation Outcomes after the Law Commission Report**’ [2008] Fam LJ 56

Preparation:

Read your lecture notes and the relevant sections of the prescribed texts as detailed above.

Consider the arguments for and against reform of the law as it relates to cohabiting couples, as detailed in the Law Commission Consultation Paper No 179 (Overview) and Report and be prepared to argue at the tutorial in support of or against these reforms. Consider the general question 1 in this context.

Prior to the tutorial, you will be given a series of short answer questions on Blackboard – please ensure that you answer these questions and bring the answers with you to the tutorial.

At the class:

The first part of the tutorial will consider the answers to the short answer questions.

The latter part of the tutorial will consider some of the arguments for and against reform of the law as it relates to cohabiting couples with reference to the question.

After the class:

Prepare final written answers to the question. This topic will provide an invaluable introduction to the general area of divorce and ancillary relief.

Question

Do you consider the law relating to cohabiting couples is overdue for reform? Explain with reference to the Law Commission Report. If you were responding to the Consultation Paper No 179, what recommendations might you make to the Law Commission to reform the law in this area?

TUTORIAL 4 – DIVORCE – THE CURRENT LAW

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To consider the current law governing divorce proceedings within this jurisdiction and any proposals for reform;

To enable you to acquire a comprehensive understanding of s1 of the Matrimonial Causes Act 1973 and in particular the five facts in s1(2);

To enable you to acquire a practical understanding of the approach to analysing problem cases in this area.

At the end of this tutorial you should be able to:

Demonstrate understanding of the historical and social context in which the law operates;

Evaluate the rules governing divorce and identify the relevant fact from s1(2) MCA 1973 to be proved in any given scenario;

Apply legal knowledge to given situations to provide solutions to problems;

Discuss the law both constructively and critically and synthesise policy issues in relation to the area of divorce reform.

Reading:

Standley, Chapter 7 p149-154, p155-163, p170-172

Extracts from the Law Commission's Report "Family Law: A Ground for Divorce" (1990)

Judgement from **Livingstone-Stallard v Livingstone-Stallard** [1974] Fam 47

Booth and Jenkinson, 'From our own Co-Respondents' [2007] Fam LJ 530

Preparation:

Read your lecture notes and the relevant sections of the prescribed texts as detailed above.

Draft outline written answers to the questions.

At the class:

The first part of the tutorial will involve a discussion of Questions 1-2. Students will be

divided into smaller groups to consider each of these questions. There will then be whole group discussion of the issues arising out of each group.

This will be followed by whole group consideration and analysis of question 3.

After the class:

Prepare final written answers to the questions. All students will find preparing the answers an invaluable check on their progress and aid towards revision for the examination.

Question 1

In 1991, Amanda married Bob. They have two children, now aged 15 and 13. At first the marriage was a happy one, however, in about 2004, Bob and Amanda started to drift apart somewhat. At first this was hardly noticeable; they would socialise separately and only went out together in the company of the children. At home, communication between them deteriorated and Bob began to throw himself into his work, staying at work later and later, leaving Amanda to care for the children and keep the household running. Although they still shared the same bedroom, there were no sexual relations between the parties since January 2005. In August 2005, Bob was offered promotion by his employers, a multinational oil company. This involved a two-year posting to Malaysia. His wife and family could accompany him. Bob was very keen but Amanda objected to his going. She refused to accompany him, stating that she had a life in England and that it was unfair on the children to take them away from their home and friends. After a number of bitter arguments Bob went to Malaysia, alone, in October 2005. He returned home on leave for three months in April 2006. The relationship between Bob and Amanda remained strained and cool. They slept in separate rooms but tried hard to maintain the pretence of being a happily married couple for the sake of the children.

Bob is due to return to England at the end of this month. Amanda has just received a letter from him, telling her that he has decided that their marriage is over and that he is going to start divorce proceedings when he gets back. Amanda does not care whether they are divorced. She has been seeing Edward, a romantic but impoverished artist who is far more interesting than Bob ever was.

Advise Amanda whether Bob has any grounds for divorcing her.

Question 2

Catherine and David were married in 1997 and have two children born in 1998 and 2000. In 2002, David was convicted of a serious sexual offence and sent to prison. Catherine resolved to stand by him and initially visited him regularly in prison. In 2004,

however, she met Harry and began a relationship with him. Eventually her visits to David in prison grew less and less until she no longer visited at all. She decided that her marriage to David was over but there was no point upsetting him by telling him this until nearer his release.

In 2006, Catherine and Harry started living together and she is now expecting his baby. They would really like to get married before the baby is born.

Are there any grounds on which Catherine can divorce David?

Question 3

Look at the extracts from the attached Law Commission's Report "Family Law: A Ground for Divorce" (1990).

Answer the following questions;

- a) Do you accept these criticisms?
- b) Can you think of other criticisms which can be levelled at the present law and practice of divorce?
- c) Those are the criticisms. What are the strengths of the present law?

LIVINGSTONE-STALLARD v LIVINGSTONE-STALLARD

[FAMILY DIVISION]

[1974] Fam 47

HEARING-DATES: 18, 19 March 1974

19 March 1974

CATCHWORDS:

Husband and Wife - Divorce - Respondent's behaviour - Test to be applied - Wife's petition - Husband constantly critical and abusive - Whether unreasonable to expect petitioner to live with respondent - Matrimonial Causes Act 1973 (c. 18), s. 1 (2) (b)

HEADNOTE:

The parties were married in December 1969. In February 1970 the husband locked the wife out of the matrimonial home and the parties lived apart until September 1970. Following an argument in November 1972 the parties lived separate lives, and in January 1973 the wife presented a petition for divorce on the ground that the marriage had irretrievably broken down under section 1 (2) (b) of the Matrimonial Causes Act 1973. She alleged that throughout the marriage the husband had abused and criticised her, frequently deriding her behaviour and attitudes, and that she could not reasonably be expected to live with him. By his answer the husband denied that he had behaved in the way the wife alleged or that the marriage had broken down irretrievably and did not cross-pray for a decree.

On the wife's petition: -

Held, granting a decree nisi, that the question whether the husband had behaved in such a way that the wife could not reasonably be expected to live with him was a question of fact the correct approach to which was to ask whether any right-thinking person would come to the conclusion that the husband had so behaved taking into account the whole of the circumstances and the characters and personalities of the parties (post, p. 54B, F); and that, on the evidence, any right-thinking person would conclude that the husband had behaved in such a way that the wife could not reasonably be expected to live with him (post, p. 55B-D).

Pheasant v. Pheasant [1972] Fam. 202 not followed.

Per curiam. In a case which depends on a course of conduct and on the character of the other spouse, rather than on a series of dramatic incidents, the effect of the conduct may be none the less serious in the long run even though it was not practical to specify particular incidents (post, p. 53C-D).

INTRODUCTION:

PETITION

The parties were married on December 5, 1969. There was one child of the family, a boy born in November 1971. By her petition filed on January 29, 1973, the wife prayed for dissolution of the marriage on the ground that the marriage had irretrievably broken down under section 1 (2) (b) of the Matrimonial Causes Act 1973. By his answer the husband denied that the marriage had broken down irretrievably or that he had behaved in such a way that the wife could not reasonably be expected to live with him.

The facts are stated in the judgment of Dunn J.

DUNN J: In this suit the wife seeks a dissolution of her marriage on the ground of irretrievable breakdown under section 1 (2) (b) of the Matrimonial Causes Act 1973. The husband by his answer denies that the marriage has broken down irretrievably and he denies that he has behaved in the manner alleged by the wife in her petition.

The parties were married on December 5, 1969, the husband being then 56 and the wife 24 years of age. He had been married before in 1942 to a lady some 15 years his junior. There was one son of that marriage who was born in 1944 and the marriage ended in divorce in the middle of the 1960s, the first wife having obtained a decree nisi in a defended suit on the ground of cruelty.

Shortly after the war, the husband started an insurance broking business at Westcliff-on-Sea, Essex, and his son, in due course, followed him into the business. He has quite recently retired from the business and is living in the former matrimonial home at 8 Branscombe Gardens, Thorpe Bay Essex.

The parties met some years before they were married. The wife's father is a clerk employed by the Customs and Excise. She herself was employed by that department before her marriage, although for a short time she was employed part-time in the husband's office. They became engaged in about 1968. The engagement was a stormy one and was broken off twice. The husband, not surprisingly, had doubts about the difference in age, and the wife frankly told me that she herself had doubts about his temper and dominant character, but that in the end she came to the conclusion that once they were married things would improve and their marriage could be a success.

The marriage was neither easy nor long-lived, because within two months of the marriage the wife had left and gone back to her parents. The parties remained apart until September 1970 when the husband joined the wife at a flat which she had bought jointly with her mother from the proceeds of a gift which had been made her by a cousin. They lived together there for some two years during which period the one child of the family, Jason, was conceived and born. In August 1972 they bought a house, 8 Branscombe Gardens, Thorpe Bay, which was conveyed to them jointly as tenants in common, on terms that on any sale of the house the wife should receive a payment of £5,000 and the balance should be split equally between them. That is set out in the conveyance; the reason for it, I was told, is that the wife provided £5,000 for the purchase, the balance being found from a bank loan and moneys put up by the husband.

It is right to say that the husband disputes the validity of that division of the property as set out in the deed, saying that he never intended the deed to be drawn up in that way.

The wife moved from the flat to 8 Branscombe Gardens in October 1972, and a month later she left, taking the child. In January 1973 she filed her petition seeking the dissolution of marriage. As the house partly belonged to her, she was naturally reluctant to give up occupation, and she moved back with the child in June 1973, though living quite separate from her husband. That arrangement did not work, so the child went back to her parents, and since then she has been living partly at the former matrimonial home - at any rate sleeping the night there - and partly at her parents' house.

The wife's case is that her husband was, as she put it, a critical and non-loving man who treated her from the very first not as a wife but as a rather stupid child. She said that even on their honeymoon, when they spent a week at the Cumberland Hotel, her husband was abusive to her. It is quite plain from the evidence of the husband himself that even at that stage there were difficulties between them. The wife had referred to a holiday with a female cousin the previous summer; the husband objected to this; and I accept the wife's evidence that the result was to make him rude, boorish and critical of her during the honeymoon.

The parties went first to live at 69 Cavendish Gardens, Westcliff-on-Sea. The wife complained that from the time that they started married life together the husband criticised her behaviour, her friends, her way of life, her cooking and even her dancing. "They were all petty little things," she said, "but my life was not my own. I dreaded hearing his latch key in the door." The husband agreed that he did criticise her, but said that he was quite justified in so doing because she was what he called a very constructive person. I had some difficulty in understanding what he meant by that or how it could be said to justify his criticism. But it appeared at the end, after he had been cross-examined, that he formed the opinion that she was worthy of criticism, because she was a person who potentially did things well and by his criticism would be able to do things even better.

An indication of the husband's attitude towards his wife was that in the witness box he referred to her variously as "the girl," "the lady" and "Brenda Foster" which was her maiden name, but not as "my wife" or "Brenda." I accept the wife's complaint that right from the very start the husband did criticise her over these petty things in the way in which she described.

On one occasion, she said, in the course of an argument he spat at her. The husband denies this and I do not accept his denial. I found his evidence evasive on this issue. The wife also told me that when he was angry he called her names and she described them. In the witness box the husband spoke in a quiet carefully modulated voice; I do not believe that it was his real voice, particularly when he was angry. This was a man who was capable of controlled anger and I accept the wife's evidence that he called her names when he was angry. The only name he would admit to having called her was a bastard. No doubt he called her that and many other names as well.

The wife also told me that on one occasion the husband tried to kick her out of bed. His explanation was that he was a restless sleeper and that he jumped and jerked about in his sleep. He denied that he ever kicked his wife intentionally.

I do not accept his explanation and I do not believe that the wife made it up. I am satisfied that on that occasion the husband did try to knock the wife out of bed because, as she said, he was bad-tempered.

Another incident, small in itself, related to the washing of the wife's underclothes. She said that the husband complained because she left her washing soaking in the sink overnight and said that it was indicative of the way in which she had been brought up. This particularly annoyed her because the husband did exactly the same thing himself. He denied either washing his underclothes and leaving them in the sink or criticising the wife for so doing. I am satisfied that the evidence of the wife had a ring of truth about it. I thought that the husband was a man who was very set in his ways and had a good conceit of himself. He was inclined to look down on his wife, her background and upbringing. I accept that on that occasion he criticised her in that way and added the twist that it was indicative of the way in which she had been brought up.

The wife also complained about another incident which was, perhaps, the most illuminating incident so far as the husband's character was concerned. They had, naturally, had some photographs taken at their wedding, and not very long afterwards the photographer came round with the wedding album. The husband was out and the wife, exercising what one would imagine was normal courtesy and hospitality, offered the photographer a glass of sherry which he accepted and she had a glass of sherry too to keep him company. When the husband came home he went to his cocktail cabinet, took out the sherry bottle and said, "You have drunk half a bottle of sherry. Don't you ever go to my cocktail cabinet again." He asked her who she had been drinking with and she told him what had happened. He forbade her to "give refreshment to trades people again." He was naturally cross-examined about his attitude and it appeared to be that if his wife took a glass of sherry with a tradesman - and he apparently classed the photographer as a tradesman - then the glass of sherry might, as he put it, impair her faculties, so that the tradesman might make some kind of indecent approach to her; and that was the justification of his conduct on that occasion. To my mind, it is typical of the man.

Not very long after that the wife left. She left as the result of one of the few scenes of violence which took place during the marriage. I have no doubt that the wife was right when she said the husband came back in bad temper, and, although there is a dispute between the two of them as to the details of what happened, there is no doubt whatever that the husband took hold of the wife, bundled her out of the house on a cold February evening and locked the door so that she could not get back in again. She was exceedingly upset, and, being a young woman of spirit, she broke a pane of glass to try and get in again. The husband, in order to prevent her getting in, got a bowl of water and threw it through the broken glass. The wife said that it soaked her; and I accept that it did. It may very well be, as the husband says, that the wife also threw some water through the window, but he was after all in possession of the house and she was being excluded from it. The wife went across to her mother's which was very close and stayed there. A few days later she went to her doctor who found that she had bruise marks on her arms and legs and that her injuries were consistent with her having been violently assaulted. He said that she was in a very nervous state for about six weeks and required sedation.

The wife bought the flat at 66 Cotswell Road and moved there, I accept that the husband was continually attempting to annoy her by going to the flat, trying to get in, following her in his car and things of that kind. But in the late summer of 1970 she agreed to a reconciliation and the husband moved into the flat. One of the criticisms which are made is that there is no specific incident either pleaded or referred to in evidence during the two years that the parties lived there together. The husband's case was that those two years were perfectly happy. The wife agreed that they were happy at times but said:

"He did not really want me he only wanted to annoy me... He was always packing his bags and threatening to go away; he was always nasty; he was unkind; he belittled me in front of people and refused to meet my friends; he belittled my opinions."

She also said that the husband said to her on more than one occasion, "In order for them to be happy, wives have to be subservient to their husbands." I accept that evidence of the wife as being completely consistent with the husband's character and attitude as I saw it in the witness box. I accept the submission of counsel for the wife that in a case which depends on a course of conduct and on the character of the other spouse, rather than on a series of dramatic incidents, perhaps of violence, the effect of the conduct may be none the less serious in the long run even though it is not practical to specify particular incidents as having impinged upon the memory of the wife as incidents in their own right.

In October 1972 the wife moved with Jason, who by that time was nearly a year old, to join the husband at 8 Branscombe Gardens. She said they did not get on there, that the husband vented his anger with other people on her, blaming her, for example, for the mistakes which the decorators had made; that his temper was very easily aroused; that he slammed the doors; and that he pushed her about and adopted a generally menacing attitude towards her. I accept that evidence.

The marriage ended for practical purposes on November 13, 1972. On that day the husband was late for his evening meal. According to the wife, he was very offhand when he arrived. He sat down and simply picked up a newspaper and started to read it, and she, in exasperation, took it away from him. He said "I will kill you" and that developed into an argument. She said he was in a terrible rage by the end of the evening. She could not take any more and she took the child to her parents and followed herself in January 1973 when her petition was filed.

The husband said at the end of his evidence that he was anxious for a reconciliation, that his wife was constructive, honest and reliable, but had some of his own failings; that, unhindered, they could make a success of their marriage; and that he loved her very dearly. If by the word "unhindered" the husband intended to convey the impression that the wife's mother had had a hand in the breakdown of this marriage, I reject that suggestion. I saw the wife's mother in the witness box; she impressed me as being an objective and sensible person. There was put to her in cross-examination a letter which she wrote to her future son-in-law on March 18, 1969, which showed that even at that time there had been some quarrel between the parties and in which she was, in effect, taking the husband's side and apologising for her daughter's behaviour, saying that she had an arbitrary streak in her.

I am quite satisfied that this marriage has broken down. The wife told me that in no circumstances would she continue to live with her husband, partly because he is so irresponsible with Jason and takes so little interest in him. I cannot, of course, dissolve this marriage unless I am satisfied that the husband has behaved in such a way that the wife cannot reasonably be expected to live with him. That question is, to my mind, a question of fact, and one approach to it is to suppose that the case is being tried by a judge and jury and to consider what the proper direction to the jury would be, and then to put oneself in the position of a properly directed jury in deciding the question of fact.

Mr. Reece, for the husband, has referred me to the cases - all of which have been so far decided at first instance - *Ash v. Ash* [1972] Fam. 135; *Pheasant v. Pheasant* [1972] Fam. 202; and *Katz v. Katz* [1972] 1 W.L.R. 955 and has submitted that incompatibility of temperament is not enough to entitle a petitioner to relief, that the behaviour must be of sufficient gravity so that the court can say that it would, under the old law, have granted a decree of divorce on the ground of constructive desertion. Mr. Reece has submitted that the best approach is to apply the test which was applied in the constructive desertion cases, bearing in mind that the parties are married and that the conduct must be sufficiently grave to justify a dissolution of the marriage; weighing the gravity of the conduct against the marriage bond or, as Mr. Reece put it, against the desirability of maintaining the sanctity of marriage. I have in the past followed the reasoning of Ormrod J. in *Pheasant v. Pheasant* [1972] Fam. 202 but, on reflection and with respect, I am not sure how helpful it is to import notions of constructive desertion into the construction of the Matrimonial Causes Act 1973. Nor, speaking for myself, do I think it helpful to analyse the degree of gravity of conduct which is required to entitle a petitioner to relief under section 1 (2) (b) of the Act. As Lord Denning M.R. has emphasised in another context¹, the Act of 1973 is a reforming statute and section 1 (2) is in very simple language which is quite easy for a layman to understand. Coming back to my analogy of a direction to a jury, I ask myself the question: Would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties? It is on that basis that I approach the evidence in this case.

The wife was young enough to be the husband's daughter and plainly considerable adjustment was required on both sides. Mr. Reece submitted that she had known him a long time and that she knew exactly the kind of man that she was marrying; that the complaints which she made are trivial; and that she cannot bring herself within section 1 (2) (b) simply because the character of her husband does not suit her. He further submitted that the reality of this case was that this young woman had simply got fed up and walked out, and walked out pretty soon too. I accept that the wife was a strong-minded young woman, but I am satisfied that she was anxious for the marriage to last and wished it to continue, that she wished to have children and bring them up and to have her own home, and that she did her best so far as she was able to adjust to her husband's character.

¹ Reporter's note: See *Wachtel v. Wachtel* [1973] Fam. 72, 91, C.A.

The husband was said, by Mr. Reece, to be meticulous. I agree with Mr. Beckman that more suitable adjectives would be self-opinionated, didactic and critical and I accept that the husband's approach was to educate the wife to conform entirely to his standards. He, in my judgment, patronised her continually and submitted her, as I have found, to continual petty criticisms and his general attitude is well exemplified by the incident of the sherry and the photographer whom he called "the tradesman." I accept that many of the incidents were, or might appear to be, trivial in themselves and that there is a paucity of specific incidents between September 1970 and November 1972. But taking the facts as I have found them in the round in relation to the husband's character, in my judgment, they amount to a situation in which this young wife was subjected to a constant atmosphere of criticism, disapproval and boorish behaviour on the part of her husband. Applying the test which I have formulated, I think that any right-thinking person would come to the conclusion that this husband had behaved in such a way that this wife could not reasonably be expected to live with him. There will accordingly be a decree nisi under section 1 (2) (b) of the Matrimonial Causes Act 1973.

DISPOSITION:

Decree nisi.

SOLICITORS:

Solicitors: Mervyn Beecham & Bodiam, Southend-on-Sea; Elman, Flint, Jefferies & Co., Southend-on-Sea.

M. B. D.

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The Last Word

A research seminar, deep in the bowels of the Lord Chancellor's Department.

Crispin Smooth: Welcome, everyone, to this informal gathering. It is my pleasure to welcome Prof Rumburger, whose challenging views on family law reform are well known to all of us here (loud muttering, 'Never heard of him', etc). Prof Rumburger, I believe you've been giving further thought to the question of divorce law reform?

Prof Rumburger: Thank you Crispin. Further thought, indeed. In fact, I would venture to suggest - without, I hope, being immodest - that I have made something of a breakthrough. It is common ground among us, I take it, that our divorce law is an incoherent, unprincipled mess, defended from ridicule only by its impenetrability (loud cries of 'Hear! Hear!' and 'Good on you Professor!'). Furthermore that, thanks to easy divorce, marriage has, to a considerable extent, lost its meaning. And that no-fault divorce overseen by local Gauleiters enquiring into motive and behaviour would be the worst solution of all (raucous cheering; banging of table tops). A state of affairs narrowly averted thanks to the principled intervention of our Lord Chancellor (cheers ring out: 'Good old Derry'; 'For he's a jolly good fellow', etc).

Well, ladies and gentlemen, how can we satisfy these competing aspirations on the one hand granting freedom to make and break relationships at will, so that those who wish to do so may treat the marriage ceremony as little more than an opportunity for a glorified piss-up, and on the other hand promoting stability in family life? I believe I have the answer.

We should do away with divorce. All legislation granting the right to divorce, from 1857 onwards, should be repealed (more muttering: 'Who dug this fellow up?'; 'What planet's he on?', etc). Now, I hear you ask, is this not an illiberal measure, out of tune with the spirit of the times? Not at all. It would be illiberal to those who wished it to be illiberal, but the very breath of freedom to those who preferred to see it in that light. The unhappily married could, needless to say, still separate. The Child Support Agency would still be with us (shouts of 'Hooray!'). But there would be no more divorce.

What would be the effect of all this? I predict that our fellow citizens would treat marriage with renewed seriousness. And for those who did not, they would doubtless form new unions, as unstable as those that preceded them, but with no further call upon the courts to regularise their transitory arrangements. Thank you for your attention (there is a stunned silence).

Crispin Smooth: Prof Rumburger, you have, as usual, been prepared to think the unthinkable. Your proposal is ahead of the times. It is also behind the times. It will appeal to all shades of political opinion and to none. I thank you on behalf of my colleagues and wish you a safe journey home. I only wish I were in a position to meet your expenses.

(Cascade of bread rolls.)

GWYNN DAVIS

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TUTORIAL 5 – FINANCIAL ASPECTS OF FAMILY LAW PART 1

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To enable you to acquire an understanding of the law as it relates to family property, both within and outside the context of divorce proceedings;

To enable you to gain a comprehensive understanding of the law relating to financial support on divorce, to include in particular an analysis of s25 of the Matrimonial Causes Act 1973.

At the end of this tutorial you should be able to:

Critically analyse the factors in s25(2) MCA 1973 and the types of property orders which can be made within divorce proceedings and be able to apply to a problem scenario;

Consider how the general principles established in case law since *White v White* impact upon the statutory rules and extend them;

Judge the merits of different solutions and give reasoned argument in favour of a chosen point of view;

Orally present conclusions to a group analysis of a problem.

Reading:

Standley Chapter 8 p180-209
Case law as directed by the tutor

Preparation:

Read your lecture notes and the relevant sections of the prescribed texts as detailed above.

Draft outline written answers to the questions.

At the class:

The class will commence with whole group consideration of the law in this area.

Students will work in small groups to finalise their answers to the problem questions.

Students will be expected to consider the position of and be able to advise either spouse.

Group feedback will involve each group presenting its conclusions on behalf of either the husband or the wife. The other groups will then mark the content and presentation of each group, by way of formative assessment.

After the class:

Prepare final written answers to the questions. All students will find preparing the answers an invaluable check on their progress and aid towards revision for the examination.

Question 1

Lucy and Ben were married in 1997. There are two children, Trevor (15) and Alison (13). Ben is not the children's natural father. At the time of his marriage to Lucy she was a widow with two small children. Ben has formally adopted the two children.

Ben (aged 46) and Lucy (aged 44) have now divorced. Lucy is living in the former matrimonial home with the children. It is worth £240,000 with an outstanding mortgage of £165,000. The mortgage repayments are £600 per month. Lucy has not been in paid employment since Trevor was born. She was a secretary but is worried about the idea of having to go back to work as she is now 44 and when she last worked computers were not that commonplace.

Ben is now living with Angela in a rented flat for which he pays £550 per month. Angela does not work. Ben is a director of a small family private limited company. The company is probably worth about £500,000. Ben's father owns 51% of the shares in the company and Ben and his brother have 24.5% each. The shares have never paid a dividend. Ben's only income is his salary of £35,000 pa, which works out at £1950 per month net. Ben does contribute to a company pension scheme but the scheme only has a transfer value of £25,000 at this time. He also drives a vehicle provided by the company.

Ben has been assessed by the Child Support Agency to pay £390 per month to Lucy for the benefit of the children.

Consider the case from the point of view of both the husband and the wife. Apply the s25 factors to the facts of this case and consider what orders for ancillary relief it would be appropriate for the court to make.

You will be expected to present the case on behalf of either spouse and may find that the orders you consider appropriate differ for each spouse.

Question 2

Betty and Walter were married in 1963. Betty is aged 67 and Walter aged 68. There are two children of the marriage, Denise (aged 35 years) and Anthony (aged 31 years). Both children are self-supporting and neither lives at home.

Both Betty and Walter are retired. Betty did used to work part time throughout the marriage but retired when she was 63. Walter worked in a local factory but retired at the age of 65. After Walter retired, he became quite withdrawn and would go away quite a lot on his own. Betty thought that he was just having difficulties in adjusting to retirement – however, matters worsened to the extent that Walter left Betty some six months ago. They have now agreed that the marriage is at an end and divorce proceedings are ongoing.

The property in which Betty lives is a two bedroomed bungalow “Whispering Pines” in an area popular with retirees. “Whispering Pines” is worth £100,000 and is mortgage free. Betty and Walter sold the house which had been their matrimonial home approximately 6 years ago and purchased this bungalow which was to be their retirement home. The bungalow was purchased in Walter’s sole name with some of the money which they made on the previous house sale. The remainder of the proceeds of sale (about £20,000) was placed into Walter’s savings account.

Betty has £2000 in a savings account in her own name. She does not have a private pension, having never contributed to a pension scheme. She does, however, receipt a state pension of £68 per week. Walter, on the other hand, contributed to an employer’s pension scheme throughout the whole period he worked and, when he retired, he received a lump sum of £30,000 and an annual pension of £12,000 which equates to a net monthly sum of £800 per month. Walter gives Betty a sum of £150 per month voluntary maintenance. Walter invested the lump sum when he received it and it is now worth £34,000.

When Walter left Betty, he moved into a rented flat, however, he now wishes to purchase a property for himself. He wants Betty to put “Whispering Pines” on the market for sale, in order that he can use some of the proceeds to buy his own home.

Consider the case from the point of view of both the husband and the wife.

How is the court likely to resolve financial matters and on what basis is any financial settlement likely to be made?

Again you may find that your conclusions differ for each spouse.

TUTORIAL 6 – FINANCIAL ASPECTS OF FAMILY LAW PART 2

AIMS AND LEARNING OUTCOMES

The aims of this tutorial are:

To further develop your understanding of the law as it relates to financial support on divorce;

To develop your skills of negotiation, presentation and letter writing;

At the end of this tutorial you should be able to:

Identify relevant facts and issues and identify their relative importance;

Critically analyse s25 of the MCA and the general principles established in key cases to a given problem scenario;

Conduct a negotiation on behalf of either the husband or the wife in a hypothetical round-the-table meeting between the divorcing couple and their solicitors;

Present the conclusions of this negotiation in oral presentation and thereafter in a letter to the client.

Reading:

Standley Re-read the relevant sections from the previous tutorial.

Preparation:

The subject of this tutorial is financial provision and property adjustment orders on marriage breakdown. In preparing for the tutorial you will need to consider:

- (i) the statutory guidelines in s25 of the MCA 1973;
- (ii) the clean break provisions in s25A;
- (iii) the case law surrounding the establishment of the principle of the 'yardstick of equality', the *White v White* case and those subsequent cases which have further interpreted the decision;
- (iv) the financial orders which can be made following divorce.

You will be asked to consider the position on behalf of either the husband or the wife. Before preparing your answer to the problem outlined below, look at the list

which will be displayed on the LLB Yr 3 notice board and see whether your client is the husband H, or the wife W. Prepare your answer accordingly.

Prepare for a round-the-table meeting with the other party's solicitor to negotiate a financial settlement in this case. Draft the arguments which you will put forward on your client's behalf, having regard to the problem and the additional information sheet given to you about your client's aspirations. In structuring your notes, make sure that you indicate clearly:-

- (i) the orders for financial provision and property adjustment you would most like to obtain for your client, adopting a realistic approach;
- (ii) the alternative arrangements you would be prepared to negotiate over and those matters on which you would not compromise;
- (iii) your reasons for (i) and (ii);
- (iv) any statutory material and case law on which you intend to rely.

At the class:

At the class, working in small groups, students will be asked to negotiate a financial and property settlement in relation to the problem below.

Student will be divided into small groups, each group consisting of equal numbers of students representing the husband H and the wife W. The groups will be asked to discuss the problem and reach a negotiated settlement. At the end of the allotted time for negotiation, the settlement must be recorded on a piece of paper and handed in to the tutor or alternatively emailed to the tutor after the tutorial.

After the class:

Self-evaluate the settlement within your group, considering the following:-

- (i) did you properly consider the alternative arrangements which might be made;
- (ii) did you correctly identify the matters over which you would be prepared to negotiate and those on which you would not compromise;
- (iii) did your agreement represent a fair settlement for your client?

Over the Christmas vacation period, students will then individually write a letter to their client explaining the settlement they recommend and why.

For this purpose a pro-forma letter will be placed on Blackboard for students' use when completing their letters. These letters must be emailed to the tutor over the vacation and will be considered at the first tutorial of term 2.

Case Study

Deirdre and David Green were married in 1985 and have two children, Amy born 21 May 1987 and Andrew born 7 October 1992. Deirdre is aged 45 years (dob. 01.05.62) and David aged 48 years (dob. 24.09.59). Amy no longer lives at home and is self-supporting and Andrew currently lives with his mother.

Deirdre and David recently separated in April 2007 and Deirdre is divorcing David. David has admitted to an affair with a female work colleague and is now living with that colleague in a small rented flat. Since separation, Deirdre has remained living in the former family home, "Greystokes" in Bruddersfield.

When Deirdre first met David, in the early 80's, he had just started his own business, manufacturing and selling a revolutionary form of luggage carrier for motorcycles. At first the business was slow to take off and David worked long hours. Deirdre helped him by doing the books at first, entertaining his business clients and, in later years, when the children were older, in a salaried role as Marketing Director. She also kept home and raised the two children. She saw little of him but gave him every help and encouragement. The business became extremely successful and the family enjoyed a high standard of living.

"Greystokes" is owned jointly by Deirdre and David and is worth £550,000. There is a small mortgage on the property of £70,000. They also own a villa in Tuscany worth £100,000.

David has numerous assets in his sole name, including his interest in his business, a private limited company, "Technocarrier Ltd". He has a controlling shareholding in the company, valued at £1.5 million and a gross income of £145,000 pa. David has also, over the years, made a number of shrewd business investments, as a result of which he has a portfolio of shares and other investments worth around £500,000.

David also has the benefit of a company pension scheme, which currently has a transfer value of £150,000. Deirdre has no pension provision.

Deirdre is currently not working. She left her position as Marketing Director in David's company, not feeling able to continue in the business in light of the affair and the fact that David's girlfriend is still working there. Deirdre has savings of £15,000 and David gives her £1,500 per month by way of voluntary maintenance. She is not opposed to finding other employment and, in fact, would quite like to start her own business. She has looked into the possibility of running an Internet company selling designer children's wear – she has always had a flair for design and has numerous contacts from her time working for David.

In addition to paying Deirdre maintenance, David also pays the mortgage and most of the utility bills for "Greystokes". This additional amount totals £700 per month.

As regards the children, Amy is no longer dependent but Andrew is classed as a qualifying child for the purposes of the Child Support Agency and is, therefore, maintained by David.

You act for Deirdre/David.

Represent Deirdre/David at a round-the-table meeting with the other party's solicitor to negotiate a financial settlement which can be presented to Court at the conclusion of the divorce proceedings.